

# **NANSEN – Dublinprocedure Kroatië voor vrouw met zware mentale problemen die Kroatië verliet voordat er een beslissing werd genomen in haar verzoek tot internationale bescherming**

## **Landeninformatie**

### **1. Systematische tekortkomingen in de asielprocedure**

Verschillende rapporten vermelden moeilijkheden voor asielzoekers om toegang te krijgen tot de asielprocedure enerzijds en illegale verwijderingen anderzijds:

Zo stelt het AIDA-rapport over Kroatië van December 2017 vermeldt dat:

“In January 2017, civil society organisations Are You Syrious? and Initiative “Welcome” reported that illegal and violent expulsions (push backs) from the territory of Croatia are happening. According to their report, people from Afghanistan, but also from Iraq, Pakistan, Syria and other countries, were not given access to asylum procedure, although some explicitly and repeatedly approached the Croatian police, expressing their wish to ask for international protection. Instead they were, according to the report, illegally expelled to Serbia from Croatian territory. The report stresses that this was accompanied by violence and degrading treatment by the Croatian police. Similar concerns were raised by Human Rights Watch and Save the Children in the same period.”<sup>1</sup>

Het FRA-rapport van maart 2018 vermeldt dat:

“The Ombudsperson confirmed that the allegations of pushbacks at the border of Croatia continued, as stated in his letter to the State Attorney in January.

(...)

According to a report by several NGOs, at least 10 people - including small children - were pushed back from Croatia to Serbia and Bosnia Herzegovina. This indicates that the practice highlighted by the Croatian Ombudsperson in January still continues.”<sup>2</sup>.

Ook Human Rights Watch vermeldt in het World Report 2019 dat:

"In August, UNHCR reported allegations that since January around 2,500 asylum seekers and migrants had been pushed back by Croatian police to Bosnia and Herzegovina, hundreds of cases of denied access to asylum procedures, and over 700 allegations of police violence and theft. The same month, a group of members of the European Parliament from 11 EU states jointly requested the European Commission to urgently investigate the allegations, with the Council of Europe human rights commissioner echoing that call in October”<sup>3</sup>.

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<sup>1</sup> AIDA, “Country Report Croatia”, December 2017, <http://www.asylumineurope.org/reports/country/croatia>, p. 19

<sup>2</sup> FRA, “Periodic data collection on the migration situation in the EU – March 2018 Highlights”, <https://fra.europa.eu/en/publication/2018/migration-overviews-march-2018>, p. 2 en 4.

<sup>3</sup> Human Rights Watch, “European Union Events of 2018”, <https://www.hrw.org/world-report/2019/country-chapters/european-union>

Ook het rapport van Amnesty International van februari 2018 haalt aan dat Kroatië vluchtelingen en migranten blijft terugsturen naar Servië zonder hen een effectieve toegang te geven tot een asielpprocedure:

“Croatia continued to return to Serbia refugees and migrants who entered the country irregularly, without granting them access to an effective asylum process. These pushbacks by police, sometimes from deep inside Croatian territory, routinely involved coercion, intimidation, confiscation or destruction of private valuables and the disproportionate use of force by the police. In July, the Court of Justice of the European Union ruled that Croatia had acted against the rules of the Dublin Regulation (which defines which EU member state has the obligation to evaluate the asylum claims) by allowing transit for refugees and migrants through the country in 2015 without examining applications for international protection.”<sup>4</sup>

Ook naar Bosnië-Herzegovina wordt illegal en met geweld teruggestuurd, zoals blijkt uit dit rapport van Human Rights Watch van December 2018:

“Human Rights Watch interviewed 20 people, including 11 heads of families and 1 unaccompanied boy, who said that Croatian police deported them to Bosnia and Herzegovina without due process after detaining them deep inside Croatian territory. Sixteen, including women and children, said police beat them with batons, kicked and punched them, stole their money, and either stole or destroyed their mobile phones”<sup>5</sup>.

Met betrekking tot de asielpprocedure zelf, dient gewezen te worden op de gebrekkige kwaliteit van beslissingen, het zeer lage aantal toekenningen van internationale bescherming en de lange duurtijd van procedures:

In het FRA-rapport van maart 2018 kan men namelijk lezen dat:

“The Croatian Law Centre highlighted the significant increase in the number of inquiries received via mobile text messages, relating to the asylum system in Croatia. In addition, the Jesuit Refugee Service criticised the quality of asylum decisions. For example, several asylum seekers who feared persecution for converting to Christianity were not granted international protection. For about seven months, no Afghan has been granted international protection, as Croatia considers Afghanistan to be a safe country”<sup>6</sup>.

Het laag aantal toekenningen van internationale bescherming blijkt uit het World Report 2019 van Human Rights Watch :

“According to the minister of interior, 3,200 migrants and asylum seekers crossed into Croatia between January and August, with 852 claiming asylum. Authorities granted 140 people asylum and 21 subsidiary protection during the same period”<sup>7</sup>.

De lange duurtijd van de asielpprocedure blijkt dan weer uit het FRA-rapport van maart 2018:

“The long waiting times for the asylum decision in Croatia has a negative effect on asylum seekers’ mental health, Doctors of the World reported. There was at least one suicide attempt per month in one of the two reception centres”<sup>8</sup>.

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<sup>4</sup> Amnesty International, Report 2017/18, The State of The World’s Human Rights, februari 2018, p. 139, <https://www.amnesty.org/en/latest/research/2018/02/annual-report-201718/>

<sup>5</sup> Human Rights Watch, Croatia : Migrants Pushed Back to Bosnia and Herzegovina, 11 December 2018, <https://www.hrw.org/news/2018/12/11/croatia-migrants-pushed-back-bosnia-and-herzegovina>.

<sup>6</sup> FRA, op.cit., p. 6

<sup>7</sup> Human Rights Watch, “European Union Events of 2018”, <https://www.hrw.org/world-report/2019/country-chapters/european-union>

<sup>8</sup> FRA, op.cit., p. 9

Tot slot dient ook verwezen te worden naar het State of the World's Human Rights rapport van Amnesty International:

“The NGO Centre for Peace Studies documented that between January and April, at least 30 asylum applications – including those from families with children – had been dismissed on the grounds of “security concerns” during a routine security check carried out by the Security and Intelligence Agency as part of the asylum process. The notes of these applications were marked as “classified” and could not be seen and thus could not be rebutted or challenged on appeal by those seeking asylum or their legal representatives. Cases with classified notes led to an automatic rejection by the Ministry of Interior. Subsequently, the failed asylumseekers were at risk of expulsion from the country and at heightened risk of refoulement – a measure forcing an individual to return to a country where they would risk serious human rights violations. Unaccompanied minors represented a quarter of all asylum-seekers in the country. By the end of the year, fewer than 200 asylum-seekers had been granted international protection. Croatia committed to accept 1,600 refugees and asylum-seekers under the EU resettlement and relocation schemes by the end of the year; by mid-November, fewer than 100 people had been relocated, and none had been resettled.<sup>9</sup>”

## 2. Systematische tekortkomingen in de opvangvoorzieningen

Het AIDA-rapport van December 2017 vermeldt volgende tekortkomingen:

“However, due to the exponential increase in numbers of asylum seekers compared to previous years, in the second half of 2016 accommodation capacities in Zagreb and Kutina were almost completely full. According to the Ministry of Interior, in both Reception Centres altogether 2,002 asylum seekers were placed in accommodation during the course of 2016. At the end of 2017, 410 persons (asylum seekers and persons with granted protection) were accommodated in the Reception Centres for Asylum Seekers in Zagreb, and 77 in the Reception Centres for Asylum Seekers in Kutina. Of those, 400 were asylum seekers.<sup>10</sup>”

“Accommodation of asylum seekers is organised in the two reception centres for asylum seekers, one in Zagreb and the other in Kutina. The Reception Centre in Kutina has been renovated and was reopened in June 2014. Although Reception Centre in Kutina is aimed at the accommodation of vulnerable applicants, with the increase in numbers of asylum seekers during 2016, vulnerable asylum seekers were also accommodated in one part of Reception Centre in Zagreb. This situation continued also at the in 2017. The Rehabilitation centre for Stress and Trauma reported that accommodation in the Reception centre for Asylum Seekers in Zagreb is not appropriate for families with children<sup>11</sup>”.

“As reported by the Croatian Red Cross, no specific problems regarding living conditions have been observed with accommodation in Kutina, while in Zagreb the problems are primarily related to infrastructure – dilapidated electrical, plumbing and sewage system, as well as old windows, doors – which as a result creates problems with heating. The problem was again reported by Croatian Red Cross, for example most of the rooms in the Reception Centre in Zagreb are in poor condition which should be resolved by renovation in 2018. Poor conditions in Zagreb were also reported by the Jesuit Refugee Service.

One of the problems reported by the Croatian Red Cross' employees working in the Reception Centre in Zagreb are unauthorised changes of rooms, as well as lack of control over the

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<sup>9</sup> Amnesty International, Report 2017/18, The State of The World's Human Rights, February 2018, <https://www.amnesty.org/en/latest/research/2018/02/annual-report-201718/>, p. 139.

<sup>10</sup> AIDA, op.cit., p. 61.

<sup>11</sup> AIDA, op.cit., p. 65.

issuance of keys. The consequences are frequent cases of theft, as well as conflicts between asylum seekers. During 2016 there was increase of unauthorised entries in Reception Centre in Zagreb as well. A new security system was due to be introduced in 2017, but no further information is available on this<sup>12</sup>.

Ook het FRA-rapport van maart 2018 bevestigt de slechte levensomstandigheden in het opvangcentrum van Zagreb:

“On several floors of the reception centre in Zagreb, Croatia, there was no electricity for several days, according to the Centre for Peace Studies. In addition, volunteers’ access to the reception centre was restricted<sup>13</sup>”.

### 3. Specifieke problemen voor personen die onder de Dublin III Verordening worden teruggenomen

Het AIDA-rapport over Kroatië van December 2017 vermeldt dat personen die Kroatië verlaten hebben voor het einde van hun procedure, opnieuw een verzoek tot internationale bescherming moeten indienen bij terugkeer na een Dublinterugname:

“Asylum seekers who are returned from other Member States in principle do not have any obstacles to access the asylum procedure in Croatia. However, those who had left Croatia before the end of procedure and therefore had their case suspended, have to re-apply for asylum (if they wish) once they return to Croatia, and thereby re-enter their initial asylum procedure, in line with Article 18(2) of the Dublin III Regulation. On the other hand, persons whose application was explicitly withdrawn or rejected before leaving Croatia are considered subsequent applicants upon return, contrary to the requirements of the Regulation.

As noted in Registration, some applicants have faced obstacles to arranging interviews for the purpose of lodging an application due to the lack of available interpreters for certain dialects<sup>14</sup>.

Ook vermeldt hetzelfde rapport dat er een risico is om in detentie geplaatst te worden:

“During the asylum procedure, detention is possible under all types of procedures, where the conditions prescribed by the LITP are met. However, the majority of asylum seekers are not detained but are accommodated in open centres. In that sense, it is not likely that any category of applicants would spend the whole status determination procedure in detention. The main reasons for the detention of applicants are situations where they request international protection after having been issued with a deportation order and situations where they left or attempted to leave Croatia before the completion of the procedure for international protection<sup>15</sup>”.

### 4. Geen toegang tot de nodige gezondheidszorg, medicatie en specifieke begeleiding

Verskillende rapporten maken gewag van problemen met betrekking tot de identificatie van kwetsbare slachtoffers van foltering en andere vormen van onmenselijke behandeling alsook met betrekking tot de toegang tot de nodige gezondheidszorg, medicatie en specifieke medische begeleiding.

Het AIDA-rapport van December 2017 vermeldt dat:

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<sup>12</sup> AIDA, op.cit., p. 65.

<sup>13</sup> FRA, op.cit., p. 8.

<sup>14</sup> AIDA, op.cit., p. 38.

<sup>15</sup> Ibid., p. 78.

“Many organisations, including UNICEF, Doctors of the World (MdM), the Rehabilitation Centre for Stress and Trauma, the Croatian Red Cross, the Society for Psychological Assistance (SPA) and the Centre for Peace Studies, have reported great problems and major deficiencies in the health care system. Due to deficiencies in the system, many organisations have targeted their activities in that direction.

In the first eight months of 2016, organised health care in the Reception Centre in Zagreb did not adequately respond to the needs of asylum seekers,<sup>294</sup> as a doctor was available two times per week but could not efficiently address the needs of all accommodated persons.

(...)

MdM, the Rehabilitation Centre for Stress and Trauma, JRS as well as other NGOs reported deficiencies in the regular health care system as well as a narrow interpretation of the legislative framework.

(...)

The lack of interpretation services when accessing medical services is still a problem. MdM provided interpreters while providing their services, but asylum seekers who approached doctors through the “regular” system have encountered this problem.

(...)

Applicants who need special reception and/or procedural guarantees, especially victims of torture, rape or other serious forms of psychological, physical or sexual violence, shall be provided with the appropriate health care related to their specific condition or the consequences resulting from the mentioned acts.<sup>301</sup> However in practice this type of “extra” health care is not accessible on regular basis for those who have special needs. During 2016 and 2017 many asylum seekers who came to Croatia were in need of special guarantees but have not received appropriate health care and were simply referred to doctor present in the Reception Centre, as a system and mechanism for addressing special needs of asylum seekers has not been established.

(...)

No system for early identification of victims of torture or other forms of ill-treatment by competent authorities and professionals has yet been developed. According to the LITP, applicants who need special reception and/or procedural guarantees, especially victims of torture, rape or other serious forms of psychological, physical or sexual violence, shall be provided with the appropriate health care related to their specific condition or the consequences resulting from the mentioned acts.

However until today in practice the system for addressing the consequences of torture among applicants has not been established. It is also unclear who can get treatment and under which conditions, and who should provide such treatments”<sup>16</sup>.

Ook het FRA-rapport van 2018 stelt dat:

“The Rehabilitation Centre for Stress and Trauma emphasised that the recognition and treatment of victims of torture remained problematic. In an interview, Doctors of the World

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<sup>16</sup> AIDA, op.cit., p. 71-75.

identified access to health care for beneficiaries of international protection as a key persisting fundamental rights concern”<sup>17</sup>.

Uit het rapport van de Hungarian Helsinki Committee van mei 2017 blijkt eveneens dat:

“In Croatia and Hungary there are no further provisions, internal guidance or informal practice on how the early identification mechanism should look like. In practice this means that often only clearly visible signs of vulnerability are identified early in the procedure.

(...)

A lack of capacity in centres for vulnerable asylum seekers is also reported in Croatia.

(...)

The reception centre in Kutina is aimed for the accommodation of vulnerable applicants and has a capacity of 100 places, which in practice is not enough. In the reception centre in Zagreb, there are 186 places aimed at accommodating vulnerable asylum seekers.<sup>59</sup> The existing capacity of these places is not enough and vulnerable people often get placed in the general part of Zagreb reception centre, where no private room is provided.

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The reception centre in Kutina is aimed for the accommodation of vulnerable applicants and has a capacity of 100 places, which in practice is not enough. In the reception centre in Zagreb, there are 186 places aimed at accommodating vulnerable asylum seekers.<sup>59</sup> The existing capacity of these places is not enough and vulnerable people often get placed in the general part of Zagreb reception centre, where no private room is provided.

(...)

In Croatia the law provides that applicants with special needs shall be provided with the appropriate health care related to their specific condition. However, in practice, this provision is not interpreted in the sense that it would cover costs when there is a need for further treatment recommended by a specialist (for example transport to specialist clinics, cost of operations, procurement of necessary medicines, etc.). Despite the fact that mental health care shall be covered by the Ministry of Health, it is mainly the NGOs’ psychologists that provide mental health care to asylum seekers. The existence of such NGOs depends on project funding and reportedly there are not enough psychologists. Moreover, interpreters are mainly provided by the NGOs.

In Croatia mental health services are assured mainly by NGOs, whose funding is limited”<sup>18</sup>.

### Rechtspraak

- HvJ EU, zaak C-578/16, C.K., H.F., A.S. tegen de Republiek Slovenië, 16 februari 2017:

« 74 In omstandigheden waarin de overdracht van een asielzoeker met een ernstige mentale of lichamelijke aandoening een reëel en bewezen risico op een aanzienlijke en onomkeerbare achteruitgang van de

<sup>17</sup> FRA, op.cit., p. 2.

<sup>18</sup> Gruša Matevžič, Unidentified and unattended, the response of Eastern EU Member States to the Special needs of Torture Survivor and Traumatized Asylum Seekers, Mei 2017, [https://www.ecoi.net/en/file/local/1407070/90\\_1504851185\\_2017-05-hhc-unidentified-and-unattended.pdf](https://www.ecoi.net/en/file/local/1407070/90_1504851185_2017-05-hhc-unidentified-and-unattended.pdf), p. 20, 33, 35, 38, 39.

gezondheidstoestand van die asielzoeker zou inhouden, zou die overdracht een onmenselijke en vernederende behandeling in de zin van dat artikel vormen.

- 75 Wanneer een asielzoeker, in het bijzonder in het kader van de doeltreffende voorziening in rechte die hem door artikel 27 van de Dublin III-verordening wordt gewaarborgd, objectieve gegevens overlegt, zoals medische attesten met betrekking tot zijn toestand, die de bijzondere ernst van zijn gezondheidstoestand en de aanzienlijke en onomkeerbare gevolgen daarvoor van een overdracht aantonen, mogen de autoriteiten van de betrokken lidstaat, de rechterlijke instanties daaronder begrepen, die gegevens bijgevolg niet buiten beschouwing laten. Zij moeten juist beoordelen wat het risico is dat dergelijke gevolgen zich voordoen wanneer zij beslissen over de overdracht van de betrokkene of – in het geval van een rechterlijke instantie – oordelen over de rechtmatigheid van een overdrachtsbesluit, aangezien de tenuitvoerlegging van dat besluit tot een onmenselijke of vernederende behandeling van de betrokkene zou kunnen leiden (zie naar analogie arrest van 5 april 2016, Aranyosi en Căldăraru, [C-404/15 en C-659/15 PPU](#), [EU:C:2016:198](#), punt 88).
- 76 Het staat dus aan die autoriteiten om iedere ernstige twijfel over de weerslag van de overdracht op de gezondheidstoestand van de betrokkene weg te nemen. In het bijzonder wanneer er sprake is van een ernstige psychische aandoening, mag daarbij niet worden volstaan met te kijken naar de gevolgen van het fysieke vervoer van de betrokkene van een lidstaat naar een andere, maar moet rekening worden gehouden met alle aanzienlijke en onomkeerbare gevolgen die uit de overdracht zouden voortvloeien.  
(...)
- 85 Daarentegen moeten de autoriteiten van de betrokken lidstaat, indien die voorzorgsmaatregelen gelet op de bijzondere ernst van de aandoening van de betrokken asielzoeker niet zouden volstaan om te verzekeren dat zijn overdracht geen reëel risico zal inhouden op een aanzienlijke en onomkeerbare achteruitgang van zijn gezondheidstoestand, de uitvoering van de overdracht van die persoon opschorten zolang hij door zijn toestand niet in staat is een dergelijke overdracht te ondergaan”.

- CcE, arrêt nr. 173 712 du 30 août 2016 :

« Dès lors, il ressort prima facie qu’il n’est nullement garanti que tout demandeur d’asile qui arrive en Croatie sera pris en charge correctement par les autorités croates et que sa procédure d’asile sera adéquate. Par ailleurs, le Conseil estime qu’au vu de la situation délicate et évolutive prévalant en Croatie, l’examen des dossiers dans lesquels un transfert vers ce pays est envisagé en application du Règlement Dublin III doit se faire avec une grande prudence, ce qui implique à tout le moins, dans le chef de la partie défenderesse, un examen complet, rigoureux et actualisé d’informations sur lesquelles elle se fonde pour prendre ses décisions (dans le même sens, voy. notamment CCE, 138 950, 22 février 2015) ; en l’espèce, ce n’est pas le cas.

g) Dans le cas d’espèce, le Conseil relève que les autorités croates ont accepté la reprise en charge du requérant le 13 juillet 2016, mais que le document qui en fait état

ne mentionne toutefois pas si le requérant a demandé l'asile en Croatie, ni s'il y sera considéré comme tel.

h) Enfin, le Conseil relève que le requérant a fait état de divers problèmes lors de son passage en Croatie. Ainsi, selon la requête, « arrivée (sic) à la frontière Croatie, les autorités policières croates les ont malmenés. Il voyageait avec un groupe. Ils refusaient tous de donner leurs empreintes. La police a alors commencé à frapper les personnes de son groupe pour les obliger à donner leurs empreintes. Le requérant a eu peur. La police les a envoyé dans un camp. Il faisait très froid à cette période. Ils ne leur pas donné de couvertures pour se réchauffer. Le requérant ne se sentait pas bien, il demandait à voir un docteur ce qu'ils lui ont refusé tant qu'il ne donnait pas ses empreintes. Il a finalement donné ses empreintes ». Même si l'acte attaqué considère que ces allégations ne sont pas démontrées, en l'état actuel de la procédure et au vu d'absence de tout élément fourni par la partie défenderesse elle-même, le Conseil estime que ces éléments n'ont pas été suffisamment pris en compte par la partie défenderesse.

i) En tenant compte de la situation particulière que connaît actuellement la Croatie et au vu des éléments particuliers au cas d'espèce relevés supra, le Conseil estime qu'il convient que la partie défenderesse procède de manière sérieuse et rigoureuse à un nouvel examen actualisé des conditions effectives d'accueil des demandeurs d'asile en Croatie, avant de décider de procéder à l'éloignement du requérant.

j) Partant, au terme de l'ensemble des développements faits supra, le Conseil juge que la partie défenderesse a, prima facie, manqué à son obligation de motivation formelle et à celle de prendre en considération l'ensemble des éléments du dossier qui lui était soumis, et estime qu'elle ne s'est pas livrée à un examen aussi rigoureux que possible des éléments indiquant l'existence d'un risque réel de traitement prohibé par l'article 3 de la Convention européenne des droits de l'Homme.

k) Le moyen, en ce qu'il est pris d'une violation de l'article 3 de la Convention européenne des droits de l'Homme et de l'obligation de motivation formelle, est sérieux ».

- CcE nr. 180 305 du 4 janvier 2017 :

« Le Conseil, à la lecture de ces informations et à l'instar de la partie requérante, relève que « ces rapports font notamment état de la situation politique très instable de la Croatie, de la situation humanitaire désastreuse et conséquente à l'afflux massif des demandeurs d'asile en Croatie, du risque de refoulement direct et indirect auquel sont soumis les demandeurs d'asile, des taux de reconnaissance qui restent toujours très bas dont il semble que l'on puisse déduire une absence de protection effective des demandeurs de protection internationale, de l'utilisation de la force, des risques d'abus et d'exploitation, ainsi que des traitements inhumains et dégradants à l'égard des demandeurs d'asile par les autorités croates ».



