



BORDER REPORT

The Republic of Serbia: a country in constant transition

**Catalan Commission for Refugees
Barcelona, 2020**

THE REPUBLIC OF SERBIA: A COUNTRY IN CONSTANT TRANSITION

Contents

| | |
|---|----|
| Introduction: Why the border between the Republic of Serbia and the European Union? | 3 |
| What was the observation mission about? | 4 |
| Background | |
| • Current situation | 6 |
| • Situation at the camps | 7 |
| • Violence at the borders | 8 |
| The different systems of international protection on either side of the border ... | 10 |
| Points of concern | |
| • Push backs | 13 |
| • Difficulties in accessing international protection procedures | 16 |
| • The situation of unaccompanied minors | 1 |
| Conclusions | 21 |
| Bibliography | 23 |

Introduction: Why the border between the Republic of Serbia and the European Union?



Abandoned train station on the outskirts of Subotica, just a few kilometres from the border with Hungary, used as an informal camp and transit zone by refugees. Source: CCAR

In its recent history, the Republic of Serbia has experienced severe social and political conflicts that have shaped its relationship with the European Union as well as its relationship with the borders of the Union. The Government of Belgrade submitted its application to join the European Union officially on 22 December 2009, under the rotating presidency of Sweden in the Council, in an event with a strong symbolic weight¹. Finally, on 2 March 2012, the heads of State and Government of the EU granted Serbia the official status of candidate for accession. This candidacy, together with the country's desire to become a member of the EU, requires, among others, a standardization of the asylum procedures that Serbia, as a transit country, has tried to update, more or less successfully. The particular anti-migration virulence in EU neighbouring states with Serbia, the closure of borders and the policies of push backs in neighbour countries (Croatia, Rumania, Bosnia or Hungary) has created a worrying bottleneck that has put its asylum system to the test and has made transiting through this country alarmingly dangerous. Hence, the possibility of Serbia joining the EU has gone hand in hand with an ambiguous and squandering relationship with the commitments acquired, necessary to join the Union

1. https://elpais.com/internacional/2009/12/22/actualidad/1261436410_850215.html

and its anti-migration and return policies that, in a de facto way, are being applied by its neighbour countries: it is becoming growingly difficult for migrants to enter the EU from Serbia and the violation of fundamental rights has increased dramatically since 2015. The delegation on an observation mission has gathered testimonials of ill treatment from the Hungarian, Rumanian and Bosnian police; has witnessed a harsher treatment and stricter conditions for people transiting along the Balkan route to Europe through Serbia, as well as the drowning of people forced by police to cross back over the river dividing Bosnia and Serbia. This has led to a rootstock of alternative routes crossing Croatia, Rumania or Hungary, which are often longer, more dangerous, and bearing many more severe consequences for people following them.

What was the observation mission about?



HCIT-UNHCR mission in Subotica that accompanied the CCAR mission on the border of Hungary and Serbia. Source: CCAR

In September 2020, a team of observers from the Comissió Catalana d'Ajuda al Refugiats (CCAR) visited the situation of people in transit, refugees and migrants in general, crossing the Republic of Serbia, many of whom are hoping to reach the EU. The main borders that were visited during the mission were the border with Hungary, in the Subotica transit zone, and the border with Bosnia, in the Loznica transit zone, used by those hoping to enter Hungary along the much longer route crossing Bosnia and Croatia. We also studied the situation in Belgrade as a transit zone and the starting point for

many of the migration flows departing to the borders between Rumania, Hungary and the Republic of Serbia. The mission was also able to interview some of the key stakeholders, institutions and entities in the field of migration and asylum in Serbia and along the border areas with neighbour countries.

The overall goal of the mission was to gain insight of the situation of refugees arriving at the doorstep and/or transiting towards the European Union, and to see first hand how the Republic of Serbia, an official candidate to access the European Union, is managing these migration flows. For this purpose, interviews were conducted with members of the following organisations:

- Katalin Pokorny, liaison officer for the Central European delegation of FRONTEX, the European Border and Coast Guard Agency.
- Yolande Ditewig, senior Regional Policy officer, and Montserrat Feixas Vihé, regional delegate of the UNHCR for Central Europe.
- András Léderer, Senior political and social advocacy officer of the Hungarian Helsinki Committee.
- Ivana Vukasevic, person in charge of projects and Dalibor Karadza, legal expert, both from the Humanitarian Center for Integration and Tolerance (HCIT), liaising with the UNHCR on the ground.
- Milica Svabic, representative of KlikAktiv – Center for Development of Social Policies.
- Marko Štambuk, coordinator of the legal team on asylum and migration at the Belgrade Center for Human Rights, among others.
- Nikola Kovasevic, representative from the Center for Research and Social Development IDEAS

The delegation also tried contacting, through official channels, the police of the Republic of Serbia, the Komissariat in charge of managing refugee camps, as well as the chief superintendent of the Hungarian police, without obtaining an answer.

Lastly, the mission conducted direct on-site observations at different border crossings as well as the situation of refugees in Belgrade, the capital. The CCAR mission was also able to interview refugees and observe the way they are treated in border hotspots and transit zones, in informal camps along the border areas, accompanied by delegations from Klikaktiv in the Loznica area, and by the HCIT-UNHCR in the area of Subotica. Lastly, since it was not possible for the CCAR delegation to enter Hungarian territory, some of the interviews with entities and institutions had to be conducted using virtual means due to the total closure of the Hungarian borders, both for EU and non-EU nationals. The official answer given by the Hungarian Government in this case was that borders were closed as a measure to prevent the spreading of Covid-19.

Background

Current situation

Modern migration processes are relatively new in Serbia and, in fact, the country's first Asylum Act was only adopted in 2008². Nevertheless, the country has been a country of reception: particularly for people from the former Soviet countries. Serbian migration laws are relatively new and have been developed in recent years, almost always alongside historical processes that came after the successive Balkan wars. Prior to 2016 Serbia did receive refugees, but they remained invisible to the general public. After the so-called "2016 crisis", when the number of people transiting through its territory grew exponentially, a majority of the organisations adopted urgent actions to open provisional immediate relief channels from a humanitarian approach, while forgetting about the official channels and leaving the pressure on the government for systemic improvements for a later stage.

The right to seek asylum is enshrined in the Constitution of the Republic of Serbia³ while the asylum procedure is detailed in the Asylum and Temporary Protection Act. Furthermore, Serbia has signed the Convention on the Status of Refugees and its Protocol, as well as the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, taking on the obligation to respect the principle of non-refoulement. Although the citizens' perception is positive, largely influenced by a recent past of conflict as an emitter and receiver of refugees, the nature of transit and the contextual political conditions are causing this perception to rapidly deteriorate. The Balkan route has gone through different moments of migratory tension over time, with varying flows depending on the European political context and, especially, depending on the political decisions taken by the countries sharing borders with Serbia. Even if it is true that Hungary, for instance, allowed applying for international protection in certain designated areas along its border (with fixed daily quotas) in the so-called "transit zones" established at the two main border crossings between Hungary and Serbia (Horgoši and Kelebija), many refugees and migrants were reticent to enter the EU this way, the main reasons being:

- The spreading of fake news mainly by organized criminal groups with the aim of increasing people trafficking.
- Lack of trust in the admissions system, especially because of fear of applying for asylum in Hungary and being registered in an unwanted country of destination.
- Long waiting lists and times that are especially unwanted for single men compared to other groups of applicants.

All in all, the figure⁴ of annual arrivals hasn't stopped growing: in 2019, 12,937 people (12,052 men and 885 women) expressed their intention to seek asylum in Serbia. This

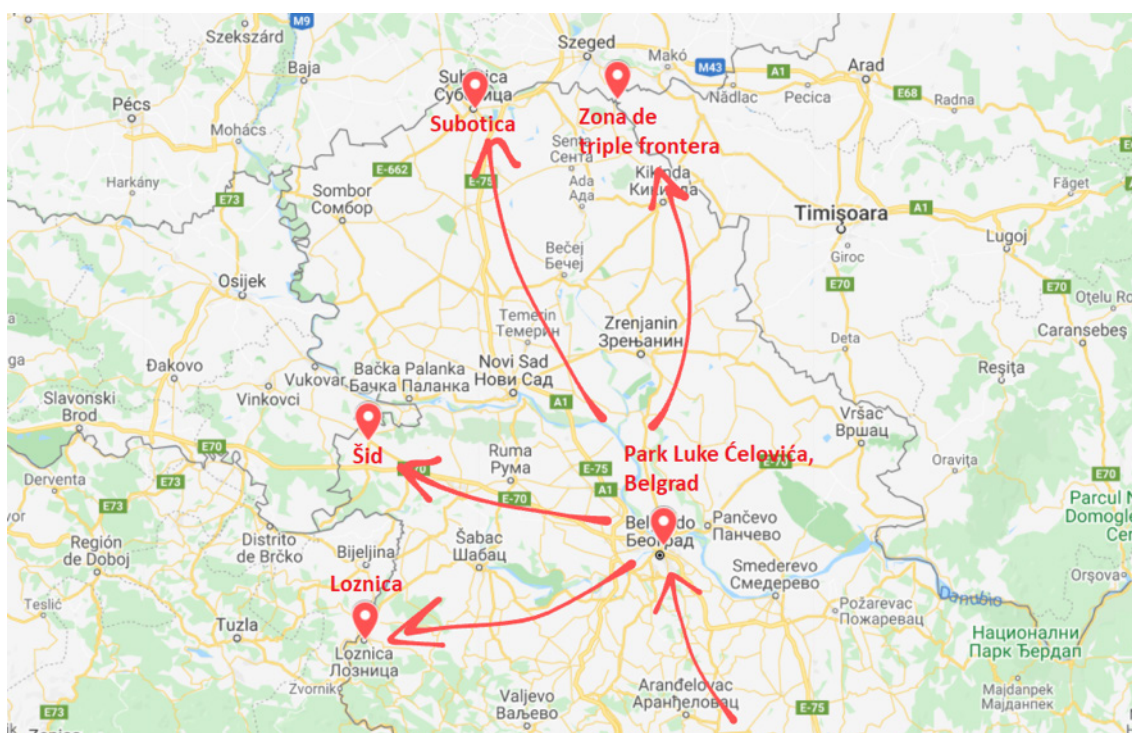
2. Serbia: Law of 2007 on Asylum, 26 November 2007, <https://www.refworld.org/docid/47b46e2f9.html> [consultat el 9 Octubre de 2020]

3. Lena Petrović, Right to Asylum in the Republic of Serbia, Belgrade Centre for Human Rights, Belgrade 2019, pag. 16

4. Xifres extretes de les dades oficials de l'Oficina de l'ACNUR a Belgrad, que rep els informes i estadístiques oficials d'activitat directament del Ministeri de l'Interior de la República de Sèrbia

figure represents an increase in 4,000 people compared to 2018. One of the most concerning points behind these figures is the extortionate number of minors coming from Afghanistan, Pakistan and Bangladesh –almost 3,000– of which 800 were transiting alone with no surveillance by the Serbian authorities and many of whom are in a legal limbo. Generally speaking, most of those seeking asylum in Serbia come from Afghanistan, Pakistan and Syria. However, since 2015, and despite the figures, only 87 people were granted subsidiary protection and only 76 were granted refugee status in Serbia⁵ and, presently, the system is progressing very slowly: in the last year, only around 20 asylum applications were resolved positively⁶.

Situation at the camps



Map of migration flows for refugees towards the EU through what is known as the Balkan route and border hotspots. Source: Google, edited by CCAR

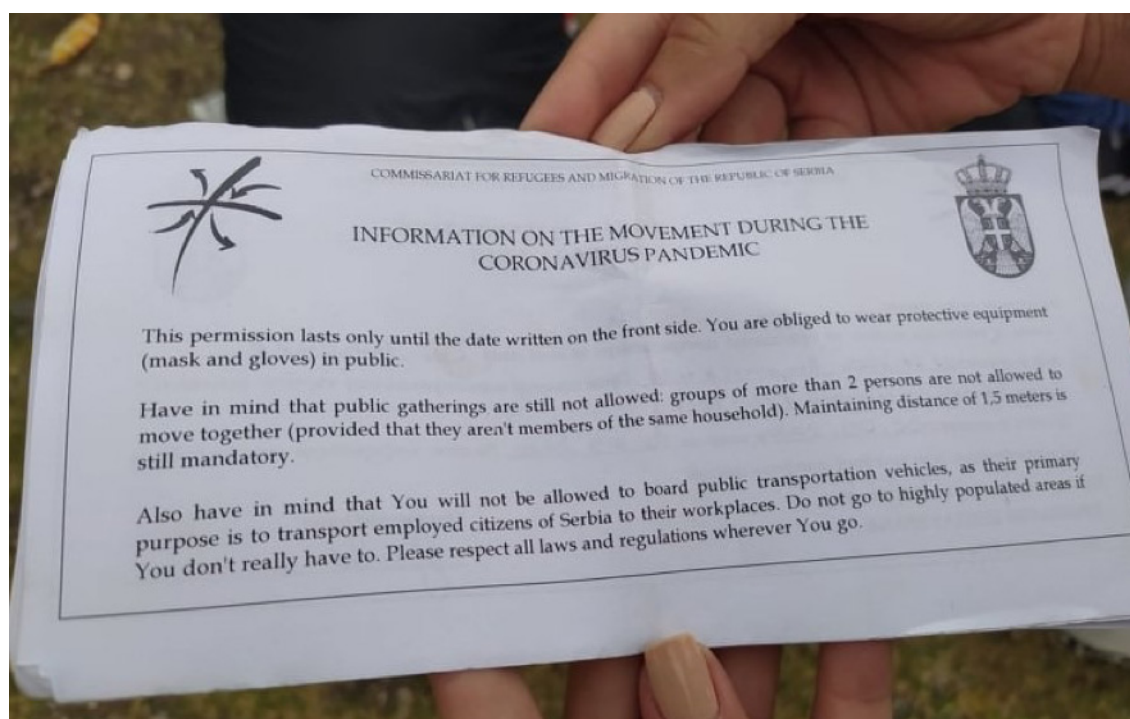
The main official asylum applicant processing centres in Serbia are Kranjaca and Bogovada, on the outskirts of Belgrade, Banja Kovilijaca, on the outskirts of Loznica, and Sjenica and Tutin, on the outskirts of Novi Pazar. Although the country also has 14 additional official reception and transit facilities, the reality is that those that are in the northern part of Serbia, and therefore at the doors of the EU, are overcrowded and it is in these areas where informal or transit camps proliferate, such as the ones visited by the CCAR delegation. During an interview with Klikaktiv, it was obvious that this creates a serious problem of people living in the streets and the authorities are doing nothing

5. Font: HCIT-ACNUR

6. Font: entrevista HCIT

about it; it also leads to pockets of people in precarious conditions that easily fall into the trap of human trafficking and exploitation.

Also, during that same interview, it was made obvious that adults and unaccompanied minors live together in these camps, –this is explicitly discouraged by organisations such as the Belgrade Centre for Human Rights–, and the existence of isolation cells as a means of individual punishment and the officials managing the camp being permissive with prostitution. Also, there is corruption via a certain level of connivance with human traffickers; bribery is also present to obtain certain benefits, to escalate on the lists or to gain access to better accommodation. During the lockdown imposed in Serbia during the peak of Covid19 infections, bad practices emerged such as the distribution of information leaflets by official channels saying, among other things, that “(...) you will not be allowed to board public transportation vehicles, as their primary purpose is to transport employed citizens of Serbia to their workplaces.”, and this is a clear violation of the rights and freedoms of persons seeking international protection.



Informative leaflet from the Komissariat for refugees during the lockdown period imposed during the Covid-19 pandemic. Source: Klikaktiv

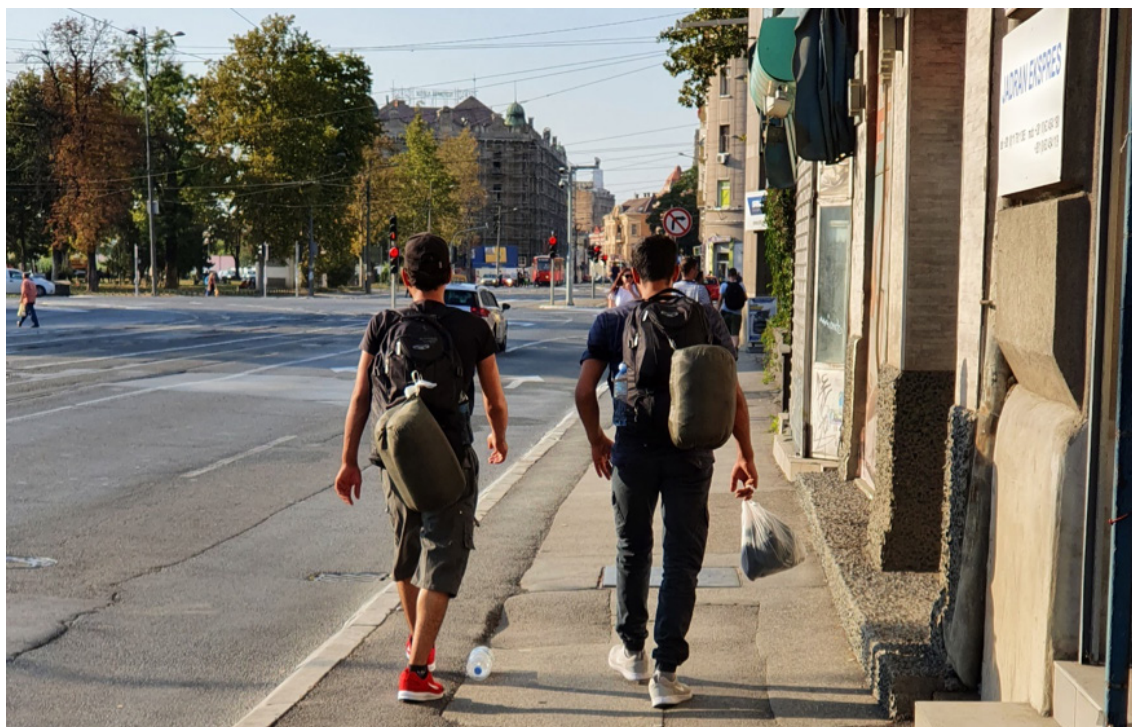
Violence at the borders

One of the most concerning factors in the current context are the many reports of violence at the borders: at 1 September 2020 there have been more than 212 documented cases of forcible collective returns affecting more than 4,000 individuals from Hungary and Croatia

7. Veure imatge pamflet

8. FORCIBLE IRREGULAR RETURNS TO THE REPUBLIC OF SERBIA FROM NEIGHBOURING COUNTRIES, Hungary and Croatia Collected throughout 2016 and 2017. Pag 2

to Serbia during 2016 and 2017, according to HCIT . The exact number of people returned illegally is difficult to determine, as many asylum seekers did not report these practices and those who did said they'd attempted to cross the borders several times and, therefore, they were returned to Serbia more than once. According to the same sources from HCIT⁸, this figure has multiplied by 5 since 2018 and refugees have reported being beaten up by the police, even pregnant women, including 6 people who drowned on the border between Serbia and Hungary, including minors aged 4 and 11. Refugees have also denounced the way they are treated by police in countries like Hungary, Croatia and Rumania, much more so than by Serbian police, which is generally perceived to be less harsh. This endemic violence encountered at border crossings into Hungary push many refugees to find alternative routes, especially at the triple border between Rumania, Hungary and Serbia or through Bosnia and Croatia. These routes are perceived as less dangerous, but push backs and a certain level of low-intensity police violence continue to occur. Of special concern are the reported cases of people drowning in the Drina River when they are forced to return to Serbia swimming in extremely dangerous conditions and completely exhausted. The delegation from CCAR was able to enquire about these events with the competent FRONTEX authorities for Central Europe: FRONTEX considers it of utmost importance to fully respect the guarantees in European legislation to avoid the violation of fundamental rights, which also includes controlling that returns are compliant with the EU Return Directive. However, different sources consulted by CCAR detect an alarming increase in both police violence in certain areas on the Hungarian border, and push backs, along with a very worrying lack of monitoring and reporting mechanisms. The consultative forum of FRONTEX is "concerned that an increase of return and readmission operations from Member States,



Two migrants approaching a liaison person who is engaged in people trafficking, near Luke Čelovića Park, Belgrade. Source: CCAR

which do not yet have an effective return monitoring mechanism in place, could ultimately lead to a decrease of return operations that are effectively monitored”.⁹

The different systems of international protection on either side of the border

Republic of Serbia (RS)

Following the provisions of the Law on Asylum and Temporary Protection (LATP), the competent authorities for asylum are:

- The Asylum Office
- The Asylum Commission
- The Administrative Court

The asylum procedure in Serbia has four different components:

- **Registration:** the person shall express their wish to apply for international protection to a police officer, whereupon they will be issued a document with a picture, their fingerprints and personal data. This document will also specify the centre they have been assigned to as housing, where they shall report to in no longer than 72 hours. If the person doesn't report to this centre, the asylum procedure shall be halted and this person shall be considered a foreigner.
- **Submission of the application for international protection:** within 15 days of expressing their wish, the person shall submit their application. To do so, an official from the Asylum Office shall report to the centre where the person is living. If this does not happen, the applicant shall submit their application within 8 days by post.
- **Interview:** the Asylum Office shall schedule an interview and the person has the right to an interpreter and free legal assistance.
- **Resolution:** the Asylum Office of the Ministry of the Interior is in charge of resolving applications, which should be notified within 3 months after submission. On some occasions the resolution may take up to 9 months for more complex cases or if a large number of applications have been submitted. In very specific circumstances this process may last up to 12 months.

If the resolution is negative, the person may appeal to the Asylum Commission; if the appeal is downturned, the person may challenge this decision in an Administrative Court.

During the procedure, the applicant for asylum shall have the right to a 6-month work permit if 9 months have past since submitting their application for international protection and is pending a decision.

If the person is granted refugee status, they shall receive a residence and work permit

9. Frontex Consultative Forum on Fundamental Rights FOURTH ANNUAL REPORT, 2016. Pag 25.

valid for 5 years; if they are granted subsidiary protection this permit will be valid for one year.¹⁰

In 2019 a total number of 35 people were granted international protection in RS, 18 of them were granted subsidiary protection (Iraq, Libya, Syria, Pakistan, Iran, Russia, China and Cuba).¹¹

Hungary

In September 2015 Hungary adopted legislation of a quasi-state of exception, under the name “State of Crisis due to Mass Migration”. During this state of crisis special rules apply for third-country nationals entering or on Hungarian soil irregularly and to asylum seekers, and some provisions of the Asylum Law are suspended.

This meant that asylum could only be applied for at the border (in the transit zone) and that asylum seekers were kept in transit zones during the whole asylum procedure, with no legal basis for detention or judicial appeals.

On 1 July 2019, the Asylum and Immigration Office ceased to exist and the National Directorate-General for Aliens Policing (NDGAP) was established to take responsibility for asylum and aliens’ control.

The procedure is comprised of two stages. The first step is an administrative procedure carried out by the NDGAP. The second step is a judicial review carried out by regional administrative and labour courts that do not specialize in asylum. Besides the normal procedure, there is an admissions procedure and a fast-track procedure.

Asylum could only be applied for at the border (in the transit zone). This was due to the state of crisis due to mass migration. Only persons with legal residency could apply for asylum in the country. The asylum procedure starts with the submission of an application for asylum to a determined authority and with an evaluation to determine if a person is subject to a Dublin process. If this is not the case, the NDGAP then proceeds to examine if the application is admissible or if it should be decided using the fast-track procedure. Decisions will be taken within 15 days. If the application is deemed inadmissible and is not fast-tracked, the NDGAP shall then decide on the grounds of substance within 60 days.

During this state of crisis, the special rules that apply to third-country nationals that have entered and/or remained in Hungary irregularly and to those who have applied for asylum were the following:

- The police is authorized to return migrants living in the country irregularly and wishing to apply for asylum through the border fence in any part of the country, with no

10. INFORMATION FOR PERSONS SEEKING ASYLUM IN THE REPUBLIC OF SERBIA UNHCR/BCHR Pag 4-8

11. RIGHT TO ASYLUM IN THE REPUBLIC OF SERBIA 2019 Belgrade Centre for Human Rights Pag 16

legal procedure and no opportunity to challenge this measure.

- Applications for asylum may only be submitted in transit zones on the border, with the exception of applicants residing legally in Hungary. Asylum seekers are retained in transit zones during the whole asylum procedure with no legal basis for detention or judicial appeals.
- All vulnerable persons and unaccompanied minors of more than 14 years of age are also detained automatically in transit zones.
- The deadlines to request a judicial review of admissions and denial decisions on asylum applications for fast-track procedures are drastically shortened to 3 days.

Currently the procedure at the border isn't applied in Hungary. Based on the decision of the CJEU in joint cases C-924/19 and C-925/19, which declared detention in the Hungarian transit zone with the Serbian border illegal, the Hungarian Government adopted Decree 233/2020, whereby since 26 May 2020, people in border crossings wishing to apply for international protection shall, temporarily until 31 December 2020, submit a declaration of intent to the Hungarian embassy in Kiev (Ukraine) or to the Hungarian embassy in Belgrade (Serbia).

2019 was marked by a very low rate of recognition (the percentage of rejections was 91.5%), procedures were extremely long, during which applicants for asylum had to stay in the transit zones, which were de facto detention areas. Most asylum applications were turned down at first instance, were then annulled when challenged and went back to the first instance to be re-examined. 11,101 migrants were returned from Hungarian territory to the other side of the fence, while 2,585 persons were stopped from crossing the border. In total, 961 people were detained in Hungary. As for the number of asylum seekers in 2019, there were 468, mostly from Afghanistan, Iraq, Pakistan, Iran and Syria, of which 22 were granted refugee status, 31 were granted subsidiary protection and 7 on the grounds of humanitarian reasons.

Statistical information on asylum seekers and their main countries of origin, as well as the global figure and decision outcomes at first instance was available monthly from the former Immigration and Asylum Office (IAO), but this practice was stopped in April 2018. The Hungarian Helsinki Committee (HHC) also published brief monthly statistics, although the regularity of this has also been limited.¹²

12. AIDA COUNTRY REPORT HUNGARY 2019 Pag 7/10-11

Points of Concern

Push backs

Hungary



An occupied old freight wagon at a transit zone before crossing the border to Hungary, on the outskirts of Subotica. Source: CCAR

On 15 September, a stretch of 175 km of fencing was completed along the border with Serbia. A similar fence was erected along the border with Croatia one month later, on 16 October 2015. The so-called “transit zones” were established as part of the fencing system. The two transit zones along the border with Serbia are located at Tompa and Röske, while the transit zones along the border with Croatia are in Beremend and Letenye. Despite all of the measures adopted with the explicit goal of offsetting the flows of refugees and migrants on the Serbian border, this section of the border continues to be the fourth largest entry point into the EU.

In 2016, only 20–30 persons were allowed into each transit zone per day. As of November 2016 only 10 persons were allowed in per day and only on workdays due to the change in working hours of the former IAO. In 2017, only five people were allowed into the transit zones each day. Since 23 January 2018 and until the end of 2019, only one person was allowed into each transit zone per day and, sometimes, this rule wasn’t followed. For instance, during the first week of July 2018 not a single asylum seeker was allowed in. As of mid-December 2019, no asylum seekers are allowed into the Tompa transit zone.

As of today, as outlined in the previous section, the only possibility to apply for asylum in Hungary is to do this via the Hungarian embassy in Kiev (Ukraine) or the Hungarian embassy in Belgrade (Serbia).

At the same time, entering Hungary irregularly through the border fence is punished with prison sentences of up to 10 years and/or a deportation order. The criminal procedure isn't suspended even when the person accused has submitted an asylum application during the court hearing. The requests to suspend the criminal procedure submitted by the legal representatives of those accused have systematically been turned down by the court.

The criminalization of asylum seekers entering the country illegally stopped being relevant with the "8 km rule" that entered into force on 5 July 2018; this rule allows the Hungarian police to automatically push back asylum seekers who are intercepted within 8 km of the Serbian-Hungarian or Croatian-Hungarian borders to the outer side of the fence without registering their information or allowing them to submit an application for asylum, in a summary procedure with none of the most basic procedural safeguards (such as the right to have an interpreter or legal assistance). By legalizing push backs from Hungarian territory, asylum seekers are denied their right to seek international protection, in a clear breach of international regulations and EU legislation, and violates article 4 of Protocol 4 of the European Convention on Human Rights (CJEU).¹³

As a result of legalising push backs via the "8 km rule", from 5 July to 31 December 2016, 19,057 migrants were denied access through the Hungarian-Serbian border. These migrants were not only denied their right to seek international protection, but also many of them were physically abused by uniformed personnel.

On 28 March 2017 amendments were introduced whereby during the state of crisis due to mass migration, the 8 km zone was extended to all Hungarian territory. This includes migrants who had not even been in Serbia and had entered Hungary via the Ukraine or Rumania. Migrants who arrived through an airport and applied for asylum were also pushed into Serbia, even if they'd never been there before.

In 2019, 11,101 migrants were pushed back from Hungarian territory to the outer side of the border fence, while 2,585 people were stopped from entering through the border fence. In total, 961 people were arrested in Hungary.

On 19 July 2018 the European Commission decided to refer Hungary to the CJEU for non-compliance of its asylum and return legislation. The Commission considers that Hungary fails to provide effective access to asylum procedures as irregular migrants are escorted back to the border, even if they wish to apply for asylum.¹⁴

During interviews conducted with the members of the different organizations working in Serbia, and also during visits and interviews conducted by the team of observers on the border between Hungary and Bosnia-Herzegovina, the highlights are:

13. Hungarian Helsinki Committee

14. AIDA COUNTRY REPORT HUNGARY 2019 Pag 18-24



Occupation of an old train station, now a transit zone before crossing the border, at the outskirts of Loznica. Source: CCAR

- The border with Hungary continues to be one of the points where migrants try crossing (digging underground tunnels, in lorries...); most of them are from Afghanistan, Iran and Pakistan. The situation isn't as bad as in 2016, when police brutality was so extreme that it could be considered a war zone, but it still persists.
- In Subotica, as we were told by members of Klikaktiv, the police are walling up the entrances to buildings where refugees live to stop them from entering and with paintings saying "get out of Serbia". The police stop them from cooking in front of these buildings and throw away their food.



Border between Serbia and Bosnia, on the outskirts of Loznica; point where cases have been reported of migrants and refugees drowning when forced to return to Serbia swimming. Source: CCAR

- The border with Rumania is consolidating as the new migratory route, with most people coming from Syria; not just men, also entire families that occupy abandoned houses near the border. The witnesses interviewed by the CCAR delegation all report police violence.
- On the border with Bosnia-Herzegovina the situation is very worrying in the area of Banja Koviljaca, where several people have drowned trying to cross the river Drina dividing both countries. Interviewees explain that the Bosnian police beat them up, confiscate their belongings and throw them into the river to return to Serbia.

Difficulties in accessing international protection procedures

Serbia

People who enter the Serbian asylum procedure are usually housed in one of the five asylum centres distributed across the country. These “asylum centres” are not to be mistaken for the temporary reception facilities created by the Government in 2015 as an answer to the mass arrival of migrants and refugees transiting through Serbia. The main problem in 2019 was the lack of differentiation between those with a genuine interest in seeking asylum in Serbia and those who simply wanted to stay in one of the centres to then try crossing into Hungary. In fact, immigration officers from all police departments have referred asylum seekers to different centres based on the available capacity, and not based on assessing the person’s wish to remain in Serbia. This practice has led to a situation where asylum seekers have been referred to reception facilities where asylum procedures are rarely followed (or centres where it is never followed) and vice-versa.

There are 5 active asylum centres in Serbia and 14 temporary reception facilities.



Informal groups of migrants and refugees at Luke Čelovića Park, Belgrade, waiting to move to the border. Source: CCAR

Today, in RS it is impossible for persons at reception/transit facilities to seek international protection.

“During the state of emergency, the army was deployed and everyone was forced to go to the centres and could not leave. It was also impossible for organizations to visit these centres to check what was happening. In April 2020 the headcount was 9,000 people and two new centres were opened; some centres were 325% above their capacity. However, refugees don’t complain so much about the Serbian police as they do about the Hungarian and Croatian police, but they have been attacked, especially in squats during the pandemic. Since the state of emergency was declared, there have been reports of excessive use of force by the police and army at these centres, collective expulsions from Serbian territory, and a lack of basic needs at the centres, such as clothes and food.”¹⁵

Hungary

During 2019 detentions continued to be a frequent practice more than an exceptional measure in Hungary. The vast majority of people were detained at the Röske and Tompa transit zones. On 14 March 2017 the ECHR in the case *Ilias and Ahmed v Hungary* confirmed its established jurisprudence and ruled that by confining people in transit zones, Hungary was failing to meet its human rights obligations when returning asylum seekers to Serbia without considering the risk of facing cruel and inhuman treatment on arrival in the country. However, it was not until 14 May 2020 that the Court of Justice of the European Union determined that it was illegal for Hungary to detain asylum seekers in transit zones near the Serbian border.

In this case an Iranian family and an Afghan family who were seeking asylum in a border crossing transit zone were detained for over a year and were not given the option of a court reviewing their situation nor to leave on their own will.

This judgement is the result of the persistent and constant work of the Helsinki Hungarian Committee to fight for the rights of those seeking international protection.¹⁶

On 17 June 2020 Law LVIII was adopted on the lifting of the state of emergency in response to the COVID-19 situation, establishing that people arriving in Hungary with the intention to seek international protection shall be rejected and will need to express their intentions at a Hungarian embassy. This practice violates international legislation on refugees and human rights, and contravenes EU legislation, exposing asylum seekers to the risk of being returned. Effective access to a territory is a basic condition for their right to seek asylum to be effective.

The situation of unaccompanied minors

15. Entrevista realizada el 14/09/2020 a miembros de Klikactiv

16. EU COURT: HUNGARY UNLAWFULLY DETAINS PEOPLE IN THE TRANSIT ZONE AND DEPRIVES THEM OF A FAIR ASYLUM PROCEDURE THE HUNGARIAN HELSINKI COMMITTEE

Serbia

According to Serbian legislation, the State shall protect migrant children in the same way and to the same extent as those living permanently in the country. Although the legal framework guaranteeing protection is quite high, in practice it is not respected sufficiently.

According to UNHCR figures, since the start of 2019 and until the end of October, 3,064 unaccompanied minors arrived at RS. During this same period, the Ministry of the Interior only registered 640 unaccompanied minors using the LATP, coming mainly from Afghanistan (72%) and Pakistan (11.6%). These minors expressed their intention to seek asylum in RS. However, the Komissariat for refugees and migrants in Serbia took all migrants to Asylum Centres and Reception facilities regardless as to whether they had asked for asylum or not. According to their data, from the start of the year and until the end of October 2019, there were 1,904 unaccompanied minors in five Asylum Centres and in thirteen Reception Facilities; i.e. 49.3% of the total figure of children that were given accommodation by the CRM during this period. Data from Save the Children, on the other hand, indicate that during the first six months of the year alone, 1,970 refugee children arrived in RS, and around 90% were not accompanied by their parents.

By comparing the figures given above, everything indicates that the number of unaccompanied minors identified by UNHCR and Save the Children on the field was considerably higher than the number of children in facilities under the jurisdiction of the CRM. Also, a large number of unaccompanied minors remained in RS without a regulated legal status, as the European Commission pointed out.

It is paramount to have an effective system to identify and register all minors entering the RS to give them protection. Unaccompanied minors are at great risk of seeing their fundamental human rights violated. There is no justification that legitimises hundreds of unaccompanied minors remaining irregularly in SR.

A In practice, a minor is only placed under guardianship if certain procedures are required (asylum procedure, medical intervention, etc.), requiring their guardian to be present. A certificate registering the minor's intention to apply for asylum in RS was often the reason to place the minor under temporary guardianship. Therefore, only once a minor is registered in the asylum procedure is he or she assigned a temporary guardian to go through the asylum procedure. This not only is a breach to the CRC and Family Law, it also contravenes the LATP, which states that the asylum procedure should only start once the minor is assigned a temporary guardian.

The most common excuse used by guardianship authorities for not adopting rapid responses is that they lack professional personnel, that they are overloaded with work and they lack means of transport and logistic capacity. This is a problem that has also been acknowledged in recent years by the Ministry of Labour, but it would seem that not much has been done to solve it. This means that social workers and professional guardians are overloaded with work, with an obvious impact on the availability and the quality of the attention given to unaccompanied minors.

Following international commitments, ensuring an adequate guardianship system is primarily the responsibility of the State. Also, the current human resources of guardianship authorities, which are clearly insufficient to deal with unaccompanied minors, are almost all financed by civil society projects, and this means they are not sustainable in the long run since it is not known how long the funds allocated to the current number of professional guardians will be available. In this regard, the Ministry of Labour must provide unaccompanied minors with an adequate level of protection through programmes that are sustainable in the long run and must invest additional efforts in improving this protection.¹⁷

Hungary

The Law does not foresee a mechanism to identify unaccompanied minors. The Law on Asylum only foresees a way of assessing the age of the child in cases where there are doubts on the alleged age of the applicant. In case of uncertainty, the asylum officer may, without



Groups of migrants and refugees at a temporary informal camp, a transit zone before crossing the border with Hungary, at the outskirts of Subotica. Source: CCAR

17. RIGHT TO ASYLUM IN THE REPUBLIC OF SERBIA 2019 Belgrade Centre for Human Rights Pag 97/112

explaining the reasons to the applicant, order an age test. Therefore, decisions on the need for an age test may be considered arbitrary. The applicant (or their representative or legal guardian) must accept an age test. However, when entering a transit zone, age tests are usually carried out before the minors are assigned a guardian. This means the minors are alone in this process without an adult to represent their best interest. Asylum applications cannot be rejected because a person doesn't give his or her consent to an age test. However, as a consequence, most provisions relative to children can't be applied in these cases.

Age tests are carried out by a military doctor in the transit zone. The main method used is by observing the physical aspect of a child, such as their height, weight, etc. and sexual maturity. In the case of age tests, the NDGAP does not conduct a psycho-social evaluation. Since the new legal regime entered into force in March 2017, age tests became even more relevant, as the law establishes a distinction between unaccompanied minors aged 14 and below and those older than 14. The consequences are more serious: there may be mistakes assessing the age of a minor and they may be confined to the transit zones, which is considered illegal by the Hungarian Helsinki Committee. The military doctor has no specific professional knowledge to assess the age of asylum seekers, and even less so to determine if a child is 14 or 15. The CPT has criticised age tests, among others. The margin for error is much greater among children around the age of 15 and it is easy to see why an age test to clearly determine if a child is younger than 14 is very problematic.

Based on interviews with unaccompanied minors, lawyers from the Hungarian Helsinki Committee found that, in reality, these "age tests" last just a few minutes, during which the military doctor measures the height of the child, looks at their teeth, measures their hips and examines the shape of their body (both if they "look like a child's body or that of a teenager") and signs of sexual maturity (for instance, pubic hair or the size of breasts). The Hungarian Helsinki Committee believes that this is a highly unprofessional practice that violates the fundamental rights of children.

By the time this report was completed, no protocol has been adopted to offer unified criteria for age tests conducted by the police and the NDGAP. On several occasions (conferences, panel discussions, etc.) the former Asylum Office denied any responsibility in adopting such a protocol, saying that age tests are a medical matter that is beyond the scope of their competencies. The police drafted a non-binding protocol for age assessment examinations ordered by the police, which includes a checklist that must be followed by doctors performing the examination. This protocol, which was published in 2014, does not include psycho-social or intercultural aspects as part of the age tests. The protocol only foresees that, in case there is any suspicion that the child applying for asylum and undergoing the examination may be a victim of sexual violence, then the aid of a psychologist may be requested (but this is not automatic and the Hungarian Helsinki Committee has not seen of any case where the authorities have referred the applicant to a psychologist free of charge).

Age assessment opinions do not usually specify the exact age of a person; they give an estimation of whether the person is above or under the age of 18, or within a margin of 2 years (for instance: 17-19 or 16-18). In this case the benefit of the doubt is given

to the applicant.

An age test may only be challenged by appealing against a negative decision on the asylum procedure, and this cannot be considered effective as, in practice, several months have gone by when the rejected application reaches the judicial phase of the procedure.¹⁸

18. AIDA COUNTRY REPORT HUNGARY 2019 Pag 48/55

Conclusions

- Since 2015 the Hungarian Government has drastically reformed its asylum system until dismantling it. The rights of persons seeking asylum are systematically violated and international and European human rights legislation are breached. Effective access to the territory, which has been made impossible nowadays, is a basic condition to make the right to seek international protection effective and there are many reports on excessive use of force and violence by the Hungarian police.
- To legitimize the importance of these reforms, since 2015 the Government has developed a series of campaigns in the media worth millions of Euro to stigmatize asylum seekers, migrants and refugees, as well as NGOs helping them: in June 2020 the Court of Justice of the European Union (CJEU) ruled that Hungary's law from 2017 requiring non-governmental organizations receiving at least 9 million HUF in subsidies from outside Hungary to register in a special registry and to label themselves as "organization funded with foreign funds" on their website and publications is stigmatizing, harmful and violates EU legislation.
- The drift of the Hungarian State, which encourages xenophobic attitudes, hatred and fear of foreigners, is worrying; this has a harmful impact on the integration of those seeking international protection and refugees.
- As for Serbia, although most migrants don't want to stay in the country -as for them it is a transit country- this shouldn't justify the government's failing to adopt adequate measures for the rights of these people to be respected. Several organizations express their concerns over the fence being erected between Serbia and Macedonia, although there is no official information available.
- Another worrying concern is the situation of unaccompanied minors. As mentioned before, there is no established procedure to determine their age; it is sufficient to state you are a minor to be considered as such. Most minors do not want to enter the system as they wish to continue their migratory journey, which means they often live in the street until they manage to cross the border; they are treated as adults and are also beaten.
- Lastly, it is also worth mentioning push backs and the use of violence, especially along the new route through Rumania used by many Syrian families.
- Everything that happens on the outer borders of the EU is also a responsibility of the EU. Hot spots to enter European territory are a growing concern within the current context of political instability, with a rise in xenophobic discourse by far-right groups and also with the gradual toughening of community policies that, in recent years, has been linked to the removal of monitoring and complaint systems. Borders are not just physical; they are also political and symbolical and are closely linked to the will of the people that are part of this political and social entity. It is essential to study and record these areas to make them visible and, hence, to exercise the legitimate and necessary monitoring systems.

Bibliography

- AIDA Country Report Hungary 2019 http://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2019update.pdf
- AMNISTIA INTERNACIONAL Serbia 2019 <https://www.es.amnesty.org/en-que-estamos/paises/pais/show/serbia/>
- AMNISTIA INTERNACIONAL Hungary: EU actions shows «intimidation campaign» against those defending asylum - seekers will not be tolerated. <https://www.amnesty.org/en/latest/news/2019/07/hungary-eu-action-shows-intimidation-campaign-against-those-defending-asylumseekers-will-not-be-tolerated/>
- AMNISTIA INTERNACIONAL Hungary: European Court declares authorities broke UE law by detaining asylum-seekers in transit zone <https://www.amnesty.org/en/latest/news/2020/05/hungary-european-court-declares-authorities-broke-eu-law-by-detaining-asylum-seekers-in-transit-zone/>
- BELGRADE CENTRE FOR HUMAN RIGHTS Right to Asylum in the Republic of Serbia 2019 <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Right-to-Asylum-in-Serbia-2019.pdf>
- BELGRADE CENTRE FOR HUMAN RIGHTS Human Rights in Serbia January-June 2020 <http://www.bgcentar.org.rs/bgcentar/eng-lat/bchr-issues-report-on-human-rights-in-serbia-in-the-january-june-2020-period/>
- COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE Dunja Mijatovic Report following her visit to Hungary from 4 to 8 February 2019. <https://rm.coe.int/report-on-the-visit-to-hungary-from-4-to-8-february-2019-by-dunja-mija/1680942f0d>
- EL PAÍS (22/12/2009) Serbia solicita la adhesión a la UE https://elpais.com/internacional/2009/12/22/actualidad/1261436410_850215.html
- FRONTEX Consultative Forum on Fundamental Rights FOURTH ANNUAL REPORT, 2016 <https://op.europa.eu/en/publication-detail/-/publication/422df630-3f63-11e7-a08e-01aa75ed71a1>
- FRONTEX (31/03/2011) Fundamental Rights Strategy https://www.statewatch.org/media/documents/observatories_files/frontex_observatory_2011-03-31-frontex-fundamental-rights-strategy.pdf
- HCIT Forcible Irregular returns to the Republic of Serbia from neighbouring countries, Hungary and Croatia collected throughout 2016 and 2017. <http://hcit.rs/wp-content/uploads/2017/05/HCIT-report-on-expulsions-to-Serbia-ENG-version.pdf>
- KLIKAKTIV (18/09/20) What is not written in the Non- Paper for Chapters 23 and 24 regarding Serbian progress in EU accession <https://klikaktiv.org/journal/what-is-not-written-in-the-non-paper-for-chapters-23-and-24-regarding-serbian-progress-in-eu-accession>
- KLIKAKTIV (11/09/20) Deaths at the serbian bosnian border <https://klikaktiv.org/journal/deaths-at-the-serbian-bosnian-border>
- KLIKAKTIV (31/07/20) Subotica unpleasant surprise <https://klikaktiv.org/journal/subotica-unpleasant-surprise>
- KLIKAKTIV (02/04/20) Border violence and push backs to Serbia <https://klikaktiv.org/journal/border-violence-and-push-backs-to-serbia>

THE HUNGARIAN HELSINKI COMMITTEE EU COURT: HUNGARY UNLAWFULLY DETAINS PEOPLE IN THE TRANSIT ZONE AND DEPRIVES THEM OF A FAIR ASYLUM PROCEDURE The Hungarian Helsinki Committee <https://www.helsinki.hu/en/hungary-unlawfully-detains-people-in-the-transit-zone/>

Serbia: Law of 2007 on Asylum, 26/11/07, <https://www.refworld.org/docid/47b46e2f9.html>

UNHCR/BCHR Information for persons seeking asylum in the Republic of Serbia <http://www.unhcr.rs/media/docs/2019/03/LifletEngleski.pdf>

UNHCR Serbia November 2019 Snapshot <http://reliefweb.int/report/serbia/unhcr-serbia-snapshot-november-2019>

UNHCR Applying for asylum in Serbia <https://help.unhcr.org/serbia/applying-for-asylum-in-serbia/>

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