

ELENA /EDAL desk research on the procedural and reception system for asylum seekers in Serbia

Introduction

1. International organisations, including the International Committee of the Red Cross, have reported that at the end of September over 130,000 persons have expressed their intention to seek asylum with numbers of entry into the territory averaging approximately 4,000 a day¹ and a maximum of approximately 5,000 arrivals in Preševo being recorded in late September.² With such a steep increase in the numbers of asylum seekers, access to the asylum procedure and reception conditions is extremely problematic with the UNHCR reporting that that the asylum system is not able to cope with the magnitude of the current inflow of people who require effective protection.³
2. This desk research looks into the procedural system as well as the reception structure and conditions for asylum seekers in Serbia. It asks the question as to whether Serbia can be classified as a Safe Third Country for asylum seekers.

Asylum Procedure

3. Asylum seekers are denied effective access to an asylum procedure in Serbia at almost every stage of the process. This has been noted by the European Commission which has stated that *“a comprehensive reform of the asylum system is required including sufficient and well-trained staff to handle an increasing number of applications, strengthening accommodation capacity, and, at the same time, rationalising the whole asylum procedure. The fact that applicants have no effective access to the asylum procedure and that, once submitted, their asylum applications are not effectively processed tends to encourage asylum applicants to see Serbia as a transit country for entering the EU illegally”*⁴.
4. There have been numerous consistent and credible reports of routine push-backs of asylum seekers to Macedonia without any consideration of the individual situation of the person arriving, or the opportunity to claim asylum.⁵

¹ International Federation of Red Cross and Red Crescent Societies, Seeking Safety from Syria to Serbia, 28 September 2015 <http://reliefweb.int/report/serbia/seeking-safety-syria-serbia>.

² 5,000 refugees enter Serbia on Monday morning, 21 September http://english.blic.rs/News/10915/5000-refugees-enter-Serbia-on-Monday-morning?utm_source=twitterfeed&utm_medium=twitter.

³ Europe's Refugee Emergency Response Update #2 1 – 16 September 2015 <http://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Update%20%232%20on%20the%20Emergency%20Eesponse%20in%20Europe%20-%20201-16SEPT15.pdf>

⁴ European Commission, Serbia progress report, October 2014, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf

⁵ Amnesty International, Europe's Borderlands Violations against refugees and migrants in Macedonia, Serbia and Hungary, July 2015., p32 available at: <https://www.amnesty.org/download/Documents/EUR7015792015ENGLISH.PDF>; and Human Rights Watch (HRW), Serbia: Police abusing migrants, asylum seekers, beaten extorted shoved back across the border, April 2015 available at: <https://www.hrw.org/news/2015/04/15/serbia-police-abusing-migrants-asylum-seekers>

5. Once an individual has entered the territory, in order to access the asylum process, they must express the intention to seek asylum to border police or at the nearest police station⁶. However, police officers may refuse to register this⁷, which prevents access to the asylum procedure as well as to reception centres and material assistance such as food and medical care. This is also the case for vulnerable individuals such as unaccompanied minors and pregnant women. There are delays too, in certificates being issued⁸ due to lack of staffing and resources⁹, with the accompanying risk of arrest and deportation for irregular entry and presence, contrary to the principle of *non-refoulement*.
6. If their intention to claim asylum is registered, they should be issued with a certificate enabling them to be received at an Asylum Reception Centre (ARC), which they must arrive at within 72 hours. If they have not 'secured' accommodation within the 72 hour deadline they are exposed to a risk of deportation.¹⁰ However, it is often difficult for asylum seekers to reach distant centres within this time period¹¹ and there have also been reports of applicants being given a questionnaire rather than a certificate resulting in them being ping ponged back and forth without any effective access to a procedure.¹²
7. In addition, there is a lack of capacity leading to a reception crisis due to the sharp increase in arrivals to Serbia. The numbers entering, along with issues of mismanagement at Asylum Reception Centres which may deny people with certificates entry, even where there is capacity, has led to many asylum seekers being forced to sleep rough in surrounding woodland or abandoned buildings in harsh weather which could amount to inhuman and degrading treatment¹³ (see below).

⁶ Article 22 and 23 Law on Asylum

⁷ HRW, *ibid*; and Belgrade Centre for Human Rights, Right to Asylum in the Republic of Serbia 2014, March 2015, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2015/03/Human-Rights-in-Serbia-2014.pdf>, p24-25.

⁸ J.Davies, Refugee Crisis Pits Neighbors Against Each Other in Serbia, August 31 2015, Vice news, https://news.vice.com/article/refugee-crisis-pits-neighbors-against-each-other-in-serbia?utm_source=vicenewstwitter

⁹ HRW *ibid*; and Belgrade Center for Human Rights, March 2015 *ibid* p26

¹⁰ Belgrade Center for Human Rights, March 2015 *ibid*

¹¹ HRW, *ibid*

¹² This has occurred at the Preševo border processing centre, which was established in 2015 where applicants have been provided a questionnaire and told by the police authorities that this constitutes the equivalent of a certification. However, there have been reports that when arriving in Belgrade and attempting to receive the official certificate at the police station that they are denied this and sent back to Preševo: G.Vale, Balkan Trail: arrival in Preševo, 21 September 2015 <http://www.balcanicaucaso.org/eng/Regions-and-countries/Serbia/Balkan-Trail-arrival-in-Presevo-164205>.

¹³ Amnesty International, *ibid* at p43; Medecins Sans Frontiers, Serbia: Asylum seekers and migrants left in cold, 19 February 2015 available at: <http://www.msf.org/article/serbia-asylum-seekers-and-migrants-left-cold>; National Preventive Mechanism Report on the Visit to the Asylum Centre in Bogovadja on 14 October 2013 available at: http://www.npm.lis.rs/attachments/053_AC%20in%20Bogovadja%2014%20Oct%202013.pdf <http://www.blic.rs/Vesti/Srbija/551055/Crveni-krst-zatrzio-smenu-upravnika-Centra-za-azilante-u-Bogovadji>

8. After reaching the designated ARC, the Asylum Office should register the claim, conduct a brief interview and issue the applicant with an identity card which provides for some freedom of movement and protects them against arrest¹⁴. However, the authorities fail to promptly register asylum seekers, and at a number of ARCs there have been periods of months at a time where no one at all had been registered¹⁵. There are also significant delays in issuing asylum seekers with identity cards which must be produced centrally, without which they are at risk of arrest and deportation for many months. Furthermore, if an asylum seeker is absent from their designated ARC for a period of more than 24 hours, they are deemed to have 'absconded' and will be excluded from the ARC and access to the asylum procedure.¹⁶
9. In 2014, of the 16,500 people expressing their intention to seek asylum in Serbia, only 388 applications were formally registered, and refugee status was only granted once. Most requests have been discontinued, as asylum seekers with very limited access to protection in Serbia have no solution but to continue their journey onwards in Europe¹⁷.
10. Those who have not had their intention to claim asylum registered, or who have not been able to gain access to a designated asylum reception centre or alternate accommodation within the statutory deadline, may be penalised for a misdemeanour and ordered to leave the territory of Serbia, contrary to Article 31 of the Geneva Convention and Article 8 of the Asylum Act. Penalisation may be discontinued by a Misdemeanour Court where it recognises an intention to seek asylum but court practice is inconsistent¹⁸.
11. The procedures following registration fail to follow basic procedural safeguards and do not ensure that an asylum claim will be fairly considered. Asylum seekers are not provided information on how to proceed with their application, which means they fail to submit their written application within the 15 days stipulated by law. The application should be submitted to an officer of the Asylum Unit at a specified time but asylum seekers may be deprived of the opportunity to do so for lengthy periods of time through no fault of their own¹⁹. There are significant delays in interviewing asylum applicants, although they have the right to be interviewed regarding their claim 'as soon as possible'²⁰. It is apparent that many of the legal safeguards provided for in the asylum law are not complied with in practice.
12. There are numerous deficiencies with the interview itself, with staff lacking requisite knowledge of the law as well as best practice interview procedures, which leads to a disproportionate burden being placed on the applicant to substantiate their claim. There is also a failure to identify vulnerable applicants and conduct the interview

¹⁴ Amnesty International, *ibid*.

¹⁵ Amnesty International, *ibid*.p37

¹⁶ Amnesty International, *ibid*.p35

¹⁷ AIDA Annual Report 2014/15, Common asylum system at a turning point: refugees caught in Europe's solidarity crisis, September 2015, at p30 available at:

http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_annualreport_2014-2015_0.pdf

¹⁸ Belgrade Centre for Human Rights, Human Rights in Serbia – A comprehensive report for 2014, 2015, at p227-228, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2015/03/Human-Rights-in-Serbia-2014.pdf>

¹⁹ Belgrade Center for Human Rights March 2015, *ibid*; Amnesty International, *ibid*.

²⁰ Amnesty International, *ibid*. p39; Belgrade Center for Human Rights, March 2015, *ibid*; p31

accordingly. Interviews are conducted by police officers of the Ministry of Interior rather than civilians, contrary to UNHCR recommendations²¹ and there are consistent reports of difficulties with translators.

13. Article 33 of the Asylum Act incorporates the safe third country concept whereby an application may be dismissed without reviewing the merits, unless the asylum seeker can prove that the country is not safe for him/her. This concept is applied systematically, as the list of safe third countries which has not been updated since 2009, includes all States bordering Serbia and nearly all States that applicants must transit through in order to reach Serbia (including Greece, Macedonia²² and Turkey) and is not based on criteria that establish whether the third country provides a fair and efficient asylum procedure. This practice is contrary to the ECtHR ruling in M.S.S.²³ and given the human rights violations that have been documented in Macedonia which also continues to return asylum seekers to Greece²⁴, leads to a risk of chain *refoulement*. Current practice results in the majority of claims being rejected on third country grounds²⁵ and deprives applicants of access to protection²⁶.
14. An appeal must be lodged within 15 days of the decision, but these are routinely dismissed by the Asylum Commission on safe third country grounds without adequate consideration of ECtHR rulings, UNHCR recommendations and international NGO reports, with explanations for the rejection rarely provided²⁷ and contrary to rulings of the Administrative Court²⁸. This leads to a significant risk of *refoulement* without an individualised assessment of the person's circumstances²⁹.

Reception Centres and Conditions

15. Turning to reception conditions within Serbia these are considerably lacking especially when compared to the numbers of arrivals. There are five asylum centres in Serbia with a total capacity of 800-850. Given the limited amount of capacity there have been reports of asylum seekers, including pregnant women and children sleeping outside in order to gain admission to the centre, as stated above.³⁰ Other

²¹ Amnesty International, *ibid.* p40;

²² UNHCR's latest assessment of FYROM concludes that, due to persisting gaps relating to access to the territory and the procedure, as well as quality decision-making, the country cannot be considered a "safe third country - UNHCR, *The former Yugoslav Republic of Macedonia as a country of asylum*, August 2015, available at: <http://bit.ly/1MCxlnP>

²³ M.S.S. v Belgium and Greece [GC], Application No. 30696/09, 21 January 2011

²⁴ Amnesty International, *ibid.* p40-41.

²⁵ Amnesty International, *ibid.*

²⁶ Belgrade Center for Human Rights, March 2015 *ibid.*; and Belgrade Center for Human Rights, 2015, *ibid.* at p 34-37

²⁷ Amnesty International, *ibid.* at p 42 and Belgrade Center for Human Rights, March 2015 *ibid.*

²⁸ Belgrade Center for Human Rights, March 2015 *ibid.* at p37-39

²⁹ In May 2015 the Committee Against Torture urged Serbia to "continue and intensify its efforts to facilitate access to a prompt and fair individualised asylum determination procedures in order to avoid the risk of *refoulement*, including through the provision for an effective asylum procedure" and "to ensure that the asylum determination procedure provides for a substantive review of the application that respects the principle of *non-refoulement*, irrespective of whether the country of destination is considered safe". (CAT concluding observations: Serbia, paras 14a) to 15

³⁰ Amnesty International, Europe's borderlands violations against refugees and migrants in Macedonia, Serbia and Hungary, 2015, 44
<https://www.amnesty.org/en/documents/eur70/1579/2015/en/>.

cases document clear instances of discrimination where certain nationalities have been allowed to stay in the centres to the exclusion of other nationalities, namely Somalians who were in receipt of certification but were not allowed into one reception centre and instead forced to sleep in the woods.³¹ Within the centres itself the standard of accommodation, sanitary facilities and resources available are very variable with the BCHR confirming that the rooms and toilets were dilapidated in one centre and that the minimum standards of accommodation including hygiene and nutrition would not be satisfied in the long term.³² Moreover, in terms of health services credible reports document that some asylum seekers had not been examined³³ and that in one centre there was no transport to take asylum seekers for regular health check-ups.³⁴

16. In light of the increase in numbers three temporary and hastily erected camps have been set up with a consensus amongst NGOs that the conditions are not suitable for long-term stay.³⁵ With a capacity of approx. 800-1000 places in tents and the only places specifically provided for women and children in Preševo (26 places), NGOs have raised concerns over the sanitary conditions, medical care and a complete lack of identification mechanism for vulnerable persons.³⁶ Indeed, the provision of food, clean water, health assistance, hygiene items, sleeping bags as well as any legal assistance, or medical care is solely provided for by NGOs and the civil society.³⁷ Worryingly, apart from opening the one-stop registration centre in Preševo, the government has not undertaken any organised and structured response. The massive strain on NGO capacity and lack of reception structure and resources provided by the government has led NGOs to publish appeals and call on EU Member States for the provision of humanitarian assistance.³⁸
17. Additionally, the lack of reception places as well as the significant barriers to accessing the asylum procedure has meant that a considerable number of refugees, including women, children and vulnerable persons needing urgent medical attention are staying in public parks, forests, abandoned factories and behind Belgrade train station, where there is insufficient access to water, sanitation, hygiene and medical facilities.³⁹ Indeed conditions are described as squalid, with a lack of shelter being

³¹ Ibid

³² Belgrade Centre for Human Rights, Right to Asylum in the Republic of Serbia, 2014, 42
<http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2015/04/Right-to-Asylum-in-the-Republic-of-Serbia-2014.pdf>

³³ Ibid at 46.

³⁴ Ibid at 43.

³⁵ ECRE, Western Balkan route news brief, 4 September 2015, 4.

³⁶ Save the Children, In Serbia One In Four Refugee Children Arrive Alone, Save the Children Reports, 18 September 2015,
<http://www.savethechildren.org/site/apps/nlnet/content2.aspx?c=8rKLIXMGlpI4E&b=9241315&ct=14762743>.

³⁷ Caritas Serbia, Caritas launches appeal to help refugees in Serbia, 3 September 2015
<http://www.caritas.org/2015/09/caritas-launches-appeal-to-help-refugees-in-serbia/>.

³⁸ International Federation of Red Cross And Red Crescent Societies, IFRC calls for greater cooperation in responding to humanitarian needs of migrants, enhanced support to host communities, 20 September 2015, <http://reliefweb.int/report/serbia/ifrc-calls-greater-cooperation-responding-humanitarian-needs-migrants-enhanced-support>

³⁹ MSF, 'Serbia: Asylum seekers and migrants left in cold', 19 February 2015, available at:
<http://bit.ly/1w1fp6L>.

particularly dire given severe weather and no transportation being provided to the temporary camps.⁴⁰ This situation is only set to worsen with reports of asylum seekers staying for longer in Serbia due to the Hungarian change in legislation.⁴¹

Recent jurisprudence

18. Recently a string of jurisprudence has suspended Dublin transfers to Hungary on the basis of new legislative amendments which consider Serbia as a Safe Third Country and consequently an asylum application to be inadmissible if the applicant has transited through the country. In an October decision from the Minden Administrative Court which extensively assesses country of origin information on Serbia, the Court finds that current evidence shows no significant change from the UNHCR position of 2012.⁴² Indeed, the court finds that due to the inadequate asylum system in Serbia there is a risk that the applicant will be deported without a substantive examination of their application to Macedonia and then subsequently to Greece. According to the Court, which refers to the systemic deficiencies in Greece's asylum system, there is a risk of chain deportation violating the principle of *non-refoulement* and thus Article 18 of the Charter of Fundamental Rights.⁴³

Conclusion

19. The Serbian asylum procedure and reception system is over-burdened and the conditions which asylum seekers are consequently confronted with meet the threshold of inhumane and degrading treatment. Therefore, the rights of asylum seekers cannot be respected and Serbia cannot be considered safe for the asylum seeking population.⁴⁴

⁴⁰ AIDA, Borderline containment: The new asylum procedure at the border and restrictions to accessing protection in Hungary. Visit to Subotica and the "Brick Factory" at 34.

⁴¹ Caritas, Refugees get aid as they pass through Serbia, 12 September 2015, <http://www.caritas.org/2015/09/refugees-get-aid-as-they-pass-through-serbia/>

⁴² See UNHCR, UNHCR urges Europe to change course on refugee crisis, Press release, 16 September 2015, <http://www.unhcr.rs/en/resources/press-releases/unhcr-urges-europe-to-change-course-on-refugee-crisis.html> and Refugee Crisis Hungary, "Crisis and Chaos", Interview with UNHCR's Hungarian spokesperson, 20 September 2015, <https://refugeecrisisinhungary.wordpress.com/2015/09/20/crisis-and-chaos/> for more information.

⁴³ Administrative Court of Minden (Germany), Decision 10 L 923/15, 2 October 2015 also confirmed in Administrative Court of Minden, Decision 10 L 285/15, 1 September 2015, Administrative Court of Dusseldorf (Germany), Decision 22 L 2944/15.A, 3 September 2015; Administrative High Court (Austria), Decision Ra 2015/18/0113 bis 0120-11, 8 September 2015. See also Federal Administrative Court (Austria), W125 2111611-1, 27 August 2015 where the Court overrules a Dublin transfer to Hungary reasoning – amongst other argumentation – that Hungarian legislation declaring Serbia as a safe third country are problematic.

⁴⁴ This reasoning is in line with the Hungarian Supreme Court which has confirmed that an over-burdening of an asylum system can lead to a country being incapable of respecting rights of an asylum seeker and thus unsafe for the asylum seeking population. Hungarian Supreme Court, Opinion 2/2012 (XII.10) KMK on certain questions related to the application of the safe third country concept, 10 December 2012, available at: <http://bit.ly/1dAn6YJ>.