



HELP ON THE ROUTE

THE RIGHTS OF REFUGEES, MIGRANTS,
AND ASYLUM SEEKERS IN SERBIA



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Overview of the refugee crisis in Serbia

In 2015, Serbia saw a dramatic increase in the numbers of refugees, migrants and asylum seekers from Syria, Afghanistan, Iraq, and other countries seeking to transit through the country on their way to Western Europe. By the end of the year, 577,995 individuals expressed their intention to seek asylum in Serbia, compared to 16,490 in 2014¹.

In response to such a large influx of refugees, Serbian officials stated that Serbia was not going to close its borders for migrants. “We're talking about desperate people, not criminals and terrorists. They just went in a search of a better life for themselves and their children, they need help, not condemnation or punishment. One cannot use fences to prevent the influx of life”, said the Serbian Prime Minister² in August, 2015. However, this open border policy was only enabling passage through Serbia to Hungary, and later on to Croatia and Slovenia. For vast majority of refugees Serbia was a transit country, not a destination: out of the total number of intentions to apply for asylum in 2015, only 583 actually submitted an application for asylum in Serbia³.

In June 2015, the Serbian Government formed a Working Group for solving the problem of mixed migration flows. The Working Group was given the mandate to monitor, analyze and discuss questions of mixed migration flows in the Republic of Serbia, to provide analyses of the situation, and propose measures to solve the identified problems. The Minister of Labour, Employment, Veteran and Social Policy presided over the Working Group, while the group members included the Minister of the Interior, Minister of Defence, the Minister of Health, Minister without portfolio in charge of European Integrations, and the Commissioner for Refugees and Migrations. As one of the first measures to respond to the refugee crisis, Serbian authorities together with international and local humanitarian NGOs organized the provision of humanitarian aid in food, water, and non-food items at the entry and exit points in Serbia. The registration procedure was conducted at the entry points along with issuing of certificates on expressed intention to seek asylum in Serbia enabling refugees to legally stay and freely move through Serbia for 72 hours in accordance with the Asylum Act. The state established the accommodation facilities to provide temporary shelter and basic services to refugees in transit through Serbia: apart from the five asylum centres in Krnjača, Banja Koviljača, Bogovađa, Sjenica, and Tutin, new transit-reception centres were established in Preševo and Miratovac (south), Kanjiža (active until September 15th, 2015) and Subotica (north), Šid, Adaševci, and Principovac (west), and Dimitrovgrad (east). The Commissariat for Refugees and Migration reported that “... the Government of the Republic of Serbia has chosen a proactive approach to ensure adequate protection and assistance to people in need. Enormous efforts have been made to provide migrants, during their stay in Serbia, with adequate assistance, appropriate reception, temporary accommodation, medical care, food and medicines, as well as all information about the asylum procedure, with full respect for their human rights. At the same

¹ UNHCR Serbia: www.unhcr.rs/en/resources/statistics/asylum.html

² <http://www.rts.rs/page/stories/sr/story/9/politika/2018718/vucic-eu-mora-da-pomogne-oko-plana-za-izbeglice.html>

³ Asylum information database: Country Report Serbia, ECRE, March 2016

time, efforts are being made to strengthen the border control and prevent smuggling and human trafficking.”⁴

During 2015 and 2016, the Western Balkan route changed several times with a high degree of unpredictability due to modifications in the entry criteria. In Serbia, the main entry point was the border with Macedonia, and later on also the border with Bulgaria. Exit points were changing: in the beginning of 2015 almost the entire migrant flow went to Hungary. In late summer 2015, after Hungary had built a wire fence along its “green border” with Serbia, the route moved to Croatia and Slovenia. Refugees started travelling from Preševo in the south of Serbia directly to Šid at the Croatian border. These movements were greatly facilitated by an organized transport: direct bus lines from Preševo to Šid were organised in November 2015, carrying around 5,000 refugees a day. Serbia and Croatia agreed to provide trains which were taking refugees from Šid directly to Slavonski Brod in Croatia and further on to Slovenia and Austria.

Entry criteria changed again in November 2015 when all the Western Balkan countries, including Serbia, started allowing access to their territories solely to refugees coming from Syria, Iraq and Afghanistan, and then only if they possessed valid documents to prove their nationality and identity. Refugees coming from countries other than the above-mentioned ones were considered to be ‘economic migrants’ and were denied access to asylum procedure at all entry points. Further restrictions followed when Austria announced a daily limit of people allowed to enter its territory and when Slovenia announced a similar cap to restrict movements across its borders. In February 2016, the Heads of Police Services of Austria, Slovenia, Croatia, Serbia, and Macedonia issued a statement announcing their agreement to jointly profile and register refugees and asylum-seekers at the border between Macedonia and Greece, as well as to take a number of additional actions to manage the situation. UNHCR expressed its concern by these restrictive practices, stating they were “...placing additional undue hardships on refugees and asylum-seekers across Europe”.⁵

In March 2016, the EU-Turkey Joint Action Plan⁶ came into effect aiming to reduce the influx of refugees and migrants to the EU. This resulted in the official “closure” of the Western Balkan route, leaving thousands of refugees stranded in Macedonia and Serbia. In summer 2016, Serbia deployed joint Police-Army Forces along the border with Bulgaria and Macedonia.⁷ However, transit of refugees through Serbia was not completely stopped: 50 to 100 individuals per day were still entering the country in 2016⁸.

Despite the closed route, refugees were still desperately trying to make their way to the Western Europe. Hundreds of them waited to enter Hungary in the makeshift camps in two transit areas, Horgoš 1 and Kelebija, while the Hungarian authorities allowed only 20 persons per day to enter. In April 2016, the refugees started drawing up the “waiting lists” of persons who wished to enter Hungary, and forwarding

⁴http://www.kirs.gov.rs/docs/aktuelno/20160119_newsletter_en.pdf

⁵<http://www.unhcr.org/56cc521c6.html>

⁶<http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>

⁷ Right to Asylum in the Republic of Serbia 2016, Belgrade Centre for Human Rights, 2017

⁸<http://azil-podraska.com/2017/01/10/the-refugee-situation-in-serbia-in-december-2016/>

them to the Hungarian border police.⁹After months of waiting, but with their name on the list, many accepted to leave the makeshift camps and move to the reception centres to wait there for their turn to enter Hungary. This informal system of compiling and exchanging lists functioned in the ensuing months: refugees and migrants put their names on the lists when they arrived at asylum or reception camps and forwarded these lists to their representatives at the border with Hungary. The Hungarian border police drew up new lists on the basis of these lists, making sure that vulnerable groups, primarily families with children and unaccompanied children, were given the priority.¹⁰

At the same time, there were numerous attempts of irregular crossing to Hungary. From July 2016, the amendments to the Hungarian Asylum Act and the Act on State Border entered into force allowing the Hungarian police to automatically push back the asylum seekers who were apprehended within 8km of either the Serbian-Hungarian or the Croatian-Hungarian border, to the external side of the border fence.¹¹ At the end of August and beginning of September, the pushbacks by the Hungarian police became extremely violent: refugees complained about being severely beaten, attacked and bitten by police dogs, returning to Serbia with open wounds and in need of medical assistance¹².

A “closed borders” policy and lack of safe pathways exposed refugees, asylum seekers, and migrants to many risks. Pushbacks from one country to another along the route continued: in December 2016, 62 refugees and migrants reported pushbacks from Serbia to either Bulgaria or Macedonia in 16 separate incidents; 15 persons reported pushbacks from Hungary, and 23 from Croatia to Serbia.¹³ Apart from mistreatment of refugees by the police in the countries along the route, there were recorded cases of mistreatment by smugglers. In the same report, during August and September 2016, NGO Praxis reported on 200 refugees who said they were beaten by smugglers, robbed, and/or kept locked for days or weeks until they paid to be set free, in 27 separate incidents. Tragic incidents highlighted the serious risks refugees and migrants face in the hands of smugglers. In one such incident, on December 29th, 2016, a vehicle reportedly driven by a smuggler carrying 17 refugees from Syria, Iraq, and Afghanistan, of which nine children, crashed in Eastern Serbia, and according to available information, left one woman and two children dead and several others in serious condition.¹⁴

During 2016, the number of refugees, asylum seekers and migrants in Serbia continuously grew from 2,000 in March, when the route was closed, to 7,000 in December. By the end of the year, 83% were accommodated in 16 governmental facilities and around 1,200 were staying out in the open and in improvised shelters in Belgrade city centre or at the border with Hungary¹⁵.

⁹ Right to Asylum in the Republic of Serbia 2016, Belgrade Centre for Human Rights, 2017

¹⁰ Ibid

¹¹<http://www.helsinki.hu/wp-content/uploads/HHC-info-update-push-backs-5-July-2016.pdf>

¹² Praxis Protection Monitoring Report, August 15th – September 15th, 2016

¹³ Praxis Protection Monitoring Report, December 2016

¹⁴ UNHCR Operational Update, December 26th, 2016 – January 1st, 2017

¹⁵ Ibid

Asylum system and procedure in Serbia

The asylum system and procedures in Serbia are mainly governed by the 2008 Asylum Act. Additionally, the Foreigners Act, General Administrative Procedure Act, and the Migration Management Act are also relevant since they regulate certain issues regarding housing and integration of asylum seekers and refugees. Serbia is expected to further harmonize its legislation with the European acquis, and the national Action Plan for Chapter 24 of the EU Accession Talks foresees the enactment of a new Asylum Act.¹⁶

The Competent institutions in the Serbian asylum system¹⁷ include:

1. Ministry of the Interior (MOI):
 - Asylum Office conducts the first-instance asylum procedure.
 - Department for Foreigners records the expressed intentions of the foreigners to seek asylum and issues them certificates of having done so, during a border check when entering the Republic of Serbia, or within its territory.
2. Asylum Commission reviews appeals against the Asylum Office decisions. Asylum-seekers are also entitled to file an appeal on the basis of “administrative silence” if the first-instance authority fails to render a decision within two months from the date the procedure had been initiated.
3. Administrative Court handles administrative disputes challenging the final decisions of the Asylum Commission and its failure to rule on their appeals within the legal deadline.
4. Commissariat for Refugees and Migrations: Pending a final decision on their applications, asylum-seekers are provided with accommodation and basic living conditions in the reception centres run by the Commissariat, which keeps record of persons accommodated. The Commissariat is also in charge of the accommodation and integration of persons granted the right to refuge or subsidiary protection, and proposing the integration plans to the RS Government. The Commissariat provides short-term accommodation to those refugees who are only passing through Serbia and do not intend to stay or seek asylum.
5. Social Welfare Centres have jurisdiction over awarding legal guardianship, i.e. appointing guardians to unaccompanied minor asylum-seekers and persons deprived of legal capacity without legal representatives prior to their application for asylum. Under the Asylum Act, the guardians must attend the asylum interviews.
6. Misdemeanour Courts: In line with the Refugee Convention, the Asylum Act guarantees that no asylum-seeker shall be held liable for illegal entry or stay in the Republic of Serbia provided that they apply for asylum without delay and show good cause for their illegal entry or stay. This provision

¹⁶<http://www.asylumineurope.org/reports/country/serbia/short-overview-asylum-procedure>

¹⁷Right to Asylum in the Republic of Serbia 2015, Belgrade Centre for Human Rights, 2016

ensures unhindered access to the asylum procedure. Proceedings before misdemeanour courts for illegal entry or stay in Serbia may be discontinued in the event the court establishes that the defendant is seeking asylum in Serbia.

The Asylum Act sets forth a single asylum procedure, which is the same for all asylum seekers regardless of their country of origin or location (i.e. there are no separate accelerated or border procedures).

Access to the territory and access to the asylum procedure

Foreigners may either orally or in writing express the intention to seek asylum in Serbia to police officers at Serbia's borders or within its territory, on which occasion they shall be registered and issued certificates of intent to seek asylum instructing them to report to the asylum centre designated in their certificates within the following 72 hours. The police officers also take the foreigners' personal and biometric data and enter them into two MOI electronic databases – OKS (a database of foreigners in Serbia) and Afis (an MOI database into which data on perpetrators of crimes and misdemeanours in the territory of the Republic of Serbia are entered and which the MOI uses also to register the asylum seekers). This practice, although not regulated by the Asylum Act, was introduced because many foreigners do not have travel or other personal documents, wherefore the photographs and fingerprints entered into Afis database are the only reliable way of establishing and checking their identity.¹⁸

The asylum seeker is then expected to go to the designated asylum centre or to notify the Asylum Office should he or she wishes to stay in private accommodation. Upon the arrival at the centre or private accommodation, the asylum seeker waits for the Asylum Office staff to register him or her, issue him or her personal identity documents for asylum seekers and take his or her asylum application. The Asylum Office is under the legal obligation to decide on the application within two months of its submission, during which time one or more hearings must be held in order to establish all of the facts and circumstances relevant to rendering a decision.¹⁹

In 2015 and 2016, most refugees used the 72 hours deadline to leave the country instead of applying for asylum. This explains a large discrepancy between the number of recorded intentions to seek asylum in Serbia (577,995 in 2015; 12,821 in 2016) and the number of asylum applications (583 in 2015; 574 in 2016). In September 2015, Serbian authorities started to issue a new "transit" certificate to "migrants coming from countries where their lives are in danger" that is to say, to individuals who are refugees, but are not interested in applying for asylum in Serbia. Despite the evident need to relieve the asylum system, which treats all refugees and migrants as though they are seeking asylum in Serbia, the new certificate did not eliminate the existing shortcomings related to the issuing of certificates of the intention to seek asylum in accordance with the Asylum Act, including, first and foremost, its limited, 72-hour validity.²⁰ This "transit certificate" was in use until mid-February 2016. There is still an absence of legal regulations that would enable potential refugees who do not want to seek asylum in Serbia, to legalize their stay in Serbia for a specific period of time and enjoy elementary rights.

¹⁸Right to Asylum in the Republic of Serbia 2016, Belgrade Centre for Human Rights, 2017

¹⁹<http://www.asylumineurope.org/reports/country/serbia/short-overview-asylum-procedure>

²⁰The Refugee Crisis and the Asylum Policy of Serbia, Belgrade Centre for Human Rights, 2016

A number of issues concerning limited access to the asylum procedure in Serbia were reported in 2015 and 2016. These include pushbacks from Serbia to Macedonia and Bulgaria, refusals to issue the certificate of having expressed the intention to seek asylum to persons whose certificate expired or was stolen, denial of access to the asylum procedure to asylum-seekers returned from Hungary, etc. As Belgrade Centre for Human Rights reports, the police officers in 2016 frequently issued to migrants who did want to stay in Serbia certificates referring them to reception centres rather than to asylum centres, which impinged on their access to the asylum procedure. In 2016, the Asylum Office performed its official activities only in asylum centres, wherefore refugees and migrants referred to e.g. the Preševo reception centre did not have the opportunity to apply for asylum in that centre and thus did not have access to the asylum procedure in it.²¹

Foreigners who did not go to the centres they were referred to in the certificates, fearing they would be deprived of liberty or deported, would no longer have grounds to stay legally in Serbia and benefit from humanitarian protection upon the expiry of the 72-hour validity of their certificates of intent to seek asylum. The re-introduction of these people in the asylum system is extremely difficult, precisely due to the misinterpretation of Articles 22 (Intent to seek asylum) and 23 (Recording the expression of a person's intention to seek asylum) of the Asylum Act by the police officers and the absence of a legal mechanism allowing the re-issuance of certificates of intent to seek asylum to them.²² The certificate of having expressed the intention to seek asylum in Serbia is not considered an asylum application; therefore, expressing the intention to seek asylum does not constitute the initiation of the asylum procedure. It is therefore possible for the same person to express the intention to seek asylum more than once, as long as his or her asylum application has not been rejected.²³ In July 2016, the Serbian Government introduced mixed patrols of the army and police at the borders with Bulgaria and Macedonia with the aim to combat illegal migration and human trafficking. The state officials frequently made public statements that the mixed patrols were guarding the state border; the Minister of Interior said²⁴ that the patrols prevented more than 20,000 migrants from entering the country in the second half of 2016. Pushbacks from one country to another along the refugee route were frequently reported by refugees, including the pushbacks from Serbia to Macedonia or to Bulgaria (62 refugees and migrants reported such pushbacks in 16 separate incidents in December 2016²⁵). A case of an attempted illegal push back of a Syrian family in mid-December 2016 received wide visibility in the Serbian media. The case involved a group of seven migrants, among which a two-years-old. The group was riding on a regular bus heading to their designated reception centre in Bosilegrad. They were regularly registered in the country, as confirmed by the documents in their possession, proving their expression of intent to seek asylum in Serbia. In the proximity of Vladičin Han, a southern town not far from the border with

²¹Right to Asylum in the Republic of Serbia 2016, Belgrade Centre for Human Rights, 2017

²² Ibid

²³<http://www.asylumineurope.org/reports/country/serbia/registration-asylum-application>

²⁴<http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:647228-Vulin-sa-izbeglicama-u-Obrenovcu-Sprecen-ulazak-20000-migranata>

²⁵ Praxis Protection Monitoring Report, December 2016

Bulgaria, the group was forced out of the bus by a mixed unit of police and military personnel. Their documents were confiscated and they were driven with another vehicle somewhere closer to the Bulgarian border, before being abandoned there, in the middle of the night, with a temperature of minus 11 degrees Celsius. It was then only by a fortunate chance that they were able to phone volunteers of an NGO with whom they had been in touch during their stay in Belgrade, explaining their situation and providing their GPS localization. They were eventually rescued through the intervention of a local police unit.²⁶

Unaccompanied minors

Unaccompanied minors are defined by the Asylum Act as foreigners who have not reached the age of 18 and who, upon or after entry to Serbia, remained without parents or guardians. The hearing conducted with minor asylum seekers should be held by officials, and translators when possible, who are qualified and trained in child and refugee issues. A competent territorial social welfare centre should be contacted depending on the location where police officers identify an unaccompanied minor in order to designate a temporary guardian. Housing should be provided in accordance with the housing capacity and the location of the minor. After the minor is accommodated in one of the institutions, he or she should be awarded a guardian by the Social Work Centre.²⁷

In March 2017, the UNHCR estimated that there were at least 900 unaccompanied and separated refugee children in Serbia, almost 700 of whom were accommodated in government centres²⁸. Many avoid being registered by the police because they fear being separated from the group they are travelling with, being deported, or assigned to a reception centre far from Belgrade, lowering the chances to continue their journey. Many are suspected to be under the influence of smugglers who are not allowing them to accept accommodation in the reception facilities. Instead, they are staying in makeshift shelters exposed to cold weather, various health risks, violence and exploitation. The social services authorized to protect the minors are overstretched and lacking capacities to appropriately provide for this vulnerable group. Adequate accommodation options are not sufficient: limited number of places is available in institutions for underage offenders in Belgrade, Niš and Subotica, which are not specifically-tailored to the needs of migrants. Nevertheless, unaccompanied minors in these facilities are kept separately from other groups and overall reception conditions are considerably better than otherwise available at asylum and reception centres.

Some minors, especially teenagers, are treated as adults due to the lack of age assessment procedures, which affects their registration procedure, accommodation and services.

As reported in the Joint Brief²⁹ on the situation for unaccompanied and separated children (UASC), “Best interest assessments (BIA) and best interest determination (BID) are often carried out in an ad hoc

²⁶<http://www.balcanicaucaso.org/eng/Areas/Serbia/Serbia-needs-to-investigate-asylum-seekers-push-backs-176790>

²⁷The Refugee Crisis and the Asylum Policy of Serbia, Belgrade Centre for Human Rights, 2016

²⁸Serbia Interagency Operational Update, UNHCR, March 2017

²⁹ “Out of Sight, Exploited and Alone”, Save the Children, International Rescue Committee, March 2017

manner, using different criteria, with language barriers when translation is poor or non-existent. Those mandated to conduct BID often lack resources and capacity to adequately protect children. In Serbia, for example, organizations working with UASC report that at times social workers appear for barely half of the calls for these cases and their appearance is often delayed by a day or two, leaving UASC exposed to various risks because they cannot register and be assigned to reception centres without a social worker. (...) Guardianship procedures are often implemented in such a way as to merely satisfy formal requirements or not at all.”

Access to formal and informal education

The Asylum Act foresees that “an asylum seeker and a person who has been granted asylum shall have the right to free primary and secondary education” (Article 41). The Act on the Basis of the Education System foresees that foreign nationals and stateless persons shall enrol in primary and secondary schools and exercise the right to education under the same conditions and in the same manner as Serbian nationals. Schools are obliged to organise language, preparatory and additional classes for foreign pupils, including stateless persons and refugees, who do not speak the language used in the schools or are in need of specific instructions in order to continue their education.³⁰

However, access to formal education in Serbia is still limited for refugee children. Access to formal education is possible only for those who have initiated the asylum procedure in Serbia, and most refugees do not plan to stay in Serbia. By March 2017, only 80 refugee children aged 7-18 years were attending eight primary schools and one secondary school in Belgrade³¹. Schools in Serbia are still preparing to organize classes for these children, including the language classes, and help them integrate into the educational system. In that process, they are supported by the Ministry of Education, UNICEF, and international and national NGOs.

Other school-age children who have not applied for asylum in Serbia only have the opportunity to participate in informal educational activities within the asylum and reception centres, if these are organized by NGOs, such as language classes, workshops, etc.

Accommodation of refugees, asylum seekers and migrants

In 2015 and 2016, Serbian authorities provided humanitarian protection (temporary accommodation, food and health care) to all migrants, whether or not they planned to seek or had sought asylum in Serbia. In these efforts, they were supported by the EU, UN agencies, and international and local humanitarian organizations.

³⁰<http://www.asylumineurope.org/reports/country/serbia/access-education>

³¹ Serbia Inter-Agency Operational Update, UNHCR, March 2017

Accommodation of persons who expressed intention to seek asylum in Serbia was provided in five asylum centres (Krnjača, Bogovađa, Banja Koviljača, Tutin, and Sjenica) and in 11 reception centres established during 2015 and 2016 (Subotica, Sombor, Šid, Adaševci, Principovac, Bujanovac, Preševo, Bosilegrad, Dimitrovgrad, Pirot, and Divljana-Niš). Unlike the asylum centres, the reception centres were established as temporary reception facilities solely for the purpose of providing emergency reception conditions for persons who enter Serbia in an irregular manner and are transiting towards their preferred destination countries in the EU. Some of the centres operated under the jurisdiction of the Commissariat for Refugees and Migrations, others under the jurisdiction of the Ministry of Labour, Employment and Veteran and Social Affairs. All asylum (AC) and reception centres (RC) are open and their tenants have the right to leave the centre, except for the Preševo RC which was initially operated under a minimum security regime, but, as of March 2016, the residents were allowed to leave it only if they were escorted by NGO representatives and at specific time of the day.³²

Accommodation capacities in Serbia became stretched in 2016, especially in the centres around Belgrade (Krnjača accommodated 1,009 people with a capacity of 700; Obrenovac accommodated 1,023 people with a capacity of 850) and Šid (Adaševci, Principovac, and Šid-Centre accommodated a total of 1,914 refugees with a capacity of 910)³³. As UNHCR reported, overcrowding continued to be of concern and caused a number of protection incidents, such as gender based violence-related ones. The government officials have been stating that there are enough places for everyone, and that there will be no further expansion of accommodation capacities in Serbia which are planned for 6,000 persons.³⁴

The conditions in the asylum and reception centres vary from one to the other, with a lack of privacy and poor hygienic conditions³⁵. Services in the asylum and reception centres are provided by the Commissariat, Red Cross, local centres for social welfare, local health institutions, and the international and local NGOs. Apart from accommodation, refugees receive three meals per day, medical services, services for children within child friendly spaces, and other services. Access to the centres and any service provision by NGOs has to be pre-approved by the managing authorities.

“I live already for many months now in Adaševci. This place holds nothing for us. We always have to take a taxi to the next village; there are no activities and information here. We still hope that someday the border will open. We cannot stay here.” (R. from Pakistan)

“Why do we have to live like that? Because there is no war in Pakistan? That’s not true! There is war in Pakistan! We already made 6,500km of our journey and now it is only 500km left and we are stuck here... (in Adaševci)” (L. from Pakistan)³⁶

³²Right to Asylum in the Republic of Serbia 2016, Belgrade Centre for Human Rights, 2017

³³ Site Profiles – Serbia, UNHCR, March 2017

³⁴<http://rs.n1info.com/a222165/Vesti/Vesti/Ivanisevic-Srbija-nece-prosiriti-smestaj-za-migrante.html>

³⁵<http://www.asylumineurope.org/reports/country/serbia/conditions-reception-facilities>

³⁶<http://moving-europe.org/bordered-lives-unbound-violence/>

Refugees at informal places of gathering

Considerable number of refugees and migrants, predominantly males, are staying out of the state-run accommodation facilities. More than a thousand reside in the Belgrade City centre using abandoned warehouses behind the central bus station as their shelter. Couple of hundreds are living out in the open or in abandoned buildings near the border area with Hungary (Subotica, Kelebija, Horgoš) and Croatia (Šid). Even though the authorities are urging migrants to go to the official accommodation centres, claiming that there are enough places for all, the number of persons in informal shelters remains high. There are several reasons for that:

- Issues with registration procedure at the police station in Savska street (Belgrade), which is mandatory for being accommodated in any of the official accommodation centres (although there were exceptions from this rule occasionally), as some have already expressed intention to seek asylum and their certificates have expired;
- Fear from being fingerprinted and prevented from going further on to the Western Europe;
- Fear from being separated from the group they are travelling with (especially among the unaccompanied minors) and sent far away from Belgrade, especially to the south, and fear from being deported to Macedonia;
- Decision to keep their options open for irregular crossing of the Hungarian, Croatian or Romanian border (keeping contacts with smugglers);
- Lack of information on available options for accommodation.

There is a lack of basic living conditions in improvised shelters. With the beginning of harsh winter 2015/16 with sub-zero temperatures during days and nights, the position of refugees and migrants in these shelters became extremely difficult. To keep warm and to cook, they were burning wood and every other material they could find. Fires inside the barracks (in Belgrade) created a lot of smoke and presented a serious health and safety hazard. As there were no toilets and sanitary facilities in the area, refugees were using the area around the barracks as toilets, and washing themselves out in the open, with water they heated on fire. There was an outbreak of body lice in unsanitary and undignified conditions of improvised shelters.

International and local NGOs provided assistance in food, clothes and other items to refugees and migrants “outside the system” in central Belgrade and elsewhere. That assistance was estimated by the authorities to be a “pull factor” and the reason which keeps the migrants living in informal shelters in Belgrade and elsewhere. On November 11th, 2016, the Working Group published an Open Letter stating that the provision of humanitarian aid to refugees outside the formal accommodation centres was “no longer acceptable”. The Letter caused almost immediate suspension of food and non-food items distribution in Belgrade and in Subotica area, which further alleviated the position of refugees and migrants. Humanitarian situation in Belgrade became more concerning than ever and international and local organizations responded by a joint letter to the Working Group, offering support to their efforts to relocate the refugees and giving suggestions how to make the process transparent and ensure that the

refugee rights are respected. Humanitarian agencies continued to provide information, counselling, referrals and transport to accommodation in governmental centres, registration procedure with the police, child protection, and medical services.

I have just come back from Serbia, says Czech activist Eva Zahradníčková. We were in Horgos. This is the place where people live in shelters made of rags. We talked to UNHCR people there. They told us that women and children have been moved to a brick building in Subotica, which is however closed so there is no access to the refugees. The men were left behind in the fields, in the shelters made of rags. At the moment, there are about twenty of them there. The UNCHR people gave them blankets and gloves. They told me they were not allowed to feed them. We brought food, but within a few minutes Serbian police arrived and a policeman started shouting at us that it was illegal to help refugees and that he could arrest us. After a debate lasting several minutes he told me that it was possible that the food we were about to give the refugees was poisoned so he was in fact protecting them from us.³⁷

Despite the efforts of the authorities to relocate refugees from their informal places of gathering and to accommodate unaccompanied minors in the recently established Obrenovac RC, there has been a continuous presence of around 1,000 refugees in the barracks in central Belgrade and couple of hundreds of refugees in Hungarian and Croatian border area.

Pushbacks, mistreatment and torture

Despite the increasing obstacles, refugees kept trying to continue their journey towards Western Europe and repeatedly attempted to irregularly cross the borders. Pushbacks from one country to another along the route continued: from Serbia to Macedonia or Bulgaria, from Hungary to Serbia, from Bulgaria to Turkey, from Croatia to Serbia, from Macedonia to Greece, and from Romania to Serbia. NGO Praxis encountered 1,714 refugees who reported being pushed back in 346 separate cases during the last four-and-a-half months of 2016³⁸.

Related to that, severe violence by the police in Bulgaria, Macedonia, Hungary, and Croatia was reported and documented in cases of attempt of “unauthorized crossings”. As NGO Praxis recorded, from August 15th to December 31st, 2016 a total of 1,059 refugees reported being beaten and robbed by the police, attacked and bitten by police dogs, kept in detention without food and water, or sprayed with pepper spray in 252 incidents, most of them in Bulgaria but also in Hungary, Macedonia, and Croatia.

Mistreatment and torture of refugees at the hands of civilians, usually smugglers, was no less concerning: in the same period, 332 refugees reported being beaten, robbed, kept locked for days and weeks by smugglers until they paid to be set free, in 110 separate incidents in Bulgaria, Macedonia, Serbia, and Albania.

The following testimonies were recorded in late September 2016 at refugee facilities in Belgrade, Subotica, Kelebija and Šid³⁹:

³⁷<http://blisty.cz/art/85321.html>

³⁸ Praxis Protection Monitoring Reports 15 August – 31 December 2016

³⁹<http://moving-europe.org/bordered-lives-unbound-violence/>

I tried six times to pass, one time through Croatia and five times through Hungary. Last time the police caught me and their dog bit me. It was around 10km inside Hungary. I have been waiting on the list for 2 months, even though I was number 9 in line after they had closed the border. (M. from Bangladesh)

The problem is that we as Algerians and Moroccans we cannot register for the transit list [to Hungary]. We know about friends who came here via Albania and Montenegro. They were robbed and pushed back several times, but they had to choose this route because before they tried to cross Macedonia and they were beaten up. One of us stayed 12 hours under a truck to reach Belgrade. Others are kept by the mafia in a house until they pay an increased prize." (R. and S. from Algeria and Morocco)

I walked for two days and passed four villages in Hungary. Then I was caught by the police and they forced me to return. (S. from Afghanistan)

We tried to cross into Croatia during the night. We were caught by the police, taken into one big police van. Around 5 policemen started to hit and beat us and then they took us to the [Serbian] border. They hit us again and forced us to walk back to Serbia. We had no possibility to ask for asylum." (O. from Syria)

Police dogs of the Hungarian police bit me in the arm, so I could not move it for one month. And they used teargas against us and we couldn't breathe or see anything." (N. from Algeria)

I am under 18, but the Hungarian beat me and hit my hand, I cannot move one of my fingers anymore. (R. from Kashmir)

I had to stay for two months in the closed camp in Presevo with my family. Then the [Serbian] police came to push us back to Macedonia. I know this happened to many more people. Afterwards I tried several times to get back to Serbia. Now our names are on the list for the transit to Hungary in Kelebija. I don't want to go through Hungary, because there the police have dogs and cameras. (H. from Syria)

We tried one time to cross into Hungary. The police caught us. We were very afraid because they used dogs and violence against us. It was horrible. The police send the dog on our child, not close enough to bite but close enough to scare her a lot. (A family from Iraq)

I tried six times to cross into Croatia. Even I made it to Zagreb one day. But the police caught me. They hit me in the face and attacked my body. They destroyed my knee. (L. from Pakistan)

I tried seven times to cross into Croatia. One day I reached Zagreb. There in the government camp they said to me that I have to register first at the police station in order to stay. I went to the police station and they didn't ask me anything, just took me and brought me back to the Serbian border. (M. from Bangladesh)

The situation with human rights of refugees

Joining the European Union is a strategic commitment of the Republic of Serbia, which implies the acceptance of the adopted European values and standards, primarily in the field of human rights. European Convention for the Protection of Human Rights and Fundamental Freedoms is guaranteeing the rights and freedoms to everyone in the territory of the country, including various categories of migrants. Particularly relevant in this context are the right to life, prohibition of torture, prohibition of slavery and forced labour, right to liberty and security, right to a fair trial, no punishment without law, right to respect for private and family life, freedom of thought, conscience and religion, right to an effective remedy, prohibition of discrimination, prohibition of collective expulsion of aliens, and non-refoulement rule.

International conventions and standards are legally binding for the Republic of Serbia and form a framework for establishing a system of protection of migrants under the Serbian Constitution. The Constitution proclaims that the generally accepted rules of international law and ratified international treaties are an integral part of the internal legal order of the Republic of Serbia. Article 18 of the Constitution declares that these rights are directly applicable and interpreted for the benefit of promoting values of a democratic society, pursuant to the valid international standards of human and minority rights.

Serbia's treatment of refugees and migrants in the past two years was primarily influenced by the fact that Serbia was a transit country for most of them, and related to that, by the policies of neighbouring countries and decisions taken at the EU level. Belgrade Centre for Human Rights reported⁴⁰ that treatment of refugees by the relevant Serbian authorities during most of the year 2015 can be qualified as adequate in the context of the large-scale influx of refugees. In 2016, the Asylum Office issued the greatest number of positive decisions on asylum applications since the Asylum Act came into force in 2008, and the quality of the first-instance decisions improved in 2016. Substantial headway was made in the field of integration in 2016 in terms of norms, but there was a lack of coordination between relevant institutions.

However, numerous violations of human rights of refugees on their route to western Europe through Serbia were recorded. The following are some of the examples:

The humanitarian situation in Belgrade at the end of 2016 was quite alarming, with nearly 2,000 persons sleeping rough in Belgrade at temperatures well below zero degrees. Because of lack of emergency accommodation provided, and lack of capacities to timely conduct registration, many refugees, including families with small children and mothers with new-borns, were forced to spend the night out in the open, at temperatures around zero degrees Celsius, waiting for registration the next day to be able to go to an asylum/reception centre. For many vulnerable persons, especially children, this situation was life threatening.⁴¹

⁴⁰ Human Rights in Serbia 2015, 2016; Belgrade Centre for Human Rights

⁴¹Praxis Protection Monitoring Reports, November – December 2016

Tragic incidents highlighted the serious risks refugees and migrants face in the hands of smugglers, in attempts to find a way to cross the borders and travel the route⁴²:

- An Iraqi asylum seeker reported that smugglers forced him to abandon his sister in the mountains as they crossed from Bulgaria as she could no longer walk. The temperatures were well below zero. He provided Serbian authorities with details of the incident and GPS co-ordinates but unfortunately, she had passed away before she could be rescued.
- In Šid, four Algerian men sustained life-threatening injuries after accidentally triggering an explosion of a cargo train carriage transporting fuel, and one of them passed away.
- Two bodies were found in the river Danube near the border with Hungary, suspected to be refugees/migrants who had attempted to cross to Hungary.

Mistreatment of refugees by civilians (usually the smugglers) in the territory of Serbia was reported in several separate incidents⁴³:

- In June 2016, a group of 14 refugees claimed that they had been intercepted by a vehicle with Serbian number plates and taken to a park/forest, where they were beaten and robbed.
- Another group reported having been kept locked in Belgrade for ten days without food and water and were eventually released only after they paid a large amount of money to the smugglers. Another group of four Afghan refugees also reported having been kept in a facility and robbed somewhere near Belgrade.
- In September 2016, 23 people reported being robbed by civilians in Serbia in 6 separate incidents, most in Belgrade. In the following months also there were reported cases of refugees being beaten and robbed by smugglers in Serbia.

NGO Praxis conducted the research⁴⁴ of the practice of 37 misdemeanour courts of the Republic of Serbia from 2014 until the end of August 2015, in the field of implementation of the Law on State Border Protection and the Foreigners Act. They concluded that misdemeanour proceedings predominantly ended in the first instance since the number of complaints filed was negligible (only five complaints against 2,530 court decisions). Presumed reasons for the lack of complaints were primarily short period of time in which the foreigners remained in the Republic of Serbia, lack of language skills to understand a written copy of the court decision, and the related lack of awareness on the right to appeal against the decision, as well as the absence of available legal aid. When it comes to misdemeanour proceedings conducted against unaccompanied minors, the courts often failed to determine the age of misdemeanour offenders and therefore did not apply special provisions of the Law on Misdemeanours. In situations when the age of an offender was determined, the courts frequently failed to engage a legal guardian in the process. It cannot be determined in a number of proceedings whether the hearing of a foreigner was attended by the court interpreter for the appropriate language (Misdemeanour Court in Subotica conducted 10 proceedings against foreign unaccompanied minors in the absence of an interpreter and a legal

⁴²UNHCR Operational Update 26 December 2016 – 1 January 2017 and Serbia Inter-Agency Operational Update, UNHCR, March 2017

⁴³ NRC-Praxis Humanitarian Report, June 2016 and Praxis Protection Monitoring Reports, August - December 2016

⁴⁴ Legal Aspects of Protection of Refugees and Migrants, Case Studies, Group 484, 2016

guardian; similar cases were recorded in Zaječar, Leskovac, Niš and other cities). Also, there were cases in which the court concluded that the foreigner knew the language in official use (Serbian language) and that there was no need to provide an interpreter (Misdemeanour Court in Belgrade). As NGO Praxis also reported, simultaneously with the arrival of migrants to Serbia there was an increase in number of discriminatory statements in the press and in other media. These statements were contributing to creating a hostile environment and deepening the social distance of citizens of the Republic of Serbia towards refugees and migrants. There were examples of discriminatory acts against the refugees, such as the case when a driver of the public transport company "Lasta", driving a bus on Belgrade – Subotica route, told the group of migrants to move to the back of the bus, although they had seats in the front part of the bus.⁴⁵

The Mayor of Kanjiža municipality Mr. Mihalj Bimbo made a number of racist and discriminatory statements against the migrants. His statement was published on the website of the Municipality of Kanjiža. Among other things, Mr. Bimbo said that "these foreigners do not have the basic elements of general intelligence and culture" and that they were "desecrating cemeteries, graves, chapels, destroying public areas, parks, fields and orchards". He also said that the citizens needed to be ready for when they would be called upon to express their dissatisfaction.⁴⁶

Pushbacks from Serbia to either Macedonia or Bulgaria were frequently reported by refugees. In one such case, in November 2016, four refugees were referred to Preševo RC after being registered in the police. When they arrived to the centre late at night, they were denied entry but instead taken to the border and expelled to Macedonia. Only after efforts of several organizations in the field they were admitted to the RC after they returned to Serbia. In December 2016, Praxis encountered 62 refugees and migrants who reported pushbacks from Serbia to either Bulgaria or Macedonia in 16 separate incidents.⁴⁷

⁴⁵<http://www.telegraf.rs/vesti/1581655-rasizam-u-lasti-migrante-vozac-strpao-u-zadnji-deo-autobusa-jer-su-smrdeli>

⁴⁶<http://www.kurir.rs/vesti/drustvo/gradonacelnik-kanjize-republika-ne-pomaze-migranti-nam-unistavaju-grad-clanak-1892703>

⁴⁷Praxis Protection Monitoring Report, November – December 2016

Most refugees transiting through Serbia in 2015 and 2016 did not perceive it as a country of asylum, but rather as a country of transit to western European states. Serbian officials insisted that Serbia would not close its borders for refugees; however, the practice of the asylum and migration institutions seemed to encourage their transit through the country. With European countries introducing more restrictive policies towards refugees, Serbia also started to limit access to its territory solely to refugees coming from Syria, Iraq and Afghanistan, considering others to be 'economic migrants'. Later on, Joint Police-Army Forces were established to prevent illegal migration along the border with Macedonia and Bulgaria. Informal push-backs of refugees to territories of countries from which they entered Serbia were also recorded. In 2016, it became increasingly difficult to leave Serbia, resulting in around 7,000 people stranded in Serbia by the end of the year. Most of them still did not want to seek asylum in Serbia. The legal status of these foreigners not wishing to seek asylum but in need of international protection has not been resolved yet.

- Asylum and migration policy should be improved to allow long-term solutions concerning the status and position of refugees and migrants in Serbia.
- Respect of the right to seek asylum and access to asylum procedure should be assured, including the provision of interpreters and provision of adequate and timely information to refugees so that they can make an informed decision. All persons who want to express the intent to seek asylum in Serbia should be allowed to do so.
- Efficient asylum procedures and refugee protection should be established for persons in need of international protection, with an effective screening and profiling mechanism for persons arriving to Serbia.
- Adequate protection of those refugees and migrants who do not wish to seek asylum and stay in Serbia should be ensured while in the country, in a way that would enable them to exercise their basic rights including access to available services and freedom of movement.
- Protection of children affected by the refugee crisis, including unaccompanied minors and separated children, should be provided including provision of timely and efficient best interest assessment by social workers, provision of adequate reception facilities, efficient asylum procedures, proper age verification and identification of particularly vulnerable individuals, sustainable access to formal education, etc.
- Adequate longer-term accommodation and services should be provided for refugees in and outside the official reception centres, including intercultural exchange activities to bridge the distance between local and refugee communities.
- More efforts should be invested by the authorities to combat smuggling and trafficking, and advocating for ending mistreatment of refugees and migrants by authorities or civilians along the route.
- Basic human rights and freedoms of refugees and migrants must be promoted, respected, and protected at all times, by all institutions and citizens.