

*July 2018*

*Access to Asylum  
and Reception  
Conditions in the  
Republic of  
Serbia*



## INTRODUCTION

Even though the so-called “Balkan migration route” officially closed before the European Union (EU)-Turkey Statement<sup>1</sup> came into effect in March 2016, persons likely in need of international protection continue to move across the countries along the route, albeit in lower numbers. However, the average time that these persons are spending in Serbia increased several times comparing to the period that precedes the Statement.

As of February 2018, a small avenue for legal entry to Hungary, which is through one of the two so-called “transit zones”, has been reduced to an almost meaningless level. Until 2018, only five people were admitted from each of the two existing transit zones per weekday. In February 2018 it was reduced to just one person per weekday, causing great anxiety among the refugee population in Serbia as many have waited for over a year for their chance to apply for asylum in Hungary.

It is important to note that Serbia cannot be considered a safe third country as there is no effective asylum system.<sup>2</sup> However Hungarian authorities continue to deny the right to asylum to persons arriving from Serbia based on an incorrect presumption that people can access asylum in Serbia. As proven in many cases, Serbian authorities also dismiss asylum applications of persons arriving from neighboring countries on the basis that they could be considered as safe in the country they are coming from. This practice raises concern of a possible refoulement to the Former Yugoslav Republic of Macedonia (FYROM) or Bulgaria, and further chain refoulement to Greece and possibly Turkey.<sup>3</sup> In late 2017, Greek Supreme Court, the Council of State, ruled that returns to Turkey are lawful.<sup>4</sup> Turkey is a country which ratified the 1951 Convention with a geographic limitation so that only those fleeing as a consequence of events occurring in Europe can be given refugee status. In addition to that, Serbian authorities routinely refuse to allow persons who were returned from Hungary back into the asylum procedure. Persons who have legal representation have in some cases managed to overcome this, at least by preventing return or deportation by interim measures of the European Court of Human Rights. The scope of work required by the legal representatives in such situations means that persons who are not beneficiaries of legal aid provision have little chances of success in this regard.

Serbian asylum legislation is generally in line with international standards arising from international human rights and international refugee law. Deficiencies in the system and procedure are generally stemming from poor implementation of the existing legislation and inadequate application on relevant international standards.<sup>5</sup> This is mostly evident in the practice of asylum authorities that are frequently applying the safe third country concept in relation to FYROM and Bulgaria, and thus, dismissing asylum applications without a rigorous analysis of the risks of ill-treatment in the case of forcible removal to said countries. Serbia is still being perceived by its authorities as a transit country in which refugees spend only a brief time before continuing their way to Western Europe, despite the

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<sup>1</sup> *EU-Turkey statement*, 18 March 2016. Available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement>.

<sup>2</sup> Hungarian Helsinki Committee, *Serbia As a Safe Third Country: A Wrong Presumption*, September 2011, available at: <http://www.refworld.org/docid/4e815dec2.html> [accessed 4 February 2018]

<sup>3</sup> UN High Commissioner for Refugees (UNHCR), *The Former Yugoslav Republic of Macedonia as a country of asylum: Observations on the situation of asylum-seekers and refugees in the Former Yugoslav Republic of Macedonia*, August 2015, available at: <http://www.refworld.org/docid/55c9c70e4.html> [accessed 4 February 2018]

<sup>4</sup> Greece: Court decisions pave way for first forcible returns of asylum-seekers under EU-Turkey deal. Amnesty International. 22 September 2017. <https://www.amnesty.org/en/latest/news/2017/09/greece-court-decisions-pave-way-for-first-forcible-returns-of-asylum-seekers-under-eu-turkey-deal/>

<sup>5</sup> See more in: *AIDA Country Report Serbia*, Belgrade Centre for Human Rights, February 2016. Available at: [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_sr\\_2016update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_sr_2016update.pdf).

currently reality people spending months or even years before being able to access the Hungarian territory, a period only growing as Hungary essentially closes off its borders completely.

In March 2018, the Serbian National Assembly after many delays finally adopted the new Asylum and Temporary Protection Act. It is expected to be implemented from June 2018.<sup>6</sup> The new law gives a more thorough definition of many institutes of the current legislation but it also introduces some novelties such as the expedited procedure and border crossing procedure. Material reception conditions are now defined in greater detail and provision of financial assistance to asylum seekers is envisaged. The length of procedure can now be extended for up to nine months. At the same time, the National Assembly adopted a new Foreigners Act which will enter into force after six months and which, under certain circumstances, envisages the possibility to grant humanitarian stay and an option to introduce tolerated stay for persons who cannot otherwise regularize their status in Serbia. When it comes to the refugees whose cases were rejected and who were unable to leave Serbia this would provide a window of opportunity to regularize their stay. At the same the requirements on integration in the fields of employment, study or knowledge of Serbian language could greatly restrict the number of potentially eligible candidates for the humanitarian stay. The tolerated stay implementation on the other hand remains uncertain as it relies on the adoption of necessary bylaws by the Government.

In 2017, 6,199 persons expressed their intention to seek asylum in Serbia. The vast majority came to Serbia escaping war and wide spread violence in Afghanistan, Iraq and Syria. Out of this number only 236 applications were actually submitted. The Asylum Office, which is the competent subdivision of the Ministry of Interior deciding on asylum claims, managed to interview only 106 persons and to decide in 81 cases in the course of 2017. The number of positive decisions remained low--only 14 cases were granted either refugee status or subsidiary protection. The Asylum Office rejected 11 applications as unsubstantiated, whereas 56 cases were dismissed without reviewing them on the merits, mostly on the basis of automatic application of the safe third country concept. The reasons behind such practice lie both in the lack of interest to pursue asylum claim in Serbia by many refugees but also in the low capacity of the Asylum Office and the self-designation of Serbia as a transit country by political leaders.

By comparison, often criticized Bulgaria, Croatia and Hungary granted refugee statuses (1951 Convention) to 800, 120 and 105 persons respectively during 2017. Against Serbia's total of 14 positive decisions (including subsidiary protection) during 2017, there were 1,695, 150 and 1,290 such decisions in Bulgaria, Croatia and Hungary in the same period.<sup>7</sup> In 2017, Hungarian law enforcement agencies detected a total of 20,100 attempts at irregular entry, while the Immigration and Asylum Office registered 3,397 asylum applications – the majority of them within the two transit zones.

As a consequence of the lack of interest by the Serbian authorities, reflected also in a continued minimum capacity of the Asylum Office, to process asylum claims, or to at least screen all foreigners arriving to Serbia to distinguish persons likely in need of international protection from those who are not, the Serbian asylum system can be seen as extremely inefficient. In line with the Rulebook on the internal organisation and systematisation of positions in the Ministry of Interior, which established the Asylum Office on 14 January 2015, there should be 29 positions within the Asylum Office. Out of 17 staff members hired by the end of 2015, three have left but two more asylum officers

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<sup>6</sup> Asylum and Temporary Protection Act. Available at: <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2018/2445-17%20lat.pdf>

<sup>7</sup>Source: Eurostat. Available at: [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr\\_asydcfstq&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asydcfstq&lang=en).

were hired in 2017. Regardless of the total number of employees in the Asylum Office, only 8 of them were in charge of carrying out asylum proceedings during 2017.<sup>8</sup> Many persons who are without a doubt in need of international protection are unable to have their asylum claims decided upon in a reasonable timeframe and to be included in Serbian society through efficient integration procedures. The self-designation by local authorities of Serbia as a transit country as an excuse for *status quo* practices puts pressure on neighboring countries, has negative effects on persons who need international protection, and can have serious effects on overall safety in accommodation facilities.

## ACCESS TO ASYLUM AND FIRST-INSTANCE PROCEDURE

Every person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion as described in the United Nations Convention relating to the Status of Refugees has the right to seek protection from another country and to have his or her case decided in a fair and efficient procedure. This is also applicable to all persons who are fleeing generalized violence caused by external aggression or internal armed conflicts or massive violation of human rights where their life, safety or freedom would be threatened or who would be subjected, if returned to their country of origin, to torture, inhumane or degrading treatment. The basis for enjoyment of this right is the access to the asylum procedure. Access to asylum is closely related with the principle of non-refoulement which represents the cornerstone of international law. It imposes on States an obligation not to expel, return (or French *refouler*) or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture and other forms of ill-treatment. Making such a decision has to follow an extensive evaluation of every individual's case in a fair procedure and with a right to appeal a negative decision.

In 2017, there were many issues in Serbia concerning limited access to the asylum procedure. A non-exhaustive list of the issues includes: push-backs to FYROM and Bulgaria; arbitrary returns to third countries or countries of origin from the Belgrade Airport; extradition of individuals before their asylum claims were decided upon; refusals of issuance of certificate of having expressed the intention to seek asylum to those persons whose certificate has expired or was stolen; and denial of access to the asylum procedure for asylum-seekers returned from Hungary after unsuccessful asylum claim.<sup>9</sup> During 2017, joint army and police patrols continued to push back refugees to FYROM and Bulgaria, and the Minister of Defense publicly confirmed these actions. On several occasions, the Belgrade Center for Human Rights (BCHR) learned that even persons who were issued with certificates of expressed intention to seek asylum were pushed back to Bulgaria, including families with children and sick elderly, and even in freezing weather. Similar findings were collected by other nongovernmental organisations (NGOs),<sup>10</sup> but also by Ambassador Tomáš Boček, Special Representative on Migration and Refugees of Council of Europe Secretary General.<sup>11</sup> Such a practice was also described as unacceptable by the United Nations Human Rights Committee in April 2017

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<sup>8</sup> See Number of staff and nature of the first instance authority – Serbia country report, Asylum Information Database. Available on: <http://www.asylumineurope.org/reports/country/serbia/number-staff-and-nature-first-instance-authority>

<sup>9</sup>See BCHR, *Right to Asylum in the Republic of Serbia 2017*, forthcoming.

<sup>10</sup>See, for instance, Osservatorio Balcani e Caucaso Transeuropa, 'Serbia needs to investigate asylum seekers push backs', 11 January 2017. Available on: <https://www.balcanicaucaso.org/eng/Areas/Serbia/Serbia-needs-to-investigate-asylum-seekers-push-backs-176790>.

<sup>11</sup>See Council of Europe, Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Serbia and two transit zones in Hungary 12-16 June 2017, SG/Inf(2017)33, 13 October 2017. Available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=090000168075e9b2](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168075e9b2).

during the review of Serbia's report on the state of implementation of the International Covenant on Civil and Political Rights.<sup>12</sup>

Under Serbia's 2007 Asylum Act, foreigners may either orally or in writing express the intention to seek asylum to authorized police officers at Serbia's borders or within its territory, on which occasion they shall be issued certificates of expressed intention to seek asylum.<sup>13</sup> There are numerous cases where the police initiated misdemeanor procedures against foreigners who approached the police officers expressing the intention to seek asylum or where the police issued such persons with cancellation of stay orders disqualifying them from the asylum procedure as such information is entered into the database. This is all in violation of the Asylum Act which stipulates that the police officer who is approached by an asylum seeker is only tasked with issuing a certificate which directs the asylum seekers to one of the Asylum Centers while the decision on the request itself is supposed to be taken by the expert body, Asylum Office. The law in fact does not allow police officers to refuse to issue a certificate, even in the event of evident abuse. The procedure will remain largely unchanged in the new law and it will only include immediate registration of biometric data.

During 2017, the BCHR was again forced to intervene in cases where persons returned from Hungary, were denied access to the asylum procedure. In one case, a UASC from Afghanistan, M.W., was issued a cancellation of stay without a translator, legal guardian or lawyer present. The Department of Foreigners refused to allow the child to be readmitted into the asylum procedure, and the BCHR had to file a request for an interim measure to the European Court of Human Rights under Rule 39 in order to prevent his forcible removal to Bulgaria. Even though the interim measure was approved and the expulsion of M.W. was stopped, he was not allowed to reenter the asylum procedure in Serbia.

Widespread disregard for the application of law is best described by the case of C.A,<sup>14</sup> a Turkish citizen of Kurdish origin who was extradited to Turkey despite the fact that there was an indication by the United Nations Committee against Torture to the Serbian Government against such extradition on account of the risk of torture and the fact that his asylum procedure was still ongoing. Such a move was made with complete disrespect for the rule of law, especially taking into account that the Court decisions preceding the extradition signature by the Ministry of Justice were not properly translated to Serbian language so the Court could not have reached a legal decision on the matter in accordance with Serbian laws governing criminal procedures.

In practice, there were also inconsistencies in the duration of asylum procedures in individual cases. Certificates of expressed intention to seek asylum are containing an instruction to asylum seekers to report to specific Asylum Centre within the following 72 hours. The asylum seeker should remain in the Asylum Centre until the final decision is rendered unless he or she can provide alternative accommodation at their own expenses. However, the situation in practice greatly differs. Responding to the influx of refugees who did not want to seek asylum in Serbia, a number of temporary facilities have been put in place to accommodate the increasing number of persons in need on humanitarian grounds. By the end of 2016, both asylum seekers and those who did not seek asylum in Serbia have been accommodated jointly in Asylum Centers and in Reception Centers depending on the number of available places. The problem that has occurred in practice is that the Asylum Office rarely conducted any activities regarding asylum applications in Reception Centers. This has led to the situation that asylum seekers residing in Reception Centers have been waiting sometimes for several

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<sup>12</sup>See Human Rights Committee, Concluding observations on the third periodic report of Serbia, CCPR/C/SRB/CO/3, 10 April 2017. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/SRB/CO/3&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/SRB/CO/3&Lang=En).

<sup>13</sup>Articles 22 and 23 of Asylum Act.

<sup>14</sup> C.A. is a Kurdish dissident who was sentenced to 15 years in prison for acts against constitutional order based on a confession obtained under torture.

months for the Asylum Office to schedule their first interview where they should formally submit the asylum application in line with Article 25 of the Asylum Act. The New Asylum and Temporary Protection Act envisages a new option for asylum seekers to be able to start the procedure by submitting their application in writing in the period of eight days if the Asylum Office does not interview them within 15 days from their date of the initial registration. Asylum seekers who did not go to a designated Asylum or Reception Centre, or had left the Centre without permission, had their asylum procedures terminated. Subsequent restart of such procedures has proven to be extremely difficult in practice. At the moment asylum seekers genuinely interested in settling in Serbia are waiting several months for the first official action of the Asylum Office, and for a few more months for the hearing.

Finally, the first instance asylum decision may take longer than 10 months to be reached, and from the moment of issuing the certificate of expressed intention to seek asylum the procedure may last more than a year. The current Asylum Act sets out a two-month deadline for the first instance decision which is practically never reached and there is currently no significant difference in the length of procedure when it comes to positive or negative decisions, even for cases dismissed on procedural grounds such as the application of the safe third country principle. In practice this means that a person might wait for an extended period of time only to learn that the Asylum Office did not even examine their case in the merits. The new Asylum and Temporary Protection Act extends the period for the first instance decision from two to three months. It also allows for the period to be extended twice, up to nine months in total, under vaguely worded circumstances of complex cases and the need to examine the application fully and appropriately.

In Serbia today, there are still many unregistered persons who are accommodated in government facilities on humanitarian grounds or due to safety concerns. However, their legal status remains undefined in any of the Serbian laws. Under Serbian law, foreigners who do not have any legal grounds to stay are considered to be illegal migrants. According to Article 42 of the Foreigners Act, an unlawful stay in the Republic of Serbia is a stay in its territory without a visa, residence permit or other legal basis. This also includes all foreigners who had not entered the territory of the Republic of Serbia in a regular manner or who overstayed the legally allowed stay and who have no other legal grounds for stay in Serbia. A foreigner is deemed to have left the Republic of Serbia by entering another country, however the exit is approved only in cases where their entry to a third country is allowed. This is where serious issues emerge as most persons who were not granted asylum in Serbia or who did not seek asylum in Serbia do not have personal documents, and even if they do, it is impossible to obtain a visa for a third country as they are not legal residents at area of jurisdiction foreign consulates in Serbia. The only right such persons have in Serbia is the right to primary education as this right exists regardless of the legal status of a child or the legal status of their parents. Even though their movement may be restricted in accordance with the law, this is rarely done in practice. The lack of physical capacity of the detention center for foreigners in Padinska Skela and the legal limitations as to how long a foreigner may be detained both prevent wider use of such measures. A new Foreigners Act<sup>15</sup> envisages in Article 77 that a competent authority shall issue decision on return of a foreigner not regularly (“illegally”) residing in the territory of the Republic of Serbia and define a deadline for leaving Serbia. Within the timeframe for voluntary return, the foreigner would be entitled to urgent medical assistance, and in the case of minors, to the right to education. Additionally, Article 84 envisages that a foreigner with postponed forced removal is recognized the right to urgent medical assistance, and in the case of minors, the right to education.

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<sup>15</sup> Foreigners Act is available in Serbian language at: <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2018/3791-17%20lat.pdf>

So far, no strategy has been developed by the Government regarding persons whose personal circumstances fall outside current legislation. The Ministry of Interior announced that it would adopt a Regulation on Tolerated Stay<sup>16</sup> which could effectively complement this legal gap in the laws, to regulate legal stay of this migrant category, thus enabling the access to a broad spectrum of rights to these persons. Until this date, Regulation on Tolerated Stay has not been adopted, however the new Foreigners Act in Article 124 envisages that the Minister of Interior may adopt such Regulation

Temporary protection is envisaged by Article 36 of the Asylum Act and is retained in similar form as in the Article 74 of the new Asylum and Temporary Protection Act. The temporary protection envisages that in the case of a massive influx of persons from a country where their life, safety or freedom is threatened by general violence, external aggression, internal armed conflicts, massive violations of human rights or other circumstances that have seriously affected public order, when it is not possible to carry out an individual procedure for granting the right to asylum due to the massive influx, temporary protection shall be accorded in line with the social, economic and other capacities of the Republic of Serbia. It also includes persons who were lawfully residents in Serbia however their residence rights expired. Such a measure is defined as extraordinary and it is prescribed that it may last up to a year with possible extensions. Persons to be granted temporary protection would have the right to submit an asylum application. As of February 2018, no decision on temporary protection has been made.

In Article 61 of the newly adopted Foreigners Act, it is envisaged that there will be a new category of temporary stay for humanitarian reasons. Some of the circumstances for granting temporary stay for humanitarian reasons include strong ties with Serbia, especially regarding education, work activities and language skills, where regular conditions for temporary stay are not met, postponing removal for a period of one year (failure to identify a foreigner without his guilt, inability to transport a foreigner out of Serbia and in cases where serious physical and psychological issues could arise), being an UASC, foreigners who were victims of a serious criminal offense, including persons involved in irregular migration, if they cooperate with the authorities and their presence is necessary in criminal proceedings and other serious and justified personal reasons of humanitarian nature. Trafficking victims are categorized separately.

When it comes to Hungary, on 5 July 2016, amendments legalizing extrajudicial push-backs entered into force. After this date, unlawfully staying third country nationals found within an 8-kilometer zone from the border fence (built in fall 2015 along the Serbian-Hungarian and the Croatian-Hungarian border) are pushed back to the external side of the border fence. On 28 March 2017, another set of amendments entered into force that fundamentally changed the Hungarian asylum system. Among these changes was the extension of the 8-kilometer area to the entire territory of Hungary from which unlawfully staying third country nationals are to be “escorted” to the external side of the border fence. Since 5 July, the Hungarian Police publish daily statistics on these measures.

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<sup>16</sup> The Ministry of Interior announced the enactment of this Regulation at the session of the Committee for social issues of the National Assembly of Republic of Serbia on 10 November 2016.

	<b>During the period of 05.07.2016- 27.03.2017 (8 km-rule)</b>	<b>During the period of 28.03.2017- 15.2.2018 (from the entire country)</b>	<b>05.07.2016- 15.2.2018</b>
<b>Push-backs</b>	11 269	6 885	<b>18 154</b>
<b>Blocked entries</b>	15 085	7 134	<b>22 219</b>
<b>Total</b>	26 354	14 019	<b>40 374</b>

There is no specific regulation on the number of asylum-seekers that can or should be allowed to enter the transit zones in Rösztke and Tompa on the Serbian-Hungarian border. A gradual reduction of the admission rate has taken place over the past two years: from the original 100-100 persons in each transit zone in September 2015 to about 30-30 in spring 2016, to 15-15 in autumn 2016. The admission was then limited to working days only in November 2016 and to 10-10 asylum-seekers in each transit zone, only to be further reduced to 5-5 at the end of January 2017. Since the end of January 2018, the admission was reduced to the bare minimum, the Immigration and Asylum Office only allows, on average, 1-1 person to enter each transit zone, only on working days.

The arbitrary and gradual reduction of admittance to the transit zones became especially problematic after 28 March 2017, when amendments prescribing that asylum can only be sought in the transit zones entered into force. For those waiting in Serbia, the current situation means that the possible waiting time to lodge an asylum application in Hungary grew from 1-1.5 years to 5-7.5 years overnight.

## **RECEPTION CONDITIONS**

In 2018, informal gathering of refugees in urban areas has largely been resolved as the number of available places in government facilities exceeded the number of persons in need of humanitarian accommodation. This has allowed the Government to move individuals who gathered in old and derelict barracks around Belgrade and in border areas into official facilities. More than 90% were accommodated in asylum or reception centers, while only those who have been trying to cross to Croatia and Hungary irregularly were staying in the border areas. As of January 2018, around 3,800 persons were accommodated in government shelters, whereas less than 300 individuals were staying in the border areas.<sup>17</sup> Currently there are 18 accommodation centers, out of which five<sup>18</sup> are designated as Asylum Centers and the rest are temporary Reception Centers.<sup>19</sup> Reception conditions greatly differ from one centre to another. Some of the issues that had been observed during 2017 are overcrowding, lack of privacy and poor hygiene. These deficiencies were also stated in the report of the Special Representative of the Council of Europe Secretary General on migration and refugees that was issued in October 2017. The Report highlighted that standards of accommodation in both Reception and Asylum Centers could potentially raise issues under Article 3 of the European Convention on Human Rights that prohibits torture, inhuman or degrading treatment or punishment.<sup>20</sup> The UN Refugee Agency (UNHCR) has also pointed out<sup>21</sup> that there are still major concerns regarding security and hygiene in many centers.

<sup>17</sup>Source: UNHCR Serbia. Available at: <https://reliefweb.int/report/serbia/unhcr-serbia-update-15-21-january-2018>.

<sup>18</sup>Centers in Krnjača, Banja Koviljača, Bogovađa, Sjenica, Tutin.

<sup>19</sup>Centers in Subotica, Kikinda, Sombor, Šid, Adaševci, Principovac, Dimitrovgrad, Pirot, Divljana, Vranje, Bujanovac, Bosilegrad, Preševo.

<sup>20</sup>Supra n. 12.

<sup>21</sup> Centre profiling – Serbia. January 2018. Available at: <https://data2.unhcr.org/en/documents/download/55034>.



As opposed to the Asylum Centers, which are envisaged by the Asylum Act for the accommodation of asylum seekers for longer periods of time, pending the completion of the asylum procedure, the Reception Centers were established during the refugee crisis as temporary centers in which the migrants were to stay several days. Sometimes even the new facilities built specifically to take in migrants have large dormitories, with over thirty beds, and are unsuitable for longer stay. Smaller rooms with bathrooms would provide more privacy and are more suitable for longer stay, particularly in view of the fact that the migrants have been staying in the centers for several months now. Furthermore, the authorities need to enact a by-law governing the regime for Reception Centers, similar to the existing one regulating the Asylum Centers (the Rulebook on Asylum Centre House Rules).

Serbia as a candidate country for membership in the European Union is expected to harmonize its legislation and practices before accession. The standards for reception in the European Union are laid out in the 2013 Directive.<sup>22</sup> The 2013 Directive contains detailed minimum standards in terms of right to freedom of movement, guarantees for detained applicants and conditions regarding detention of vulnerable persons, measures to maintain family unity, schooling and education of minors, right to access the labour market, access to vocational training. In terms of material reception conditions, the Directive requires member states to ensure conditions are available to asylum seekers and that reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health. Standard of living must be met in the specific situation of vulnerable persons. The Directive allows for Member States to ask applicants to cover or contribute to the costs if they are able to do so. Material reception conditions may also be provided in the form of financial allowances or vouchers instead of housing in kind. When the housing is provided in kind asylum seekers must be guaranteed protection of their family life and they must have the possibility of communication with relatives and legal representatives. Most importantly, gender and age-specific concerns and the situation of vulnerable persons in relation to applicants within the premises and accommodation centers must be taken into consideration. Appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment, must be taken within such premises. Children, unaccompanied and separated children (UASC), persons with disabilities, elderly, pregnant women, single parents with children, victims of human trafficking, persons with serious illnesses, mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence are recognised as vulnerable persons. Authorities are expected to carry out an assessment on vulnerabilities in a reasonable period of time.

The EASO Guidance on Reception Conditions<sup>23</sup> was created with an aim to overcome the significant degree of discretion allowed for by the 2013 Directive and the great difference in reception standards between the EU member states. The EASO guidance lays out operational standards and indicators for housing, food, clothing and non-food items, daily expenses allowance, health care, provision of information and counselling, identification, assessment and response to special needs and staff training. In Serbia some efforts have been invested by the UNHCR to conduct a site assessment analysis using traffic light rating system. The so called centre profiling is updated periodically and includes data on shelter, wash, safety and security, food and non-food items, health, education and

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<sup>22</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1517745483509&uri=CELEX:32013L0033>

<sup>23</sup> EASO, *Guidance on Reception Conditions: Operational Standards and Indicators*, September 2016. Available at: <https://www.easo.europa.eu/sites/default/files/EASO%20Guidance%20on%20reception%20conditions%20-%20operational%20standards%20and%20indicators%5B3%5D.pdf>.

leisure, communication, PSNs, family unity, child protection, asylum and identification, coordination and freedom of movement.<sup>24</sup>

Minimum accommodation standards are often examined by the European Court of Human Rights. In the case *Tarakhel v. Switzerland*, the Court found admissible the complaints of a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It found that a significant number of asylum seekers removed to Italy may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions and that Swiss authorities must have obtained assurances from their Italian counterparts that on arrival of persons returned to Italy the applicants would be received in facilities and in conditions adapted to the age of the children, and that the families would be kept together. Since the Swiss authorities had not first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together, the Court found that there had been a violation of the Article 3 of the Convention.<sup>25</sup> This is extremely relevant for both Hungary and Serbia, who have exhibited widespread practice of returning asylum seekers to other countries without any procedure whatsoever, and such practices often involved the return of children, including UASC.

Material reception standards have been defined by the new Asylum and Temporary Protection Act under Article 50 to include accommodation, food, clothes and money for personal needs. Provision of financial assistance in the amount provided to persons in social care institutions in Serbia is a novelty introduced by the new law. Such assistance will be provided for up to four persons per household and can be reduced in cases where the person is self-sustainable.

Asylum seekers and other migrants accommodated in Asylum and Reception Centers are provided with food and health care, for the most part from donations or the direct provision of services by international and national NGOs. The availability of other services in Centers varies, depending on the presence of civil society organizations; the greatest number of services was still available in the centers close to Belgrade and the fewest in Bosilegrad, Dimitrovgrad, Pirot, Sjenica and Tutin.

The vast majority of Reception Centers are operating under open regime, but in some centers the administration issue accommodated persons with special passes with which they can leave the Centre during the day. The security level in the Preševo and Obrenovac Reception Centers is somewhat higher and only a specific number of persons are allowed to leave them for short periods of time during the day. In the reception Centers in Pirot, Divljana and Dimitrovgrad, there is also a limited freedom of movement in terms of the number of people who can be outside the centre at the same time. Although there are no direct sanctions for people who leave one of the four centers without a permission, only those who have a permission can get documents confirming their status, while others risk being stopped by a police patrol and sanctioned. The availability of legal aid and psycho-social support services, two extremely important elements of migrant protection, varied among the centers, in some of them, because the managements were unwilling to let the NGOs conduct their activities on the centre grounds.

In January 2018, there were around 139 UASC in Serbia.<sup>26</sup> They amounted to 11.8% of all refugee children residing in government facilities. One of the biggest obstacles in providing meaningful protection to vulnerable individuals, especially UASC in Serbia is the lack of specialized facilities and

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<sup>24</sup> *Centre profiling - Serbia*. UNHCR. Available at: <https://data2.unhcr.org/en/documents/download/55034>

<sup>25</sup> *Tarakhel v. Switzerland*, European Court of Human Rights, Application no. 29217/12, Grand Chamber Judgment of 4 November 2014. Available at: <http://hudoc.echr.coe.int/eng?i=003-4923136-6025044>.

<sup>26</sup> See detailed statistics at: <http://www.unhcr.rs/CentreProfiling/overview.php>.

the lack of an effective guardianship system. In regular Asylum and Reception Centers, there are no specially designated zones for UASC. Even if there is an official designation that such objects exist, in practice this means just that there are is particular set of rooms where UASC are placed without separation from adults that they are not related to. Further services in terms of care by legal guardians are almost non-existent due to an enormous strain on the existing social care system. Since late 2017, UNHCR, in cooperation with the Ministry of Labour, Employment, Social Affairs and the Belgrade Centre for Social Work, launched a pilot project on the improvement of guardianship protection and introduction of assistant cultural mediators in the process. Within this project, 19 professional social workers were hired to be guardians for UASC. In order to maximize the effects of the project, almost all UASC from around Serbia were relocated to Belgrade.

On account of this move and effort to improve the response for UASC, several facilities were designated for their reception. The 2013 EU Directive which Serbia is expected to harmonize its national legislation with prescribes that UASC should be placed only with adult relatives, foster families or in accommodation centers with special provisions for minors and other accommodation suitable for minors. Children over the age of 16 may be placed in accommodation centers for adults, but only if this is in their best interest. As of May 2018, the Ministry of Labour, Employment, Veteran and Social Affairs have designated three facilities for the accommodation of unaccompanied children – the Institute for Youth Education in Niš, Special department of the Institute for Education of Children and Adolescents in Vodovodska Street in Belgrade and the Home for children without parental care “Jovan Jovanović Zmaj” in Belgrade with total capacity of 40 beds. However only in the first four months of 2018 53 new unaccompanied children asylum seekers were identified. This was followed by the adoption of a new Instruction on the procedures of the centre for social work – the guardianship authority in accommodating unaccompanied refugee/migrant minors on 12 April 2018. Furthermore, foster care options remain extremely limited.

When it comes to accommodation options for sexual and gender-based violence (SGBV) survivors, most of the burden falls on NGOs maintaining safe houses. The number of vulnerable cases requiring immediate move from one of the centers into a safe environment exceeds the capacity of such safe houses. This has led to major vulnerabilities as UASC and SGBV survivors have few options for receiving specialized care.

## **RECOMMENDATIONS TO THE GOVERNMENT OF SERBIA**

- Due to the gravity of the consequences of violations of peremptory norms of customary international law, but also the violation of the right to an effective remedy, special attention must be paid to the problem of frequent denial of access to the refugee status determination procedure in border areas with Bulgaria and FYROM.
- Avenues for all personal circumstances should exist. This means that the Government is responsible for distinguishing genuine refugees from other foreign citizens, especially those involved in people smuggling and other criminal activities. Among genuine refugees, a differentiation needs to be made between those who are interested in seeking asylum in Serbia and those who are not. Further to that, Government agencies should pay particular attention to vulnerable individuals such as UASC, SGBV survivors, the elderly and the ill. The only way to make this possible is to screen each person individually for personal circumstances.
- Asylum requests should be processed efficiently within legally set timeframes and by determining in each individual case whether the person is in need of international protection by issuing individual decisions determining their status. Given that there is no longer a large influx of refugees arriving to Serbia, there is no excuse for the competent authorities' inability to process asylum claims in a timely fashion. Current prolonged delays not only leaves asylum

seekers without much needed protection, but also send the incorrect message to neighboring countries such as Hungary and Croatia, that Serbia will not provide international protection even to persons arriving from war-ravaged countries.

- The Asylum Office should avoid dismissing asylum claims from nationals of countries such as Syria and Afghanistan based on application of the safe third country principle if a person entered Serbia from such a country a long time before the decision was made, sometimes even two or three years prior. The Asylum Office should never dismiss asylum claims based on the application of a safe third country principle when it is obvious that it would be impossible for a person to return to such a country or where a person would be at risk of a chain *refoulement*.
- Proper accommodation for vulnerable individuals should be considered a most urgent priority. The current situation, where facilities for UASC and SGBV survivors are decreasing in number, is alarming and needs to be addressed as quickly as possible. The shelters for UASC should have enough available space for ongoing needs.
- Bylaws defining the status of foreigners under the current circumstances should be adopted. Such legislation should not interfere with Serbia's international obligations under the Convention Relating to the Status of Refugees but should aim to provide protection to persons of concern outside its scope.
- Reception conditions and standards in all reception facilities should be harmonized with international standards at an acceptable level of quality. Serbia should aim to reach the minimum standards established in the Directive on standards for the reception as part of the EU accession process.
- Provisions of the newly adopted Foreigners Act on humanitarian stay and temporary stay should be efficiently implemented in practice by the adoption of necessary bylaws.