

EUROPE'S BORDERLANDS

VIOLATIONS AGAINST REFUGEES
AND MIGRANTS IN MACEDONIA,
SERBIA AND HUNGARY

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Cover photo: The railway line at Subotica, in the north of Serbia, leading towards the Hungarian border.
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GLOSSARY

A **refugee** is a person who has fled from their own country because they have a well-founded fear of persecution and their government cannot or will not protect them. **Asylum procedures** are designed to determine whether someone meets the legal definition of a refugee. When a country recognizes someone as a refugee, it gives them **international protection** as a substitute for the protection of their country of origin.

An **asylum-seeker** is someone who has left their country seeking protection but has yet to be recognized as a refugee. During the time that their asylum claim is being examined, the asylum-seeker must not be forced to return to their country of origin. Under international law, being a refugee is a fact-based status, and arises before the official, legal grant of asylum. This report therefore uses the term refugee to refer to those who have fled persecution or conflict, regardless of whether they have been officially recognized as refugees.

A **migrant** is a person who moves from one country to another to live and usually to work, either temporarily or permanently, or to be reunited with family members. **Regular migrants** are foreign nationals who, under domestic law, are entitled to stay in the country.

Irregular migrants are foreign nationals whose migration status does not comply with the requirements of domestic immigration legislation and rules. They are also called “undocumented migrants”. The term “irregular” refers only to a person’s entry or stay.

Illegal immigrants is a term used by authorities, including in Serbia, Macedonia and Hungary to describe both refugees and migrants. The use of the term “illegal”, for those who only infringe administrative rules in crossing borders irregularly, is dehumanizing and criminalizing. People can be undocumented or have an irregular immigration status but can never be “illegal”.

Jungle refers to an area near a border, where refugees and migrants rest before attempting to cross the border.

EXECUTIVE SUMMARY

With few safe and legal routes into the EU, many of the thousands of refugees and migrants who have travelled the western Balkans route to Hungary find themselves trapped outside the borders of the EU in Serbia and Macedonia, without any legal protection or status. Refugees face considerable obstacles in accessing asylum in any country along their journey. Refugees and migrants alike are at constant risk of exploitation, arbitrary detention and ill-treatment along their journey.

In 2014, more than 42,000 people entered Hungary irregularly from Serbia.¹ More than half were refugees and migrants who had crossed the border into Hungary from Serbia, having travelled along the western Balkans Route from Greece, the vast majority through the Former Yugoslav Republic of Macedonia (Macedonia). Their numbers are increasing: by 22 June 2015, 60,620 refugees and migrants had been apprehended entering Hungary irregularly, 60,089 of them crossing into Hungary from Serbia.

Based on interviews with over 100 refugees in Greece, Macedonia, Serbia and Hungary, this report follows their journey, documenting the abuses and obstacles they face along the way.

The journey taken by refugees and migrants is often risky, and sometimes dangerous and irregular.² It is made out of desperation by people who are fleeing war or other violence, persecution, discrimination or poverty, in the hope of finding asylum, safety and security. Walking through all weathers, over mountains and wading through rivers, sometimes without food and water for days on end, the challenges are immense. Exhaustion, pain and hunger take both a physical and a psychological toll.

The Balkans route is certainly not safe. At Macedonia's border with Greece, and at Serbia's border with Macedonia, refugees are routinely subjected to unlawful push-backs and ill-treatment by Border Police. They may be arbitrarily detained by the authorities. Their irregular status also makes them vulnerable to financial exploitation by law enforcement officers, who misuse their authority to demand bribes.

In addition to human rights violations at the hands of the authorities, refugees and migrants are vulnerable to exploitation by smugglers who, in the absence of safe and regular routes, make their irregular journeys possible. Smugglers can fail to live up to their promises, raise the agreed fee or abandon people in remote areas. Refugees and migrants are also vulnerable to attack and robbery by armed groups, but because of the harsh treatment that some receive

¹ Figures for 2014 and for 2015 (until mid-March 2015) are artificially distorted by the mass migration of more than 21,000 Kosovo citizens in 2014 and 30,000 in 2015.

² Despite the risks, the route is far safer than that across the Mediterranean Sea, which in 2014 claimed the lives of 3,500 people. See Amnesty International, *Europe's sinking shame: The failure to save refugees and migrants at sea* (Index: EUR 03/1434/2015), available at <https://www.amnesty.org/en/documents/eur03/1434/2015/en/>

at the hands of the authorities, they fear reporting such attacks to the police.

Refugees who attempt to seek asylum in Serbia or Macedonia face severe obstacles. Despite the increase in the numbers of registered asylum-seekers, the number of refugees granted international protection in both countries remains pitifully small. In 2014, 10 asylum seekers were granted refugee status in Macedonia; and in Serbia, only one applicant was provided with asylum, while five were granted subsidiary protection. The fact that most refugees view Serbia and Macedonia as transit countries on their journey to the EU, does not absolve these countries of their obligations to develop effective asylum systems, which would provide refugees with access to international protection.

In both Macedonia and Serbia, inadequacies in the implementation of their asylum laws make it nearly impossible for asylum-seekers to access protection. Discouraged by the authorities' slow progress in registering their claims and conducting refugee status determination interviews within the time set out by law, most continue their journey and move on towards Hungary, where even *prima facie* refugees - including almost half of Syrian applicants - are not granted asylum.

Serbia and Macedonia are required to bring their asylum systems and laws in line with international and EU law and standards. Yet, without the political will, capacity or resources to ensure implementation, those seeking protection will continue to be denied access to an adequate asylum procedure.

In Macedonia, Amnesty International found that refugees and migrants are frequently arbitrarily detained in inhuman and degrading conditions at the Reception Centre for Foreigners (Gazi Baba) in the capital Skopje, some of whom are unlawfully detained as witnesses in proceedings against smugglers. In Serbia, despite the presumption against the detention of asylum seekers, refugees are regularly detained for their irregular entry and stay. In Hungary refugees and migrants entering the country irregularly may be subject to ill-treatment when initially detained; subsequently, up to 40% of male asylum-seekers may be detained during the asylum process.

As Serbia, Macedonia and Greece do not have functioning asylum systems, and the treatment of irregular migrants and asylum seekers, in Macedonia and Greece in particular, exposes them to the risk of multiple human rights violations, returns to these countries - whether through readmission agreements or unlawful pushbacks - currently breaches the prohibition of *non-refoulement* and should be stopped.

Ultimately, it is impossible to separate the migratory pressures on Serbia and Macedonia, and the rights violations occurring there, from the broader stresses prompted by the flow of migrants and refugees to and through the EU. The particularity of the Balkan route is that it involves refugees and migrants entering and exiting the EU only in order to re-enter it two countries further on in Hungary. As the Macedonian border with Greece is much more porous than the Hungarian border with Serbia (an imbalance that will only be aggravated by the Hungarian proposal to build a fence along that border), refugees and migrants are increasingly trapped in what is, for them, a Balkan no-man's land. Indeed, Serbia and Macedonia are currently serving as an overflow pipe for refugees and migrants that neither Greece nor Hungary, nor, indeed, the EU as a whole, are willing to receive.

While both Serbia and Macedonia can and should do more to respect the rights of refugees and migrants, the fact remains that they are struggling to deal with the consequences of EU migration policies, over which they have no influence. Ultimately, the stresses on Serbia and Macedonia, as with the stresses on Italy, Greece and now Hungary, can only be resolved by a much broader rethink of EU migration policies.

In its recommendations to the authorities, Amnesty International urges both Serbia and Macedonia to take immediate measures to respect the rights of refugees to a meaningful asylum process, without delay, and in accordance with the timelines set out by law.

Serbia and Macedonia should refrain from unlawful push-backs, and instead ensure that refugees entering those countries irregularly are informed of their right to apply for asylum. States must respect the principle of non-refoulement and refrain from returning asylum seekers to Serbia, Macedonia or Greece.

Allegations of ill-treatment by law enforcement officers, including during push-backs, should be promptly investigated and appropriately sanctioned. Each country should ensure that refugees and migrants are not arbitrarily detained, including in conditions which may be inhuman and degrading.

The criminalization of refugees and migrants, including through arbitrary detention in Macedonia, routine detention in Hungary, and the administrative detention of refugees for illegal entry and stay in Serbia, should cease. Detention should be considered as a last resort, where it can be justified as necessary and proportionate, in compliance with international law. Children should not be detained under any circumstances.

As this report was going to print, Hungary had announced a series of measures intending to restrict access to asylum in the country both physically – through the construction of a fence – and through the introduction of legislation that would facilitate the denial of asylum to asylum seekers who had transited through a “safe third country” – i.e. Serbia. Given the obstacles to accessing asylum in Serbia and the risk of chain *refoulement* to Macedonia and on to Greece, Hungary should ensure that it continues to offer access to asylum to refugees entering Hungary irregularly from Serbia.

Finally, Amnesty International urges European governments to offer refugees safe and regular routes to access protection, and ensure that refugees have effective access to asylum at the EU's external land borders. In response to an ever-growing refugee crisis, Amnesty International proposes a series of measures towards the creation of an equitable, rights compliant, migration management system in the EU.

METHODOLOGY

Between July 2014 and March 2015, Amnesty International representatives carried out three research missions to Serbia and two visits each to Hungary and Macedonia. In Serbia, Amnesty International conducted interviews with asylum-seekers at Asylum Reception Centres in Bogovadja, Banja Koviljača and Krnjača, and with asylum-seekers and irregular migrants in “the jungle” in Subotica.³ In Macedonia, interviews were conducted at the Reception Centre for Asylum Seekers in Vizbegovo, Skopje. Despite repeated requests, Amnesty International was denied entry to the Reception Centre for Foreigners at Gazi Baba in Skopje. In Hungary, interviews were conducted in the Nagyfa Asylum Reception Centre, the Békéscsaba Asylum Detention Centre, and the Immigration Detention Centre at Kiskunhalas. Interviews were also conducted at Eidomeni in Greece, close to the Macedonian border, in February 2015.

Care has been taken to avoid the inclusion of information that could reveal the identity of individual asylum-seekers; only their initials are given, in order to respect confidentiality and ensure that any published information does not prejudice their ongoing asylum or appeal proceedings.

Amnesty International conducted interviews with over 100 refugees and migrants: 13 of these interviews were conducted with families (40 individuals), and 18 with groups of between two and five people travelling together, including at least 10 unaccompanied minors. Their countries of origin included Afghanistan, Egypt, Eritrea, Kosovo,⁴ Iraq, Nigeria, Somalia, Sudan, Syria (including Palestinians ordinarily resident in Syria), and Tunisia. The majority of interviews were carried out with men, reflecting in part the gender imbalance amongst refugees and migrants, but also the reluctance of some women to be interviewed.

Amnesty International collected information about the asylum and border management systems in Macedonia, Serbia and Hungary. The organization interviewed representatives of the Ministry of the Interior and governmental authorities responsible for the accommodation of asylum-seekers, intergovernmental organizations including UNHCR (the UN Refugee Agency), non-governmental organizations (NGOs), including those providing legal assistance to asylum-seekers, as well as the EU delegations to Serbia and Macedonia.

Amnesty International thanks all the individuals and organizations that assisted in this research, particularly the asylum-seekers and migrants who agreed to be interviewed, and the translators who helped us to understand each other.

³ Amnesty International interviewed eight individuals who did not travel through Macedonia, but had reached Serbia from Greece via Albania and Montenegro (2), Bulgaria (5), and Kosovo (1).

⁴ Despite its declaration of independence, Kosovo remains part of Serbia under UN Security Council Resolution 1244/99.

BEGINNING THE JOURNEY

In 2014, more than 21,000 refugees and migrants travelled along the western Balkans route. They had travelled from their home countries – some for days, others for months or even years – eventually arriving in Turkey and embarking on the short sea crossing to Greece, from where this part of their journey starts. The largest number were refugees fleeing conflict and persecution in countries such as Syria, Iraq, Afghanistan, Somalia and Eritrea. Few succeeded in applying for asylum in either Serbia or Macedonia. By 22 June 2015, some 61,474 refugees and migrants had arrived in Greece, around the same number, 61,256, as had arrived after crossing the Mediterranean to Italy. At the same time more than 60,000 refugees and migrants had crossed the Hungarian border into the EU.

The extracts which follow are taken from some of Amnesty International's interviews with refugees and migrants in Serbia, Macedonia and Hungary. In each interview, we asked people to tell us how and why they began their journey.

"There were guns everywhere [in Damascus, Syria]. We had two choices – to take the gun ourselves or to die. We wanted to live and to leave."

"I left Syria three months ago, I lived in Damascus. It was very difficult for us, we had no electricity, it was hard to get food and there was war in that part [Harasta, a north-eastern suburb]. There were clashes between the Syrian army and the Free Syrian Army."

"I left Syria because I had to do military service, and I did not want to find myself dead. You are supposed to be in the army for a year and a half – but some of my friends have been there for four years. I refuse all armed struggle, in a practical way, a struggle of ideas and not guns."

"I left Iraq on 8 November 2014. I had my own company, but with all the problems with the mullahs and ISIS – I am Sunni, so I preferred to leave."

"We came because of the war – our families are still in Somalia. It is difficult for women in war, and they were going to force me to marry. I didn't want to be violated by a man who was 48 or 49 years old. I want to go to Belgium. I want to go to school to have an education, and I don't want to get married."

"I came from Afghanistan. We are Waziri people from Pakistan. I worked five years for NATO, I was supervisor of the containers for NATO. When NATO went, the Taliban came and asked me for money; they wanted \$10,000 from me. They sent me a letter, they told me to get out because I worked for NATO. I want asylum in a NATO country."

"We left Syria on 13 February 2015. We are from Halab [Aleppo]. The Syrian army accused me of working with the other army, and then ISIS took control, and accused me of working with the Free Syrian Army. So I decided to leave."



"All I wanted was to get to Europe to make some money and help my family. I came alone. I left Ethiopia four years ago, and spent most of it in Lebanon. My father is from Eritrea, but my mother is in Ethiopia. She is sick and I am trying to find out how I can go home."

"I'm from Tabriz, in Iran. I left three and a half years ago. I converted to Christianity and it was hard to live there. Not just me but my whole family is in danger. My brother has been in Evin prison for three years, for political reasons. My sister was kicked out of her job. When the police started to harass me, my mother had a heart attack. So I went to Turkey."

"We are Yazidis, our family was threatened, [we heard about] women in the family who were taken away to be raped. Men in our family were killed by ISIS. We left Iraq a month ago."

"I left because I had political problems in Egypt. While I was in prison, the police beat my

mother and my sister to stop me demonstrating. The third time I was in jail, they put informers to watch my family. When I was released, I decided to leave to protect my family."

"We came to Hungary because there is nothing in Kosovo. I have no job, we have an old house which needs repairs, and my son has heart disease."

"My brother was looking after sheep when he was attacked by Pashtuns. They had knives, and all he had was a stick for keeping off the wolves. But he hit one of the Pashtuns and killed him. He ran away to Iran. The Jirga decided that in compensation, I should give my eight-year-old daughter to the father of the man that died. They wanted her to marry a 60-year-old man. I knew he would abuse her in an inhuman way. So we ran away from Afghanistan the same night."

"Before the war [in Syria] I never thought to go and stay in Europe, except maybe as a tourist. We lost our dreams, our dreams were all destroyed. I dream to see my child running in the street again. All the world tried to attack us, they did not help us. We have no other choice."

As a young Somali woman told Amnesty International: "You have to understand that we are just travelling now. We have no home. We are homeless and without a home, we are lost, we are powerless."

HUMAN RIGHTS VIOLATIONS ON THE JOURNEY

PUSH-BACKS

Push-backs are unlawful return operations which take place at borders between countries, where border authorities push people back to the country they have most recently left. This can result in refugees being denied the opportunity to ask for asylum, and being returned to a country where they may face serious harm. Under the 1951 UN Convention and Protocol relating to the Status of Refugees (Refugee Convention), and Protocol 4 to the European Convention on Human Rights (ECHR), all countries are obliged to examine the separate individual situation of each person arriving on their territory, and grant the right to challenge any decision to deport them, before any deportation or expulsion can be lawfully carried out.⁵ Push-backs are therefore prohibited under international law.

REFOULEMENT

Push-backs can result in the return of individuals to countries where they would be at risk of serious human rights violations, whether directly, or via a third country. This is known as

⁵ 1951 Refugee Convention and its Protocol, available at www.unhcr.org/3b66c2aa10.html; Art 4 of Protocol No. 4 to the ECHR, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/046.htm>. Macedonia, Serbia and Hungary are all states party to the Refugee Convention and to the ECHR and its protocols.

refoulement, and may also occur as a result of formal deportations.

The principle of *non-refoulement* is enshrined in Article 33 of the Refugee Convention⁶ and under other international and European standards.⁷ The *non-refoulement* principle not only prohibits states from sending people back to a country where they may face serious human rights violations, but also prohibits indirect or chain *refoulement*, which occurs when one country forcibly sends refugees to another country that subsequently sends them to a third country where they risk serious harm.

The general presumption against *refoulement* is set out in both Serbian and Macedonian asylum laws.⁸ Hungary, as an EU member state, is also bound by the Charter of Fundamental Rights of the European Union (the European Charter), which at Article 19 expressly prohibits collective expulsions, including the expulsion of individuals to countries where “there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment”.

DENIED ACCESS TO ASYLUM

The right to seek asylum derives from the Refugee Convention, which defines who is a refugee, their rights and the legal obligations of states towards them. This right is also set out in the Universal Declaration of Human Rights. Over half of the asylum-seekers in both Serbia and Macedonia in 2014 were Syrian nationals; others originated from Afghanistan, Eritrea, Iraq, Somalia, Iraq and Sudan. Many of these individuals, in particular people from Syria, are manifestly in need of international protection.

CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Many refugees and migrants report being ill-treated by border police or other law enforcement officials. Others report inhuman and degrading treatment in detention, or being kept in inhuman conditions. These acts violate the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture); Article 3 of

⁶ “No Contracting State shall expel or return (“refoul”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

⁷ See for example, Art. 3 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Art. 16, International Convention for the Protection of All Persons from Enforced Disappearance; Art 19, Charter of Fundamental Rights of the European Union; Principle 5, UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

⁸ Art. 6 of the Serbian Asylum Law states: “No person shall be expelled or returned against his/her will to a territory where his/her life or freedom would be threatened on account of his/her race, sex, language, religion, nationality, membership of a particular social group or political opinions”; Art. 7 of the Macedonian Asylum Law: states: “The asylum-seeker, recognized refugee or person under subsidiary protection cannot be expelled... to the frontiers of the state, in which his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion, or, where he would be subject to torture, inhuman or degrading treatment or punishment.”

the ECHR, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. States have a responsibility to prevent cruel, inhuman or degrading treatment, and are obliged to fully investigate all allegations of such treatment, irrespective of a person's migration or other status,⁹ including allegations made against law enforcement officials, and to bring those responsible to justice.

DETENTION OF REFUGEES AND MIGRANTS

Under international law, the detention of asylum-seekers and migrants should only ever be used as a last resort, when it can be justified – in each individual case – as a necessary and proportionate measure that complies with international law.¹⁰ Alternative non-custodial measures should be the preferred solution and should always be considered before resorting to detention.¹¹ Children should never be detained, as it can never be in their best interests.¹²

PROSECUTION OF REFUGEES

Article 31 of the Refugee Convention provides the principle of immunity from prosecution of asylum-seekers for irregular entry and stay, provided they immediately apply for asylum and provide a valid explanation for their irregular entry or residence.

UNACCOMPANIED MINORS

Unaccompanied minors are children who have been separated from both their parents and other adult relatives, and are not being cared for by an adult. All states have particular responsibilities towards unaccompanied minors, based on the 1989 Convention of the Rights of the Child, and in particular Article 3, which provides that "The best interests of the child shall be a primary consideration in all actions affecting children". States should have effective procedures for the recognition of unaccompanied and separated minors, and should provide them with specialized assistance and support, including through the appointment of a legal guardian to represent their best interests.¹³

⁹ Art. 1, ECHR, for example, establishes that parties to the convention "shall secure to everyone within their jurisdiction the rights and freedoms" enshrined in the Convention.

¹⁰ See Art. 5, ECHR, and relevant jurisprudence concerning its interpretation. See also Amnesty International, *Migration-related detention: A research guide on human rights on standards relevant to the detention of migrants, asylum-seekers and refugees* (Index: POL 33/005/2007).

¹¹ Amnesty International, *Irregular migrants and asylum-seekers: Alternatives to immigration detention* (Index: POL 33/001/2009), available at www.amnesty.org/en/documents/document/?indexNumber=POL33%2F001%2F2009&language=en

¹² UNHCR, Revised Detention Guidelines, Guideline 6. See also Working Group on Arbitrary Detention, *Report of the Visit of the Working Group to the United Kingdom on the Issue of Immigrants and Asylum-seekers*, UN Doc. E/CN.4/1999/63/Add.3 (1998), para. 37; UNHCR, *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum* (1997), Guideline 2. See also, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, A/HRC/20/24, 2 April 2012, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24_en.pdf

¹³ This may include: "measures to identify unaccompanied and separated children, child-sensitive

BORDERLANDS: FROM GREECE TO MACEDONIA

“I was so afraid of the sea, but it was the least of the problems we had.”

A.H. from Syria, interviewed in Serbia in March 2015

Wherever they started their journey, most of those taking the western Balkans route will have taken the short sea crossing from Turkey to the Greek islands. In the 18 months from 1 January 2014 to 25 June 2015, 123 refugees and migrants, including 17 children have lost their lives on this crossing.¹⁴ Their safety is compromised by unseaworthy and overloaded inflatable boats, often driven by inexperienced passengers or by smugglers who abandon the boat when the authorities appear.¹⁵ Amnesty International's research has found that at least 61,474 refugees arrived on the Greek islands between 1 January and 22 June 2015 – already far more than the 43,500 who arrived during the whole of 2014.¹⁶

Having arrived on the Greek islands, refugees and migrants are usually arrested by coastguards or the Greek police, who take their personal information and fingerprints, and provide them with access to a refugee camp. They are given a document, which suspends a deportation order, effectively permitting their stay. Syrian nationals are granted six months; other nationalities 30 days. Many then travel to the capital Athens, where some remain for days or weeks, before travelling via Thessaloniki to the border with Macedonia.

In interviews with refugees and migrants, Amnesty International was told that those found irregularly on the territory of Macedonia are routinely pushed back to Greece by the

registration mechanisms, the appointment of a guardian, provision of temporary care and monitoring, refugee status determination, individual documentation, tracing, verification of family relationship, family reunification, identification and implementation of durable solutions". See *UNHCR Guidelines on Determining the Best Interests of the Child*, p. 17, available at www.unhcr-centraleurope.org/pdf/who-we-help/children/unhcr-guidelines-on-the-best-interest-of-the-child.html

¹⁴ Amnesty International estimate, compiled from published sources.

¹⁵ Based on Amnesty International interviews with Afghan, Syrian and Somali nationals.

¹⁶ *Greece: Humanitarian crisis mounts as refugee support system pushed to breaking point*, available at <https://www.amnesty.org/en/latest/news/2015/06/greece-humanitarian-crisis-mounts-as-refugee-support-system-pushed-to-breaking-point/>

Macedonian authorities, except those who are apprehended with their alleged smuggler (see below). Such push-backs occur not only at the Greece-Macedonia border, but well within the territory of Macedonia. Refugees told Amnesty International that they were not offered the opportunity to claim asylum in Macedonia or to challenge their unlawful deportation.¹⁷ In 16 out of 21 interviews conducted at the border village of Eidomeni, refugees and migrants stated they had already attempted the crossing and had been pushed back, five of them on multiple occasions. Six claimed they had been ill-treated by Macedonian police.¹⁸ Twenty people interviewed in Macedonia, Serbia and Hungary told Amnesty International that they had been pushed back by the Macedonian police, seven stating that they had been pushed back repeatedly, in some cases more than 10 times.

LEAVING GREECE

"We stayed four days at a camp. Then they gave us a paper saying that we had to leave the country after six months. But the law says that you cannot leave [cross the border] legally. We asked the judge how we could leave legally. She said she couldn't change the law."

B. from Syria, interviewed in Serbia in July 2014.

While increasing numbers of Syrian nationals are attempting to apply for asylum in Greece,¹⁹ the vast majority are driven to continue their journey due to difficulties in accessing the asylum process, the lack of reception places, poor living conditions in a failing economy and the absence of social integration measures.²⁰ Others are motivated by the desire for family reunification or readier access to asylum in other EU member states. People of other nationalities, who try to apply for asylum in Greece, and become frustrated over delays in the asylum procedure, then attempt the crossing to Macedonia.²¹

At the end of February 2015, Amnesty International visited the border village of Eidomeni, where over 100 refugees were aiming to cross to Macedonia. Between 50 and 60 Afghan refugees and other migrants, including unaccompanied minors and some families with children, were camping out in the open, near the border. Syrians, also trying to cross the border, were staying in local hotels. A pharmacist providing medical assistance to refugees described the increasing challenges: "People are coming constantly, the food and medicines

¹⁷ Amnesty International interviews with asylum-seekers in Serbia, March 2015; interviews with migrants and refugees in Greece, February 2015.

¹⁸ Amnesty International interviews in Eidomeni, February 2015.

¹⁹ In the first five months of 2015, 1,351 Syrian nationals applied for asylum in Greece; only 786 had applied during the whole of 2014, Asylum Service, Statistics for 2014 and 1 January to 31 May 2015, available at http://asylo.gov.gr/wp-content/uploads/2015/01/Greek-Asylum-Service-statistical-data-2014_gr.pdf & http://asylo.gov.gr/wp-content/uploads/2015/06/Greek-Asylum-Service-statistical-data-May-2015_gr.pdf

²⁰ *Greece: Humanitarian crisis mounts as refugee support system pushed to breaking point.*

²¹ Amnesty International interviews with Afghan, Ghanaian and Pakistani nationals in Greece, February 2015, Serbia, March 2015 and Macedonia, July 2014.

we collect are never enough.”²²

Refugees and migrants enter Macedonia between Gevgelija and Lake Dojran, on either side of the recognized border crossing. Over two days, Amnesty International saw more than 50 refugees, including several unaccompanied minors, preparing to cross the unguarded border each day, and during one hour witnessed 15 refugees crossing the border.

PUSH-BACKS AT THE MACEDONIAN BORDER

“I went to Athens in April 2014. After two days I went to Thessaloniki, and straight to Evzoni. There were people crossing by foot, or by car or truck or bus. I tried 13 times, in three months, to get into Macedonia. Every time the police put us into groups and sent us back again to the border. I once went 190km before they found me. They never asked me if I wanted asylum, they only wanted to know who the smuggler was.”

N.N., interviewed in Serbia in March 2015.

In the absence of a bilateral Readmission Agreement, due to the continuing name dispute between Greece and Macedonia,²³ deportations from Macedonia to Greece can be conducted under a general Readmission Agreement with the EU.²⁴ Article 6(3) of the Readmission Agreement provides for the accelerated return within two days of persons found to be illegally on Macedonian territory within 30km of the border. However, rather than make a formal application for their return to Greece, Border Police appear to be routinely pushing refugees and migrants back over the border, without any safeguards. They rarely provide any opportunity for refugees to apply for asylum, despite UNHCR’s requests that Border Police should specifically identify refugees.²⁵

A Syrian man, interviewed in Serbia in March 2015, told Amnesty International: “*The second time [we crossed the border], we went in a closed train. After 15 minutes the police stopped the train, opened the carriages and told us to come out. The police were joking with us and told us we had five minutes to go back to Greece*”. When Amnesty International enquired whether the Macedonian police had asked if they wanted to claim asylum, he replied: “*Never, ever in our lives*”.²⁶

²² Amnesty International interview, February 2015. Since March 2015, a mobile medical team from Médecins Sans Frontières (MSF), has also been present at Eidomeni.

²³ UN-brokered negotiations on the name issue have continued since 1995, following Greece’s objection, for historical and political reasons, to the use of the name “Macedonia” without a geographical qualifier.

²⁴ Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorisation - Joint Declarations, entered into force 1 January 2008, available at [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22007A1219\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22007A1219(01))

²⁵ In response to a freedom of information request, the NGO Macedonian Young Lawyers Association (MYLA) was informed that no asylum applications were made at the border in 2014. In January 2015, however, the Assistant Director for Border Affairs told Amnesty International that 16 asylum-seekers had recently applied at the border.

²⁶ In May 2015, the Macedonian authorities refused to release around 98 mainly Syrian refugees who

Fuelled by their determination to find safety and security, in the hope of receiving asylum or of being reunited with family members, for most refugees and migrants continuing the journey is their only option, despite repeated push-backs. One young Palestinian man from Damascus, Syria, was pushed back so many times by the Macedonian authorities that he tried another route. He told Amnesty International in March 2015: “*I decided to go via Albania. We walked for 50km but then they sent me back. They sent me back nine times, but they were better than the Macedonian police. The Albanian police took care of the women and helped them to carry the children. In Macedonia the police were not respectful. They just said, ‘Don’t talk, don’t move’.*”

“We started walking towards Skopje. We walked for about four hours and the police apprehended us and put us in a police station, in the first village after the border. They threatened that if we returned they would detain us. They held us there for around an hour then took us back... There was an interpreter, but we did not understand anything.”

- Ismail, a Kurdish refugee from Syria, interviewed in Greece in February 2015

“We attempted to enter Macedonia yesterday. We started at 5pm and at 9pm they returned us back... We wanted to catch a train but the police arrested us, and brought us near the river and then they let us go.”

- A., an Afghan national interviewed in Greece in February 2015

“We took a train from Athens to the border: an agent was waiting for us and took us to the jungle. He told us to go along the railway line. We walked for five hours and reached the nearest place in Macedonia. When we tried to get on a train, the local police caught us and returned us to Greece. No paper, no questions, they just brought one big truck and deported a lot of us to Greece. We tried again, and they sent us back again.”

- S.Z.Z., an Iranian national interviewed in Hungary in March 2015

Refugees and migrants who succeed in crossing Macedonia undetected may be pushed back to Greece even when they reach the border with Serbia. A Pakistani national told Amnesty International: “*I followed the railway line, and managed to get all the way to the border with Serbia, in a group of about 14 people, walking and by car. But I was caught by the Macedonian police. They took me back all the way to the Greek border. They did not even ask my name. I spent an hour at a police station, then they pushed me back to Greece.*”²⁷

Push-backs by the Macedonian authorities occur not only at the border with Greece. M. A., a Syrian travelling with his family, interviewed in Serbia in March 2015, told Amnesty International that rather than being pushed back to Greece, they were instead pushed into Serbia: “*The fifth time, we took a train to Skopje. The police caught us and took us to a prison or police station. There were about 40 families there. We stayed there for four hours, then the police took us all to the [Serbian] border [at Lojane], and then they just let us go. I think it was because of the women and children.*”

were locked into train wagons in high temperatures without ventilation or water, and instead returned the train to Greece, see “Diplomatic thriller for the train of shame”, 22 May 2015, available at <http://www.kathimerini.gr/816350/article/epikairohta/ellada/diplwmatiko-8riler-gia-to-treno-ths-ntrophs>

²⁷ Amnesty International heard similar accounts from A., an Afghan national interviewed in Greece in February 2015; and H., a Syrian refugee interviewed in Serbia in March 2015.

ILL-TREATMENT AT THE BORDER

In February 2015, refugees in Eidomeni reported ill-treatment by Macedonian border guards. In one instance, an injury to the eye of an Afghan refugee was clearly visible; he told Amnesty International that he had been hit by a border guard when he was apprehended.

Another Afghan refugee, travelling with his wife, their four children, and two other family groups, told Amnesty International: *"We spent five days in the camp in Mytilini [Lesvos, Greece] and then got the paper to leave the country in one month, so we came to the border. The first two times we were caught, we spent the night at a small police station, families were kept inside, men outside.²⁸ Single men were treated very badly [by the Macedonian police]. I saw men badly beaten. They beat my 13-year-old son. They beat me too, just when I was about to wash my face. I did not do anything."*

R.A.A., interviewed in Subotica, Serbia, in March 2015.

Amnesty International also heard allegations from a Palestinian-Syrian refugee that Macedonian police had shot at refugees in August 2014: *"After we left the Greek part of the border, we went into the woods in Macedonia, 150 people in one group. The Macedonian police were shooting at us; they hit one guy in the leg – I saw him fall down. We thought that they were coming into the woods with their guns, they sounded like automatics, AK47s. We couldn't see the police, they were shooting from a distance. I don't know what happened to the man who was shot – we separated into small groups and ran and hid. They were shooting for more than an hour. For me, it was so similar to what is happening in Syria."²⁹*

In some cases, refugees and migrants are not pushed back. If the authorities suspect that they are travelling with a smuggler, they are detained, as K. and F., a young Somali couple interviewed in Serbia told Amnesty International: *"We crossed the border on foot at around 6pm. It was raining, and a man in a car stopped and asked us where we wanted to go. We said we wanted to go to Skopje, and he did not ask us for any money. He drove us for about 30 minutes, and then there was a [border] control. The police arrested us and put handcuffs on the driver; they did not handcuff us. Then they took us to a place called Gazi Baba."*

²⁸ It is possible that they were detained at the Border Control Police Station at Bogorodica, see National Preventive Mechanism, 'Visits', available at <http://ombudsman.mk/upload/NPM-dokumenti/2013/Nenajavena%20poseta-PS%20Bogorodica%20-16.10.2013-ang.pdf>

²⁹ A.I.M Palestinian refugee from Syria, interviewed in Hungary, March 2015. Similar allegations were made by a female Syrian refugee travelling with her children, who claimed that in December 2014, Macedonian military police shot over their heads in a mountainous area close the border, Amnesty International interview, Athens, February 2015. According to one NGO, on 22 September 2014 Macedonian border police opened fire on a group of Syrian-Palestinians, and a 13-year-old child who was hit by three bullets, was hospitalized in Skopje; see Action Group for Palestinians of Syria, *Palestinians of Syria: the Bleeding Wound*, pp. 95-96, available at http://actionpal.org.uk/en/reports/special/the_bleeding_wound_semi_annual_report_2_2014.pdf

IN MACEDONIA: DETENTION OR ASYLUM?

“The police beat you if you ask for anything. I didn’t know the rules... If people make a mistake they are beaten.”

- K., a Somali national, detained in Gazi Baba Reception Centre for Foreigners.

DETENTION IN GAZI BABA

“We were stopped at the first control point by the police. They arrested the driver. The police told us we had entered the country illegally, and took us to a camp called Gazi Baba. We were told we were not criminals and that it was an administrative procedure and we would be witnesses. When we arrived at Gazi Baba, we immediately asked the others what to do. They told us not to waste our time and money, as we would have to stay there until we went to court. Through a friend, we called the lawyer we had in Greece, but we were told off. They said they would take us to an open camp, but they just told us to wait, wait, wait... After one month and five days, I was sent to the court and testified, then we were brought here [to the Asylum Reception Centre]. They fingerprinted us and collected data in Gazi Baba, but they did not explain that was part of the asylum process]. There is no translator in Gazi Baba.”

- Member of a Kurdish Syrian family, interviewed in Vizbegovo Asylum Centre in January 2015

Amnesty International is deeply concerned at the prolonged detention of hundreds of refugees and migrants, including families and unaccompanied children, at Macedonia’s Reception Centre for Foreigners, without any legal safeguards such as the right to challenge the lawfulness of detention, or any opportunity for refugees to claim asylum.³⁰ The centre is more commonly known as Gazi Baba, after the Skopje municipality in which it is located.

In 2014, according to the Minister of Interior, 896 migrants and refugees were detained in Gazi Baba; by 3 June 2015, 1,003 people had been detained since the beginning of the year.³¹ They were detained for irregular entry into the country, for the purposes of identification, or prior to deportation to Greece (as provided in law, see below). The most

³⁰ The majority of those detained in 2014 were refugees from Syria.

³¹ Address of the Minister of Interior, Mr Mitko Chavkov, on the draft law amending the Law on Asylum’, 18 June 2015, available in Macedonian at <http://www.mvr.gov.mk/vest/155>.

significant concern to Amnesty International is the detention of refugees, such as the Kurdish Syrian family cited above, whom the authorities require to remain in Macedonia as witnesses in proceedings against their alleged smugglers.³² Macedonian law provides no legal basis for the detention of witnesses.

Amnesty International has been refused access to Gazi Baba, despite applications made in writing to the former Minister of Interior in December 2014 and April 2015, and in person – in a meeting with the Assistant Director for Border Affairs – in January 2015. As of 29 June no response had been received to the April request.³³

Amnesty International has interviewed former detainees about the conditions at Gazi Baba, and has received additional evidence of inhuman and degrading conditions,³⁴ including photographs taken on mobile phones by detainees and forwarded by refugee organizations. Information has also been received from UNHCR, the EU Delegation in Macedonia and the Macedonian Association of Young Lawyers (MYLA).³⁵ Repeated concerns about the conditions, as well as the detention of children, pregnant women and breastfeeding mothers, have been expressed by the Macedonian Ombudsperson, the designated National Preventive Mechanism (NPM).³⁶

INHUMAN AND DEGRADING CONDITIONS

Under international standards, detained persons should not be held in conditions which threaten their health or their lives, or which amount to cruel, inhuman or degrading treatment or punishment. Such conditions may include being deprived of adequate nutrition and medical care, and a lack of adequate sanitary conditions, resulting in a serious hazard to health. Detainees should be provided with adequate space to sleep and access to adequate

³² In April 2015, Amnesty International wrote to the Minister of Interior requesting a statistical breakdown of the numbers detained at Gazi Baba, and the reasons for their detention.

³³ Amnesty International was first alerted to detention conditions in Gazi Baba in January 2014 by the family of a Syrian man, whom they understood was being detained there on the basis that he had been trafficked. Amnesty International has subsequently received many emails from individuals, organizations and lawyers seeking information about Syrians and Palestinian Syrians, who in 2014 made up the majority of those detained at Gazi Baba.

³⁴ Amnesty International interviewed 10 people, including members of four family groups with children, an unmarried couple and two unaccompanied minors who had been detained at Gazi Baba. UNHCR estimated that five or six groups of people per week are taken there directly from the border.

³⁵ Amnesty International interviews with UNHCR in Skopje in July 2014 and January 2015; interviews with EU Delegation and MYLA in January 2015.

³⁶ "Press Release of The Ombudsman in Honor of the International Migrants Day", 18 December 2014, http://ombudsman.mk/en/news_and_events/31257/press_release_of_the_ombudsman_in_honor_of_the_international_migrants_day.aspx. The NPM is a domestic body, charged with the protection of, and ensuring respect for the rights of people deprived of their liberty, including through a preventive system of regular unannounced visits to places of detention, under Art. 17, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which Macedonia ratified in 2009.

light and ventilation.³⁷ Gazi Baba fails to meet these standards.³⁸

"In Gazi Baba there were about 400 - 450 people when we entered. There was hardly anywhere for people to sleep, but we did get food. People were sleeping even on the stairs, the overcrowding was terrible. There were mattresses on the floors and in the corridor; we had showers and medical treatment. It was better for the women and children, it was less crowded – and they had a mattress, hot water, a doctor and basic hygiene."
Member of a Kurdish-Syrian family interviewed in January 2015

Originally a nursery, the reception centre is housed in a dilapidated building, inadequately converted for detention purposes in 2006. The Ministry of Interior state that its official capacity is 120 to 150 people, but that around 200 individuals are normally detained there,³⁹ while former detainees suggest that at times there are more than 350 detainees. During such periods, there are insufficient beds for men. Meals are inadequate, consisting mainly of bread, butter and jam, and occasionally canned fish or other processed food.⁴⁰

Access to adequate sanitation and health care is limited. Several former detainees have reported that because of the lack of hot water, children and adults developed skin infections, but were not provided with appropriate medical treatment. One former detainee told Amnesty International that police officers refused to take a sick family member to hospital, telling him: "When you are dead we will take you to hospital".⁴¹

"Gazi Baba is not a proper prison: there are no clean blankets, no hot food, you cannot go out, except for 30 minutes a day – that is not a prison. People sleep in the hall, on the stairs, everywhere, even in the kitchen. The children were in the women's part with their mothers, on the other side. Everything was awful in Gazi Baba. The water was cold, the place was dirty, but people cleaned themselves, and their clothes. There were more than 200 people in the men's part and around 60 to 70 women in the women's area. We [a couple] were allowed to meet for an hour each day, between 9 and 10pm."

- F. and K., interviewed in Serbia in March 2015

The centre has one section for men, and one for women and children. There is no section for families, and couples are separated. There is no separate accommodation for unaccompanied minors, who are detained with adults, nor any specific procedures for their identification.

³⁷ See: UN Standard Minimum Rules for the Treatment of Prisoners; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

³⁸ In October 2014, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Gazi Baba. The publication of their report remains pending the consent of the government. Conditions in Gazi Baba were among the issues discussed by the CPT in a follow-up meeting with the authorities in March 2015, see www.cpt.coe.int/documents/mkd/2015-04-01-eng.htm

³⁹ Amnesty International interview with the Assistant Director for Border Affairs in February 2015.

⁴⁰ Amnesty International interviews with former detainees, January and March 2015.

⁴¹ A.S., Afghan national, interviewed in the Reception Centre for Asylum-seekers at Vizbegovo in January 2015.

In March 2015, Amnesty International interviewed two asylum-seekers from Afghanistan, one of whom was an unaccompanied minor; they had been detained in Gazi Baba for two and three months respectively. They described the conditions at the detention centre in detail, and drew a plan of the facility. They told Amnesty International that at the time of their detention, there were more than 300 men in the centre. As a result of the overcrowding, they had to sleep on the floor in the hallway, without a bed or mattress. There was only one functioning shower and two toilets; other sanitation facilities were broken or otherwise unusable. They were allowed access to fresh air in a small inner courtyard for just one hour per day.⁴²

ILL-TREATMENT

"The police beat you if you ask for anything. I didn't know the rules. We wanted something from the market. But the manager said: "Can't you see that I'm busy?", and then he just hit me in the face with his hands – I just knocked the door, that's all. Then I learned the rules, and so I didn't speak. If people make a mistake they are beaten".

- K., interviewed in Serbia in March 2015

Amnesty International interviewed former detainees who were beaten, or had witnessed beatings, Ministry of the Interior police officers. Given the absence of procedures and safeguards for the protection of their rights, it is unsurprising that none of the detainees interviewed had made an official complaint against the authorities for their ill treatment.

"I saw women being beaten. One of them wanted to go to the manager's office, and the woman police [officer] said, "It's not allowed", and the woman said "I just wanted..." and then the policewoman said "No, get back!", and she started to slap the Syrian woman. The Syrian woman started to fight back; then the policeman came and beat her so badly." - F., interviewed in Serbia in March 2015

"The police beat me in Gazi Baba and I also saw a Syrian man being hit in the ear, he was beaten until he was bleeding. When I got to Gazi Baba, I was new and did not know that we have to stay in the room until the exact time. I went to have a shower and brush my teeth. They came – one officer punched and hit me. Some Syrians threatened to go on hunger strike. The police told them, "If you die here, nobody will come and ask about you. We will throw your dead body out." - A.H., an Afghan refugee interviewed in Serbia, March 2015

DETENTION OF WITNESSES

"When we were arrested, they took us to a police office near the border. The detective came and asked questions, and he brought the driver. He said: "Do you know this man" and I said: "No, he just offered us a lift". When they took us to Gazi Baba, they said, "You will not leave, you will stay here until your case is finished". I asked: "What case?" They didn't tell me whether the case was against me, or the driver. They just asked our names, they didn't ask us anything else; they didn't ask anybody anything. We could get no help, except a doctor who came to check that we were OK. We stayed 20 days [in Gazi Baba]." K., interviewed in Serbia in March 2015.

According to the Ministry of Interior, refugees and migrants are initially detained in Gazi

⁴² Amnesty International interviews with A.H., detained for three months, and M., detained for two months, Serbia, March 2015. Photographs of the interior of Gazi Baba taken in secret by detainees show the insanitary and unhygienic conditions they described.

Baba to establish their identity, but many continue to be detained at the request of the prosecutor, so that they may be witnesses for the prosecution in criminal proceedings against smugglers.⁴³ They may be detained for months, with no judicial authorization and without an opportunity to challenge the legality of their detention, or to have it reviewed.

Unaccompanied minors are also detained. A.H., a 16-year-old Afghan national, was detained with three others, two of whom were also unaccompanied minors, after the police stopped the taxi in which they were travelling and arrested the driver. He said the police told him that they were required to stay at Gazi Baba in order to appear before the court. He was not provided with any documentation apart from a list of his belongings.⁴⁴

The detention of refugees and migrants as witnesses has arisen following the introduction of amendments to the new Criminal Procedure Code in 2013, which require a witness to give evidence during the main trial proceedings.⁴⁵ Proceedings against alleged smugglers, conducted by one specialized prosecutor, may take place months after the witness is detained, depending on the longevity of the investigation.

Macedonian law provides no legal basis for the detention of a witness for more than six hours, but according to UNHCR, the Prosecutor's Office does not consider witnesses to be "detained", but rather "accommodated" as a damaged party to the case.⁴⁶

"The judge said that we had to be [there to give] evidence, and had to stay in the camp for the procedure. He asked if we knew the driver and some other questions about the smuggler. I did not get any paper from the judge. I just saw him once. I went to the court, and then after two days I was just released." - M. from Afghanistan, who was detained for two months before the court hearing, interviewed in Serbia in March 2015

LEGAL GROUNDS FOR DEPRIVATION OF LIBERTY

"The police said they were arresting us because we had no documents or papers. They took all of us, 14 adults and four children, all families, including a baby born in Greece, to Gazi Baba." – A.H. from Afghanistan.

⁴³ Amnesty International interview with Marinko Kocovski, Assistant Director for Border Affairs, January 2015. On 24 April 2015, Amnesty International received an email from a lawyer concerned about the detention of Syrian refugees in Gazi Baba, enclosing photographs of the interior of the centre. The lawyer wrote: "I understand that they are detaining them until the smugglers have been brought to justice... However, it came to my knowledge that they freed the smugglers from prison and [the smugglers] went back to Greece, while the refugees are still in custody".

⁴⁴ A.H., Afghan national, interviewed in Serbia in March 2015.

⁴⁵ Exceptions are made for protected witnesses, those who have died (!), are mentally ill or cannot be located, Arts 388 (1) & (5), Criminal Procedure Code, "Exception of direct presentation of evidence".

⁴⁶ Art. 292, Criminal Code; Art. 281, CPC. Article 81 of the Law on Foreigners provides for the "accommodation", (not detention), for up to two months, of trafficked persons to allow them time to decide if they are willing to testify against their traffickers, whereupon they should be provided with a residence permit and moved to an appropriate shelter.

Article 5 of the ECHR establishes an exhaustive list of permissible grounds for detention, including: the lawful arrest or detention for the purposes of bringing a person before a competent legal authority on reasonable suspicion of having committed an offence (Art. 5(1)(c)); and to prevent a person's unauthorized entry into the country or with a view to deportation or extradition (Art. 5(1)(f)). Further, under Article 5(2), detainees have a right to be informed promptly, in a language they understand, of the nature of their detention, the reasons for it - and therefore, the process for reviewing or challenging the detention decision.⁴⁷

In May 2015, the UN Committee against Torture (CAT) expressed concern about the inhuman and degrading conditions in Gazi Baba, and urged the Macedonian authorities to: "Adopt all necessary measures to ensure that asylum-seekers, irregular migrants and refugees, are not held in detention indefinitely, [and are] provided with access to an effective judicial remedy to review the necessity of the detention". The CAT urged the authorities to immediately take measures to "put an end to the inhuman and degrading conditions of detention in Gazi Baba", including "by closing it".⁴⁸

Under Macedonian law, with respect to irregular entry into Macedonia, there are only three grounds for detention: detention to establish identity; detention prior to deportation; and detention on suspicion of having committed a criminal offence or misdemeanour.

Under Article 132 of Macedonia's Law on Foreigners, a foreign national may be detained for no longer than 12 hours in order to establish their identity. The Ministry of Interior may then apply to a court requesting their continued detention, "until information on his/her identity is supplied".

Once the person's identity has been verified, there is no reason in Macedonian law for their detention to continue.⁴⁹ However, identities are seldom established, even when the relevant embassy is approached by the Ministry of External Affairs. The Assistant Director for Border Affairs told Amnesty International in January 2015: "We have to open the procedure, but we don't get any response from anyone. We can detain people for up to one year. If they have no identity documents we can detain them for another six months, just like in the EU."

Some of those held at Gazi Baba have not sought to claim asylum, and are detained pending deportation under Articles 108-9 of the Law on Foreigners. Amnesty International's request for the number of people detained and deported has received no response. According to the Assistant Director for Border Management: "The numbers are not large. Greece will only

⁴⁷ Article 12, Constitution of Macedonia opens, "The human right to freedom is irrevocable. No person's freedom can be restricted except by a court decision or in cases and procedures determined by law". It provides for a maximum of 90 days' detention, authorized by a court.

⁴⁸ Committee against Torture, *Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia*, Advance Unedited Version (2015), para. 17(a-c), available at http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/MKD/CAT_C_MKD_CO_3_20486_E.pdf

⁴⁹ Unless they are being detained for prosecution for irregular entry; Amnesty International is not aware of any such prosecutions.

accept those who have documents [for example, deportation orders] issued by the Greek authorities [thus proving that they entered Macedonia via Greece]".⁵⁰

Migrants and refugees may also be detained for a criminal offence or misdemeanour for being irregularly on the territory of Macedonia.⁵¹ However, although there would appear to be a justification under Macedonian law to detain all irregular migrants on these grounds, Amnesty International has received no information to suggest that any refugees or migrants are prosecuted, or even charged with this offence, in order to justify their detention.

Everyone, including all migrants and asylum-seekers, regardless of migration status, has the right to liberty, including protection from arbitrary arrest and detention. Yet the detention of refugees, asylum-seekers and migrants in Macedonia fails to respect both international standards and procedures established by law.⁵² There appears to be no detailed assessment of the specific circumstances of each individual concerned, including the risk of absconding. Neither do the authorities consider the necessity and appropriateness of any restriction of liberty, including whether it is proportionate to the objective to be achieved. Nor are detainees provided with a reasoned decision, in a language that they understand. Children, particularly unaccompanied children, should never be detained. None of these considerations and safeguards have been duly observed with regards to the detainees held at Gazi Baba.

RELEASE FROM GAZI BABA

"There were no clear rules about what to do after Gazi Baba. Some of those who wanted to depart were taken to the Macedonia-Serbia border." – A.H. and M.N.

Some of those detained in Gazi Baba are subsequently deported. Yet in the majority of "witness" cases, when the authorities decide to release them, detainees are asked if they wish to apply for asylum. If they confirm this orally, they are transferred to the Reception Centre for Asylum Seekers at Vizbegovo, Skopje, and only then are they considered to be asylum-seekers.⁵³ In practice, Amnesty International's observations suggest that those

⁵⁰ For Readmission Agreement, see p. 16, fn. 24. For a deportation in September 2014, see www.independent.mk/articles/9252/Macedonia+Surge+of+Illegal+Immigrants+in+the+Transit+Center+for+Foreigners. An Afghan man, detained in Gazi Baba in 2014, told Amnesty International in January 2015 that he had been returned to Greece, among 200-300 detainees deported at that time.

⁵¹ Art. 108, Law on Foreigners provides that a foreign national may be detained for removal from the country at the Reception Centre for Foreigners, for a maximum of 24 hours; if they do not have travel documents, they may be detained under Article 109 for up to 12 months. The law provides for a non-suspensive appeal (which does not suspend the deportation order); it has not been possible to establish if any appeals have been lodged. This should not apply when it is suspected that a person has been the victim of human trafficking or when a person has applied for recognition of the right to asylum; as the testimonies in this section suggest, those detained were not offered this opportunity.

⁵² Art. 9(1), International Covenant on Civil and Political Rights; Art. 31, Refugee Convention; Art. 16(4), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

⁵³ According to the law, they should be given a decision on their release but, according to MYLA,

released to the Asylum Centre are either not fully informed of their rights and obligations, or have no wish to claim asylum in Macedonia, and depart within a few days.⁵⁴

For example, the Assistant Head of Border Affairs and Migration told Amnesty International that 155 people, of whom 105 originated from Syria, were transferred from Gazi Baba to the Reception Centre for Asylum Seekers in January 2015. In the same month, 155 asylum requests were registered, including applications from 105 Syrian nationals, 20 Palestinians and 13 Afghan citizens. Yet, by the end of January 2015, when Amnesty International visited the Reception Centre, only one Syrian family and three Afghan families who had been detained at Gazi Baba were still there; the other released detainees had left. The Syrian family told Amnesty International that when their personal details and fingerprints were taken prior to release from Gazi Baba, they have not been informed that this was part of the asylum process.⁵⁵ Indeed of the 30 people then resident at the Asylum Reception Centre, only three nationals from Eritrea, Pakistan and Greece were in the asylum process.

INADEQUATE AND DELAYED ASYLUM PROCEDURES

Macedonia's Law on Asylum and Temporary Protection was adopted in 2003. While the law is broadly in compliance with international standards, its provisions are not being implemented effectively.⁵⁶ Between 2009 and 2014, when increasing numbers of people began to take the western Balkans route, at least 4,231 refugees have applied for asylum in Macedonia. However, between 2009 and 2013, no applicants were granted international protection, and in 2014 asylum was granted to just 10 Syrian nationals.

Until June 2015, the law required refugees to request to seek asylum from border police or the nearest police station, providing their name, country and date of entry. In practice, most

detainees are issued only with a record of their belongings.

⁵⁴ Amnesty International visited the Asylum Centre at Vizbegovo, run by the Ministry of Labour and Social Policy (MLSP), in January 2015. Around 30 people were accommodated at the centre when Amnesty International visited, although it has the capacity for 150. One accommodation building was locked and appeared unused. For conditions see this report by Macedonia's NPM:

<http://ombudsman.mk/upload/NPM-dokumenti/2013/Posledovatelna%20poseta%20centar%20za%20azil%20-ang.pdf>. See also the NPM's Annual Report for 2013, pp. 214-5, available at <http://ombudsman.mk/upload/NPM-dokumenti/2014/NPM%20Godisen%20izvestaj-2013.pdf>; and Jesuit Refugee Services Europe, *From Back Door to Front Door*, June 2013, available at www.jrs.net/assets/Publications/File/FromBackToFrontDoor_CroatiaMacedonia_JRS1.pdf.

⁵⁵ According to the Ministry of Interior, detainees are required to show an understanding of the concept of "asylum", before they are transferred to the asylum system. Three Afghan families, recently released from Gazi Baba, interviewed by Amnesty International at the Asylum Centre in January 2015, were unaware that they were there to claim asylum. Two of the men reported that they were waiting, with concern, for other members of their family who remained at Gazi Baba, including mothers with children.

⁵⁶ Entered into force 2004; updated in April 2013. From 2004-2008, applicants were predominantly Roma and Ashkali who had fled Kosovo in 1999, and who were mainly granted temporary protection.

made requests at the Butel police station in Skopje.⁵⁷ Amendments to the Law on Asylum, which entered into force in June, allows asylum-seekers to declare their intention to claim asylum to any police officer. According to UNHCR, Skopje, this will provide more flexibility in claiming international protection by, “removing the restrictive requirement to apply only at the border when entering the country, and at the nearest police station”. Instead of being held in police custody in order to be transferred to Reception Centre for Asylum Seekers by the police, their stay in Macedonia is regularized for 72 hours, with full freedom of movement, so that they may, within 72 hours, formally submit their asylum application at the Reception Centre for Asylum Seekers. For this purpose, they may travel on public transport.⁵⁸ The very likely effect of this amendment is that most asylum-seekers will use the 72 hours and subsidised transport provided to transit the country.⁵⁹

In 2014, 1,249 asylum requests were submitted, including 735 by Syrian nationals and 374 by Afghan nationals.⁶⁰ Some 80% of these applications were discontinued, meaning that the applicant left Macedonia before his or her application was concluded.⁶¹ Of the 265 applicants who remained within the procedure in 2014, only 10 Syrians, including one unaccompanied minor, were provided with refugee status, and one Ukrainian was afforded temporary protection. Eight Syrians were also offered subsidiary protection, but had already left the country; six applications from Syrians nationals were rejected as groundless.⁶²

While the majority of refugees leave the asylum centre within four to five days, the lack of prompt access to asylum deters many applicants. According to UNHCR and their implementing partner, the legal NGO MYLA, most applicants – in the absence of progress in their asylum procedure – leave the country within six months of the registration of their asylum claim, after having received no interview or further information in their case. Few stay until the end of the process, except, according to UNHCR, Syrian nationals.⁶³

“I arrived in Macedonia on 3 May 2013, and took a train to Skopje, where I met a policeman and said I wanted asylum. But I didn’t understand what he said to me. He took me to a police station where they asked if I wanted to go to Serbia. I said ‘Yes’ at that moment. The police took me in a car to Gazi Baba. I stayed there for

⁵⁷ Art.16 of the Law on Asylum and Temporary Protection (LATP).

⁵⁸ See Ministry of the Interior, *Law on Amending the LATP*, May 2015, available at www.mvr.gov.mk/predlozeni-zakoni; further information provided by UNHCR, Skopje in June 2015. The authorities consider that this measure will make refugees and migrants less susceptible to smugglers, and reduce deaths on the railways (see next chapter).

⁵⁹ See or example, www.telegraf.mk/aktuelno/makedonija/276684-zakon-za-azil-izmenite-ke-sprecat-migrantite-da-ginat-na-prugite.

⁶⁰ UNHCR, Skopje, January 2015; Department of Asylum statistics differ slightly, at 1,283.

⁶¹ If an asylum-seeker leaves the centre for more than five days, their application is discontinued, according to UNHCR, January 2015.

⁶² Amnesty International interviews with the Department of Asylum and UNHCR Skopje, January 2014.

⁶³ Amnesty International interview with UNHCR in Skopje, July 2014 and January 2015; interview with Pakistani national outside Vizbegovo in July 2014.

two months – the conditions were good then, but now everybody says it's terrible. After five days, they took fingerprints and photos. Then, after two months, on 13 July 2013, they brought me here [the Reception Centre]. After 14 days I filled in the documents with MYLA to submit my request [for asylum]. I got the first identity card after a year. My assigned inspector said at the court that I was not at the camp – although I never left the camp. My last interview was three months ago, maybe more. I complained that the procedure took so long. I don't know what will happen to my application. MYLA will inform me if there is any news."

- H.A., interviewed in January 2015. He originally left Eritrea as a child in 1993 due to his father's involvement in the Eritrean Liberation Movement.

MYLA, which provides legal assistance to asylum-seekers, has found that the authorities most often fail to meet deadlines set out in law. Within 15 days of their application, asylum-seekers should be informed about the asylum procedure and have completed their application in an interview with the Ministry of the Interior's Section for Asylum.⁶⁴ They should, within 15 days of their initial application, also be issued with identity documents, but this may take as long as six months.⁶⁵

Refugee status determination interviews conducted by the Section for Asylum should be concluded, and a determination issued, within six months, yet this is rarely the case. In 2014, 26 applicants were interviewed by the Section for Asylum; however, the other applicants had left the country before the interview was scheduled. According to UNHCR, in 2014, the longest period for scheduling an interview was one year and the shortest three months.⁶⁶ An exception was made in the case of the 10 Syrians granted asylum in 2014, who were granted asylum in an accelerated process.⁶⁷

Between 2009 and 2013, all asylum applications were rejected on grounds - set out in Article 10 of the LATP - that the applicant had "delayed himself" in a "safe third country" (for example, Greece). Amnesty International considers that the fact that *all* asylum applications were rejected on that basis indicates that these RSD procedures were deeply flawed and arbitrary. Appeals against decisions were, according to MYLA, routinely rejected by the court of second instance without adequate consideration of the merits of the case.⁶⁸ In 2014, 48 appeals were rejected on grounds that the applicant had no real fear of persecution, was not fleeing armed conflict or, in 35 appeals – five of which concerned new asylum-seekers – that, on the basis of classified information provided by the State Security Bureau, the applicant was a danger to the security of Macedonia.⁶⁹

⁶⁴ Art. 18, LATP. The Ministry of Interior's Section for Asylum has a staff of 11, five of whom are dedicated to cases of applicants from Kosovo.

⁶⁵ Art. 40, LATP.

⁶⁶ See interview with H.A., above; additional information from MYLA and UNHCR in Skopje, who note delays are mainly caused by absence of interpreters in the Farsi and Pashto languages.

⁶⁷ Only one of the three families granted asylum remains in Macedonia; the other two families (seven individuals) returned to Lebanon later in 2014, unable to sustainably integrate.

⁶⁸ Amnesty International interview, MYLA, January 2015.

⁶⁹ Art. 6, para. 2, LATP, states: "[A]n alien shall not be granted subsidiary protection, that is, [they]

As of 31 May 2015, 836 applications for asylum had been submitted, four times the number that were submitted for the same period in 2014. Only two applicants had been interviewed.⁷⁰ A new Law on Asylum and Temporary Protection is due to be adopted in 2015, to bring Macedonia's legislation in line with the relevant European Directives.

UNACCOMPANIED MINORS

There is a lack of clarity about the identification and care of unaccompanied minors.⁷¹ According to MYLA, 71 unaccompanied minors applied for asylum in 2014 and 55 in 2013; but procedures for their identification, conducted by municipal Centres for Social Work, (under the Ministry of Labour and Social Policy, MLSP), appear arbitrary. The Assistant Director for Border Affairs stated: "There is no technical test, we can see from their bodies sometimes whether they are minors or not, but we always treat them as minor. We don't have any statistics, but there are no more than 15 cases [per year]". The MLSP is also required to appoint a guardian; however, only one guardian was appointed in 2014 to support all of the unaccompanied minors detained in Gazi Baba (exact number unknown), and another for those at the Asylum Reception Centre. A guardian may file an asylum request for a minor, who is interviewed in the presence of a social worker.⁷² Only one unaccompanied Syrian minor has so far been granted asylum (in 2014).

cannot enjoy the right to asylum in the Republic of Macedonia, also if she or he constitutes a danger to the security of the Republic of Macedonia". According to UNHCR, this is applied in 30 to 40% of decisions. For recent concerns, see Committee against Torture, *Concluding Observations: Macedonia*, para. 17. MYLA has lodged a complaint to the European Court of Human Rights on behalf of an Afghan national and a Roma man whose sister and her children were deemed to be threat to national security.

⁷⁰ Information provided by UNHCR, Skopje, June 2015.

⁷¹ Minors are defined as a vulnerable group in the recently published Migration Strategy, available at www.marri-rc.org/upload/Documents/MKD%20M%20R%202009-2014.pdf

⁷² Arts. 23 (a) and 22, LATP; MYLA reports that in a recent asylum procedure, the guardian was not present. Unaccompanied minors in Gazi Baba are not visited by the appointed guardian, see *CAT Alternative report by Ombudsman of Republic of Macedonia*, p.2, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNHS%2fMKD%2f20245&Lang=en

BORDERLANDS: FROM MACEDONIA TO SERBIA

“We are going from death to death. Why are they making us illegal? People are being killed on the road, on the railways.”

- N., a Syrian asylum-seeker, interviewed in Krnjača Asylum Reception Centre, Serbia, March 2015.

In the past year, at least 24 refugees and migrants have died after being hit by trains while travelling along Macedonia’s main railway line. The railway line is one of the main routes that refugees and migrants have followed to the north of Macedonia, where it passes close to Lojane, near the main crossing point into Serbia.⁷³ On the night of 24 April 2015, 14 people were killed on the railway line between Veles and Skopje after being hit by a train; eight survivors, believed to be relatives of the dead, were detained by the authorities.⁷⁴ In November 2014, at least eight refugees were killed in the same area, including five Syrians. On 6 November 2014 a six-week-old baby and his father, an Afghan citizen, were also killed on the railway line near Gevgelija, close to the Greek border.⁷⁵

The vast majority of refugees do not stop to seek asylum in Macedonia. Indeed, under the legislation amending the Law on Asylum and Temporary Protection introduced in June 2015, (which clearly facilitates, and effectively subsidizes, their onward journey), they are even less likely to do so in the future. They know they are unlikely to be provided with international protection, and – as noted above – the treatment they receive at the hands of the Macedonian police and other authorities gives them little encouragement to stay. Most will continue their journey to Serbia and beyond.

⁷³ Some media sources suggest as many as 28 people may have been killed.

⁷⁴ Balkan Insight, ‘Moving Train Kills 14 Migrants in Macedonia’, 24 April 2015, available at www.balkaninsight.com/en/article/at-least-14-refugees-hit-by-train-in-macedonia; Al Jazeera, ‘Voz pregazio 14 migranata u Makedoniji’, available at <http://balkans.aljazeera.net/vijesti/voz-pregazio-14-migranata-u-makedoniji>

⁷⁵ Balkan Insight, ‘Refugees Dice with Death Crossing Macedonia’, 17 November 2014, available at www.balkaninsight.com/en/article/refugees-dice-with-death-crossing-macedonia; Al Jazeera, ‘Zvižduk lokomotive migrante dijeli od spasa i smrti’, 4 December 2014, <http://balkans.aljazeera.net/vijesti/zvizduk-lokomotive-migrante-djeli-od-spasa-i-smrti>.

As well as abuses by the authorities, refugees and migrants also risk attacks, theft, kidnap for ransom and exploitation by armed groups in Macedonia.⁷⁶ Two Nigerian men interviewed in Hungary spoke of their experience: “*We don't have anything. The mafia in Macedonia took everything. It happens in the villages, not in the cities. Nine men attacked us with knives. We went to the police to ask for help... but they arrested us*”. Others told Amnesty International a similar story; one bore clear signs of injury.⁷⁷

The majority of refugees and migrants leave Macedonia through the mountains near Lojane, a predominantly Albanian village in Lipkovo municipality. For this isolated village, refugees and migrants have become an important source of income. In Lojane – and the nearby village of Vaksintse – refugees and migrants meet the smugglers who will take or guide them across the border. Despite police raids and arrests related to cross-border smuggling or trafficking, Lojane remains a major crossing point. UNHCR reports that in the winter of 2014-2015, increasing numbers of people were attempting the crossing, in groups of 30 to 40.⁷⁸

The Lojane village representative Seljami Mehmeti told Amnesty International that the number of people passing through the village was steadily rising. He expressed concern that refugees and migrants were in visible need of assistance, but that there were no health and humanitarian services they could access (at that time) without risking arrest or another push-back to Greece.⁷⁹

The road from Lojane crosses the “green border” (the border between official crossing points) and leads to the Serbian village of Miratovac. The area is patrolled by Macedonian Border Police based at the Tabanovce crossing, near Kumanovo, who have been assisted by three EU-funded Frontex police officers since 2014. Border Police also monitor the road below Lojane, where it intersects the railway line from Skopje, along which refugees and migrants walk to Lojane.⁸⁰

PUSH-BACKS BY SERBIAN BORDER POLICE

“The great smuggler ‘Ali Baba’ met us and made a deal. Two smugglers were offering to take us across the border to Serbia during the day for €400. It was 10 hours through the mountains. The smugglers led the way, and then they left us. They said there would be a car: we waited for an hour, but there was no car. It was

⁷⁶ For information on the abduction, detention and financial exploitation of refugees, see Channel 4, ‘Tracking down Macedonia's migrant kidnap gang’, 5 June 2015, available at www.channel4.com/news/tracking-down-macedonias-migrant-kidnap-gang

⁷⁷ Interviewed in Nagyfa, Hungary, March 2015. Four refugees, one of whom bore signs of injury, interviewed by Amnesty International in Idomeni told they had been attacked and robbed in Macedonia.

⁷⁸ Amnesty International interview, UNHCR, Skopje, Macedonia, January 2015.

⁷⁹ Amnesty International interview in Lojane, January 2015. Interviews with refugees and migrants apprehended within Macedonia, including near the border with Serbia, and who were then pushed back to Greece, suggest that these fears are not ungrounded.

⁸⁰ Amnesty International visit to Lojane, and interview with Assistant Director for Border Affairs in Skopje, January 2015.

raining and the children were soaking wet, so we continued on foot and arrived in a town – all 40 of us. We were looking for transport to Belgrade, but the smugglers were all asking for too much money. We carried on walking, but then we realized that we had gone round in a circle, and we were in the same village as the day before, and we were surrounded by Serbian police. They took us to the police station and gave us a paper, and then took us back to Macedonia and left us about 2km from Lojane. The paper was for leaving Serbia, not for going to an [asylum] camp." - M.A. from Syria, travelling with his wife and two children, interviewed at Krnjača Asylum Reception Centre, Serbia, March 2015.

Statements gathered by Amnesty International from refugees and migrants contain a level of detail and consistency which suggests that push-backs by Serbian Border Police are routine, and that border officials consistently fail to examine the individual situation of each person arriving on their territory or offer the opportunity to register their intent to claim asylum. In some cases, push-backs are accompanied by ill-treatment.⁸¹

Serbian Border Police are stationed in prefabricated cabins just outside the village of Miratovac, 3km from Lojane, and conduct mobile patrols in the surrounding border area.⁸² As of 29 June 2015, their presence was strengthened by joint patrols by Serbian, Hungarian and Frontex police from Austria.⁸³ Of 39 people interviewed by Amnesty International who had crossed this border, 12 said that they were pushed back to Macedonia by Serbian Border Police, seven of them on multiple occasions, with no opportunity to claim asylum. (Although, according to UNHCR in Macedonia, many do not try to claim asylum.) Most were briefly detained by Serbian Border Police, asked for their name and country of origin, and had their fingerprints and photographs taken and within hours, were pushed back to Macedonia.⁸⁴

"From Skopje we went to Kumanovo, where we met somebody to take us to Serbia. We stayed in Lojane. Three times we tried to cross, but the [Serbian] police said to go back... We were taken to a police station, fingerprinted, taken by car to the border, and told to go back. We tried again and again until we managed to get into the country." - Two Syrian men interviewed at Nagyfa, Hungary, in March 2015.

"I walked through Macedonia, and came to an old house in Lojane, with some other people. I tried three times to get into Serbia: I went by car to the border, and then we walked and met the Serbian police who deported us. Twice I gave them my fingerprints and photographs at the border. They didn't ask us any questions, just name, country and fingerprints. They said we were illegally in the country, and, 'We don't want to see you here again'.

⁸¹ For similar allegations, see Human Rights Watch, '*Serbia: Police Abusing Migrants, Asylum Seekers*', 15 April 2015, available at www.hrw.org/news/2015/04/15-serbia-police-abusing-migrants-asylum-seekers

⁸² The Serbian Department of Border Management reported 9,014 detections (based on the number of police actions, not individuals detected) of irregular entry into Serbia in 2014, 98% from Greece (via Macedonia) and Bulgaria. Amnesty International interview, March 2015.

⁸³ *Blic* 'Veljovic: Serbian, Hungarian, Austrian Police To Start Patrolling The Serbia-Macedonia Border Together' 23 June 2015, <http://english.blic.rs/News/10822/Veljovic-Serbian-Hungarian-Austrian-Police-To-Start-Patrolling-The-SerbiaMacedonia-Border-Together>

⁸⁴ Fingerprints are taken under the AFIS system, which is not yet linked to the EURODAC database, (see *Fortress Europe* section) but is compatible, and will be linked on Serbia's accession to the EU.

By the third attempt, there were only three of us left, we eventually crossed the border and went to Belgrade by bus." - H., from Syria, interviewed at Bogovadja, Serbia, in March 2015.

"Afterwards our group was put on a military truck, and we were taken back to Macedonia [from Serbia]. The police told us to go back to Macedonia and try again the next day." - A.D. from Homs, Syria, interviewed in Krnjača Asylum Reception Centre in March 2015.

ILL-TREATMENT

Amnesty International also received 12 reports from refugees and migrants, that they had been ill-treated by Serbian Border Police, while being pushed back. A group of five young Somali nationals, some of whom were unaccompanied minors, told Amnesty International that they had been beaten with sticks by Serbian Border Police as they were being pushed back.⁸⁵

"The Serbian police caught us just after crossing from Macedonia. I was taken to a nearby police station. I was beaten by a policeman there, together with an older guy, about 55, who had diabetes. One Serbian police officer, who was about 35 years old, average build, in blue uniform, kicked me in the chest, then in the head. It happened at the police station where they take the photo and fingerprints, that's his office."

- A.D., from Homs, Syria, interviewed in Krnjača ARC in March 2015.

"When I crossed the border to Serbia, I got stopped. I had to try seven times to pass. The Serbian police were very hard... it's the police between Lojane and that Serbian village [Miratovac]. The Serbian police never asked me about asylum. They slapped me all the time. The last time I got a hard slap and was told not to come back ever again."

- B. H., from Sierra Leone, interviewed at Békéscsaba, Hungary, March 2015.

ORGANIZED PUSH BACKS

In 2012, UNHCR accused Serbia of mass expulsions of refugees and migrants to Macedonia. In addition to reported push-backs, and despite the Readmission Agreement between Serbia and Macedonia,⁸⁶ UNHCR found that migrants and refugees (who had not yet claimed asylum) but had been apprehended and convicted in southern Serbia for crossing the border into Serbia irregularly, and ordered to leave the country, were taken by bus to the border, and ordered to return to Macedonia without being given access to an asylum procedure.⁸⁷

⁸⁵ Amnesty International interview, Bogovadja ARC, Serbia, July 2014. Amnesty International also received an allegation from a Syrian refugee that he and 25 others were apprehended while travelling in a van, outside what appeared to be a military (or possible gendarmerie) base in southern Serbia. The driver fled, but the refugee alleges that he and other refugees were taken into the base where they were slapped, punched and hit with rubber truncheons. They were also questioned in the presence of a translator. Amnesty International is seeking to verify these allegations.

⁸⁶ 'Agreement between the Government of the Republic of Serbia and the Government of the Republic of Macedonia on the delivery and readmission of persons whose entry or residence is not authorised, with the accompanying Protocol', *Official Gazette of the RS - International Treaties No. 1/2011*.

⁸⁷ "Formally there is a readmission procedure, but there are reports that they are simply pushed back over the border", said UNHCR in Skopje, 2015. See UNHCR, *Serbia as a Country of Asylum - Observations on the situation of asylum-seekers and beneficiaries of international protection in Serbia*,

It has also been alleged by UNHCR that, in some cases, refugees and migrants who have been deported from Hungary to Serbia have been informally returned to Macedonia instead of being returned under the Readmission Agreement between Serbia and Macedonia.⁸⁸ The Macedonian Assistant Director of Border Affairs told Amnesty International that he had no official information about such organized push-backs. The Serbian Border Police Department claimed in March 2015 that such deportations were conducted in accordance with court orders: "When Hungary returns people they are charged with illegal crossing and brought before a judge. They get a fine and the judge imposes an order to leave the country. It is possible that people are taken to Macedonia if the court [deportation] order states that the people should be escorted. But sometimes on the border the Macedonians do not want to take them back."⁸⁹ It would appear that, in practice, Serbia neither requests nor relies on the cooperation of the Macedonian authorities in the return of third country nationals and instead, simply returns them irregularly.⁹⁰

In May 2015, the Committee against Torture (CAT) expressed concerns about the "heightened risk of *refoulement*" for individuals returned to Macedonia by the Serbian authorities, and urged the authorities to ensure "the necessary legal and administrative safeguards and remedies in forced return procedures". In addition, the CAT called for the establishment of formal border monitoring in co-operation with UNHCR and civil society organizations, and the combating of ill-treatment and extortion by the police.⁹¹

August 2012, para. 13. Documentary photographer Giorgos Moutafis, interviewed in April 2014, informed Amnesty International that while filming the documentary *Escape from Greece*, he had encountered refugees deported in this way, including some who had not travelled through Macedonia, see <http://giorgos-moutafis.com/multimedia.htm>

⁸⁸ Amnesty International interviews with UNHCR in Skopje and Belgrade, 2014 and 2015.

⁸⁹ Amnesty International interview with the Head of Border Police, Belgrade, March 2015.

⁹⁰ In 2013, Serbia submitted 19 readmission applications to the Macedonian authorities; 11 were approved and eight declined on the basis that there was no proof that those to be deported had entered Serbia from Macedonia. In 2012, three applications were approved and 12 rejected. No readmission applications were submitted in 2014. The NGO Grupa 484 considers that in the face of these refusals, the Serbian authorities have adopted the practice of informal, and unlawful, push-backs. See Grupa 484, *Challenges of the asylum system*, 2014, pp. 46-47, available at www.grupa484.org.rs/sites/default/files/Challenges%20of%20the%20asylum%20system,%202014.pdf

⁹¹ Committee against Torture, Concluding Observations: *on the second periodic report of the Republic of Serbia*, Advance Unedited Version, para. 15, (henceforth, CAT, *Concluding Observations: Serbia*), available at http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/SRB/CAT_C_SRBI_CO_2_20491_E.pdf

BARRIERS TO ASYLUM IN SERBIA

Between 1 January and 31 May 2015, 22,182 refugees registered their intent to claim asylum in Serbia, 5,692 more than the total registered during the whole of 2014.⁹² The authorities, international organizations, NGOs and asylum-seekers alike acknowledge that Serbia is predominantly a transit country, and that not all of those who register their intent to claim asylum will go on to make an application.⁹³ Yet, under the present system, few are likely to be provided with international protection, even if they do decide to apply for it.

INADEQUATE IMPLEMENTATION OF ASYLUM LAW

While Serbia's Law on Asylum is broadly in accordance with international standards,⁹⁴ failures and delays in the implementation of its provisions deny asylum-seekers a prompt and effective individual assessment of their protection needs and, in the majority of cases, result in the discontinuation or suspension of asylum applications due to the applicant having "absconded".⁹⁵ The failure of the Asylum Office (formerly the Department of Asylum)⁹⁶ to promptly register asylum-seekers, provide them with information on submitting a claim, identify vulnerable persons, conduct asylum interviews promptly and provide first-instance decisions in a timely fashion, places a significant number of individuals at risk of *refoulement* to Macedonia and onwards to Greece.

Until December 2014, the Department of Asylum included only four legal officers, including the head of department, available to conduct refugee status determinations interviews, and one country of origin official. First instance decisions were made by only the Head of Department, who claimed, quite correctly, that they were under resourced. The number of staff members was increased from 11 to 29 in January 2015.⁹⁷ While this more than doubled

⁹² UNHCR, *Asylum-seekers in Serbia 2015*, 5 June 2015, available at www.unhcr.rs/en/resources/statistics/asylum.html. As of June 2015, following recommendations by UNHCR, a plan of action to address the increased numbers arriving in Serbia was being developed.

⁹³ UNHCR, in Serbia, estimate that only half of those who declared an intention to seek asylum go on to claim asylum at an Asylum Reception Centre.

⁹⁴ For amendments required to bring the law into full compliance with international standards, see Grupa 484, *Challenges of the asylum system*, 2014, pp. 73-164.

⁹⁵ Following recommendations made in 2014 by the Ombudsperson, any person absent from an Asylum Reception Centre for more than 24 hours is deemed to have absconded, and is excluded from the centre and from access to the asylum procedure. See Protector of Citizens (Ombudsperson), *Recommendations*, IV (6), available at www.npm.lls.rs/attachments/053_azil%200702%20English.pdf

⁹⁶ Art. 19, Law on Asylum sought to establish an Asylum Office, independent of the Ministry of Interior Border Police Administration. This was not formally established until January 2015 at the request of the EU Delegation in Serbia. However, the office remains within the Ministry of Interior and is staffed by Ministry of Interior police.

⁹⁷ Including the planned recruitment of full-time translators.

the human resources dedicated to processing asylum applications, the increase fails to reflect the increase in asylum applications, and has so far failed to reduce the number of people moving on, frustrated at the time spent waiting for an interview or for their application to be considered. Nevertheless, with increased staff, by mid-June 2015, 26 interviews had been conducted, more than the total in any previous year.⁹⁸

Since the introduction of the Law on Asylum in 2008, the number of recorded asylum-seekers has risen exponentially from 77 in 2008 to 16,490 in 2014.⁹⁹ Yet, between the entry into force of the Asylum Law in April 2008 and 31 December 2014, only six people were granted refugee status, and 12 afforded subsidiary protection.¹⁰⁰ By the end of May 2015, another four refugees had been granted asylum.

In 2011, not one of the 3,134 recorded asylum-seekers were granted asylum; in 2012, out of 2,723 declarations of intent, only three individuals were provided with some form of international protection.¹⁰¹ In 2013, when 5,066 persons recorded their intent to claim asylum, of the 193 applications considered (some from the previous year), four were upheld, 13 rejected or dismissed and 176 discontinued.¹⁰²

In 2014, according to UNHCR statistics, 16,490 people, including 9,701 Syrian nationals, recorded their intention to claim asylum, although it is estimated that half of this number will have continued through Serbia without applying for asylum at an ARC. Even then, only 1,350 asylum-seekers were actually registered by the Asylum Office, and of 388 applications submitted, 307 were discontinued because the applicant "absconded" during the process.¹⁰³ In 2014 the Department for Asylum conducted 17 interviews (for a total of 18 applicants): six applications were accepted, with refugee status granted to one Tunisian national (whose application was submitted in 2013), and subsidiary protection extended to five Syrian nationals. Twelve applications were rejected. Four applications from 2014 were still under consideration in 2015.

The reasons for the disparity between the number of registered asylum-seekers and the number interviewed are discussed in more detail below. However, as already noted, many

⁹⁸ Information received by email from the Belgrade Centre for Human Rights (BCHR), June 2015.

⁹⁹ In 2008, 77 persons recorded their intention to seek asylum; in 2009, 275; in 2010, 522; figures provided by UNHCR, Belgrade.

¹⁰⁰ Refugee status: two Libyan nationals and one of Egypt (2012); two Turkish nationals (2013); one Tunisian national (2014). Subsidiary Protection: three Ethiopian nationals and one of Somalia (2009); one Iraqi national (2010); two Syrian nationals (2013) and five in 2014; Asylum Office statistics.

¹⁰¹ European Commission, *Serbia 2013 Progress Report*, 16 October 2013, p. 50, available at http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf

¹⁰² Amnesty International interviews, July 2014. See also BCHR, *Right to asylum in the Republic of Serbia 2013*, p. 39, available at www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Right_to_Asylum_in_the_Republic_of_Serbia.pdf

¹⁰³ See BCHR, *Right to asylum in the Republic of Serbia 2014*, p. 19,

applications were discontinued because the applicant had left the country before their application was considered. Although there are multiple reasons why individual refugees move onward to another country rather than seeking asylum in Serbia, deficiencies in the asylum system do appear to play a role in such decisions.

The drafting of a new Law on Asylum was announced in December 2014 by the Ministry of the Interior, scheduled for adoption in March 2016. Amnesty International urges the authorities to ensure that it addresses the deficiencies identified and outlined below.¹⁰⁴

FAILURE TO ENSURE ACCESS TO ASYLUM PROCEDURES

"There are absolutely no procedures that enable access to those who make a serious effort to find international protection." - Senior Protection Officer, UNHCR, Belgrade.

Articles 22 and 23 of Serbia's Law on Asylum provide that, on entering the country, those wishing to claim asylum must register their intention to do so with border police or the nearest police station. Few register at the border – the majority register in Serbia's capital, Belgrade. They are then issued with a certificate which allows them to receive shelter at an Asylum Reception Centre (ARC), which they must reach within 72 hours. Unaccompanied minors are first referred, depending on their location, to Homes for Children and Youth in Belgrade or Niš, and subsequently transferred to an ARC if they wish to claim asylum.

FAILURE TO PROMPTLY REGISTER ASYLUM-SEEKERS

"The police asked my name and gave me a paper for the camp. They interviewed me after 20 days. They took me to a police station about 30 minutes from here, and then I had an interview with the Ministry of the Interior. There was a translator and a lawyer there – they asked me about what I used to do, and about my family. It took about 15-20 minutes, but I have not had an identity card yet. Like my friend, he has been here two months and has no identity card yet." - N. from Syria, interviewed at Krnjača ARC in March 2015.

Under Article 24 of the Law on Asylum, asylum-seekers should be registered by the Asylum Office in a brief interview and issued with an identity card, which provides some freedom of movement and prevents their arrest for being irregularly in the country. However, the law does not stipulate a time-frame within which asylum-seekers must be registered and issued with an identity card. In 2014, only 1,350 of the 16,490 individuals who registered their intention to claim asylum were formally registered by the Asylum Office.¹⁰⁵

For example, of 1,000 people who stayed at Bogovadja ARC between January and April

¹⁰⁴ In December 2013, a Project Group was formed by the Ministry of the Interior, including government bodies, international organizations and NGOs, mandated to review the law and practice around asylum. However after March 2014, the Ministry temporarily dropped the project. Comprehensive recommendations and amendments proposed by the UNHCR implementing partner, BCHR, were published in co-operation with the NGO Grupa 484 in *Challenge of the Asylum System*, pp. 73-164.

¹⁰⁵ By July 2014, only 10 % of asylum seekers accommodated at ARCs had been registered in accordance with the law. At Sjenica ARC, for example, no registrations took place from its opening in December 2013 until March 2014; at the Tutin ARC, opened in January 2014, no-one had been registered by 10 July 2014, Amnesty International interview with UNHCR, July 2014.

2014, only 200 were registered, and none had subsequently been registered when Amnesty International visited in July 2014.¹⁰⁶ However, at Banja Koviljača ARC, where a local police officer is empowered to conduct registrations, there are no reports of such delays.

When Amnesty International visited Bogovadja and Krnjača ARCs in March 2015, following the increase in Asylum Office staff, registrations were taking place weekly at these centres. However, at Sjenica and Tutin ARCs, the situation had not improved. The Asylum Office still fails to meet the recommendation made by the NPM, that it "shall ensure that there are authorised Asylum Office officers on duty in all the Asylum Centres on a daily basis".¹⁰⁷

Although personal details are taken during the registration of asylum-seekers at ARCs by Asylum Office staff, identity cards are produced centrally. It may be several weeks or even months before asylum-seekers receive their identity cards, without which they risk arrest for being irregularly in the country.¹⁰⁸

Only 460 identity cards were issued in 2014, despite an estimated ARC population of at least 8,000 people. The rate of registrations increased in 2015, following the increase in Asylum Office staff. Yet, in March 2015, several asylum-seekers who had registered at the Krnjača centre in January were still waiting to receive identity cards or information about making an application.¹⁰⁹

FAILURE TO ENSURE SUBMISSION OF ASYLUM APPLICATIONS

"I arrived two-and-a-half months ago; they interviewed me and told me I would get an identity card in a week, but did not get one. They asked the same questions [that you are asking] – who do you have in Europe and how did you cross the borders. I already had my fingerprints taken someplace. They did not explain that I had to apply for asylum in 15 days, the lawyer says it will take longer."

- M. from Syria, interviewed in Krnjača ARC in March 2015

Article 25 of the Law on Asylum requires asylum-seekers to submit written applications to the Asylum Office within 15 days of registration. However, the Asylum Office does not ensure

¹⁰⁶ The former Head of the then Department of Asylum, suspended in December 2014, explained to Amnesty International in July 2014 that Asylum Office staff did not have the time or capacity to make the six to eight-hour journey to Tutin or Sjenica (350km and 250km from Belgrade, respectively) to register asylum-seekers. However, this failed to explain the lack of registrations at Obrenovac (in Belgrade) and Bogovadja (70km from Belgrade). He suggested that after some time at Tutin or Sjenica ARCs "those who are interested [in seeking asylum] should be transferred to a centre nearer to Belgrade". Amnesty International found this response inadequate.

¹⁰⁷ Protector of Citizens (Ombudsperson) of the Republic of Serbia, *Recommendations*, V (2).

¹⁰⁸ Those who can afford to stay in a hotel or private accommodation are required, under Art. 7 of the Law on Foreigners, to provide an identity document to the accommodation-provider, who will register them with the local police. See

www.euprava.gov.rs/ResourceManager/FileDownload.aspx?rId=41031&rType=2

¹⁰⁹ For example, Amnesty International interviews with N. and M., Krnjača ARC, March 2015.

that applications for asylum are promptly made and submitted.¹¹⁰ The asylum-seeker has the right to an oral interview, (Article 17), “as soon as possible” (Article 26), with an authorized official, (Article 16), empowered to decide on refugee status in the first instance (Articles 27 to 31). However, several people interviewed by Amnesty International at Asylum Reception Centres in 2014 and 2015 clearly had no intention of applying for asylum in Serbia, but welcomed a few days’ accommodation at an ARC.

“After I entered Montenegro, I went to an open camp [asylum reception centre] where I stayed for 12 days. Then I entered Serbia and made the registration and received the paper from the police to come to the Krnjača camp, and took the bus. I have made the registration, and I will leave, inshallah.” - Eritrean national, interviewed in Krnjača ARC in March 2015.

“Serbia is beautiful, it is magical, but there is no job for me, you cannot live here. I have five children, one at college and one in Sweden... We knew that before we came here. We came here as transit.”

- B. from Syria, interviewed in Bogovadja ARC in July 2014.

FAILURE TO CONDUCT INTERVIEWS WITH APPLICANTS

Article 26 of the Law on Asylum requires an asylum officer to interview an asylum-seeker in person “as soon as possible” after they have submitted their asylum application. While 26 interviews were conducted in the first five months of 2015, only 17 interviews took place in 2014, and 19 in 2013.¹¹¹ In one case, in 2014, the lawyer acting for an Iraqi family, who considered that they had genuine grounds to fear persecution, submitted an appeal to the Asylum Commission after they had not been interviewed two months after submitting their application.¹¹² Another asylum-seeker told Amnesty International in March 2015 that he had left the Asylum Reception Centre after waiting for three months without receiving an identity card, an interview, or any information relevant to his asylum claim.¹¹³

DECISIONS ON ASYLUM

“I arrived in Serbia about 10 months ago, in June 2014, and registered [that I wanted to claim asylum] at a police station in Belgrade. They gave me the paper to come to Bogovadja. I made my application, and had the first interview two months after I arrived. M. [translator] was present and she helped me understand and be understood by the police. The lawyer who represented me was from APC [the Serbian NGO Asylum Protection Centre]. Around six weeks or two months later I had my second interview. The [other] translator had difficulties in understanding me and vice versa.

¹¹⁰ In many cases from 2013, six months elapsed between an asylum-seeker’s registration and submission of their application. See BCHR, *Right to Asylum in the Republic of Serbia 2013*, p. 40.

¹¹¹ Art. 26, Asylum Law. Of the 17 decisions made in 2013, four were upheld, five rejected and eight dismissed without deciding on the merits. Amnesty International interview with UNHCR, July 2014. NGOs providing legal assistance to asylum-seekers report an improvement in the rate of interviews in 2015.

¹¹² This form of appeal is made against the “silence of [the] administration”; in 2014, BCHR submitted seven such complaints. Amnesty International interview, March 2014.

¹¹³ Amnesty International interview, Hungary, March 2015.

"The interview was two-and-a-half or three hours long: how did I arrive, where I am from, the situation in Darfur; there was not too much pressure from the person interviewing. I got the refusal, about 20 days to a month after the interview. My appeal was filed about six weeks to two months ago. [I appealed] on the [procedural] grounds that the translator couldn't understand me."

- J. from Darfur, interviewed at Bogovadja ARC, March 2015.

NGOs providing legal assistance to asylum-seekers during the course of their asylum applications have found that the Asylum Office staff lack the necessary professional knowledge, expertise and experience in the field of asylum and refugee law, and in ensuring adequate country of origin information. Furthermore, despite recommendations by UNHCR in Serbia that refugee status determination (RSD) interviews should be conducted by civilians, Asylum Office staff conducting such interviews are Ministry of Interior police officers.¹¹⁴

Until recently, Asylum Office staff lacked any training in the identification of persons at risk, including vulnerable individuals such as victims of torture. Unaccompanied minors are interviewed in the same way as adult applicants. As officers are not trained in appropriate interview techniques, RSD interviews are unstructured. Rather than drawing out the relevant information from an applicant, officials leave the applicant – who in some cases is frightened and unable to fully explain their case – to provide their own account.¹¹⁵

"I had the first half-hour interview after about four or five months – it was about eight months ago. After I had the identity card for six months, the translator came with the police and they asked me why, when, job, family, how many brothers, why are you staying in Serbia, why did I ask for asylum... simple questions. Nobody understood the catastrophe – I explained about the war, so they asked about that. They gave a copy of the interview to the [ARC] manager in Serbian. I was not given a translation." - H. from Syria, interviewed at Bogovadja ARC in March 2015

“SAFE” THIRD COUNTRIES

Article 33(6) of the Law on Asylum provides that an asylum application shall be dismissed in the event that “the asylum-seeker has come from a safe third country, unless he/she can prove that it is not safe for him/her”. Given the absence of an effective asylum process in Macedonia, and the human rights violations to which many migrants and refugees are

¹¹⁴ UNHCR has raised “serious concerns regarding both the designation of police authorities as the determining authority, and the designation of police to conduct personal interviews. UNHCR considers that this raises issues of a potential conflict of professional interests. [...] Applicants may fear and/or mistrust the police as a result of their experiences in their country of origin. Furthermore, an interview conducted by the police may trigger or exacerbate post-traumatic stress disorder in applicants who have suffered persecution or serious harm at the hands of the police, military or militarized groups in their countries of origin. UNHCR recommends that another state or independent authority is assigned this responsibility and role.”, see UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice – Detailed Research on Key Asylum Procedures Directive Provisions*, March 2010, p. 70, available at www.refworld.org/docid/4c63e52d2.html

¹¹⁵ Amnesty International interview with Asylum Protection Centre (APC), March 2015. In 2015, Asylum Office officials were taken on a study visit to the Netherlands and Austria to learn how to work with vulnerable groups.

subjected, including *refoulement* through push-backs to Greece, Amnesty International considers that Macedonia should not be regarded as a safe third country and that the continued application of the safe country concept would deny refugee status to the majority of asylum-seekers.¹¹⁶

Until 2012, the Asylum Office automatically applied the “safe third country” concept without seeking further information from the applicant. The list of safe countries includes all countries which border Serbia, including Macedonia, as well as the countries through which most refugees and migrants reach Serbia, including Greece and Turkey.¹¹⁷ Although the Asylum Office has sought further information from applicants and country of origin information since 2012,¹¹⁸ NGOs providing legal assistance to asylum-seekers consider that the “safe country” policy broadly continues. For example, of the 17 decisions issued by the Asylum Office in 2014, applications in seven cases (considered between January and April), were rejected “pursuant to Art. 33, paragraph (1) item 6, 13 i.e. because the asylum-seeker came to Serbia from a safe third country”. The applicants were neither granted asylum nor any other form of protection.¹¹⁹

“When I received the [asylum] decision, they told me I only got subsidiary protection. There was a problem about why I did not ask for asylum in Macedonia, in a safe country before this one. The lawyer told me that they complained about the decision, about why they did not give me asylum. She told me that if I appealed, we could have a chance, but I don't know if I want to continue. I am really worried that if I appeal, I will have trouble or I will be deported, and I don't know how long I will have to wait. I would like to stay in Belgrade, or in this village, get married and live a normal life. I have a lot of friends, I like it here. They told me it is better in Europe, but I don't care about the country. I just want a normal life.”

- H. from Syria, interviewed at Bogovadja ARC in March 2015.¹²⁰

Applicants denied refugee status at the first instance may appeal to a second instance body, the Asylum Commission,¹²¹ within 15 days of the initial decision, under articles 35 and 20 of

¹¹⁶ However, as BCHR has noted, “The Asylum Commission is of the view that reports by international organizations referred to in an appeal cannot be considered evidence that a specific country is not a safe third country and that they merely illustrate the state of human rights in that country and substantiate the asylum-seeker’s allegations”. See BCHR, *Right to Asylum in the Republic of Serbia 2014*, p. 35.

¹¹⁷ ‘Government decree on defining the list of safe countries of origin and safe third countries’, *Službeni glasnik RS*, No. 67/2009, available at www.apc-cza.org/en/component/phocadownload/category/2-zakoni-i-konvencije.html?download=5:odluka-o-utvrđivanju-liste-sigurnih-drzava-porekla

¹¹⁸ Amnesty International interviews with the Asylum Office, July 2014 and March 2015.

¹¹⁹ BCHR, *Asylum in The Republic Of Serbia: Report For The Period of January –April 2014*, p.8, available at http://azil.rs/doc/ENG_april_2014.pdf

¹²⁰ H. eventually decided to appeal; however, on appeal, the Asylum Commission instructed the Asylum Office to dismiss his application entirely. He has now appealed the second instance decision.

¹²¹ Few of the nine members of the second instance appeals body, the government-appointed Asylum Commission have any expertise in refugee law. They include two legal academics but also a former director of a telecommunications company; it is chaired by the Director of Border Police. See also BCHR, *Right to Asylum in the Republic of Serbia, 2014*, p. 33.

the Law on Asylum. The majority of appeals are routinely dismissed, irrespective of their merits, including appeals against decisions based on the “safe third country” concept. Explanations for rejection are rarely provided.¹²²

In May 2015, the Committee against Torture expressed “serious concern” about the low rate of refugee status determinations in Serbia, and the automatic application of the third country principle. The CAT urged Serbia to “continue and intensify its efforts to facilitate access to a prompt and fair individualized asylum determination procedure in order to avoid the risk of *refoulement*, including through the provision of an effective asylum procedure”, and “to ensure that the asylum determination procedure provides for a substantive review of the application that respects the principle of *non-refoulement*, irrespective of whether the country of destination is considered safe”.¹²³

INADEQUATE RECEPTION CONDITIONS

“*Krnjača is really the worst place, very sad. Nobody can say we are pulling people to come there*”.¹²⁴ Krnjača is one of five Asylum Reception Centres in Serbia, administered by the Serbian Commissariat for Refugees and Migration (the Commissariat) and charged with the provision of accommodation for all those who register their intent to claim asylum.¹²⁵

According to the Commissariat, asylum-seekers at the five centres are provided with “adequate shelter and basic living standards in line with international standards for asylum-seekers pending a final decision on an asylum application”.¹²⁶ Amnesty International has visited three of the five Asylum Reception Centres: Banja Koviljača (2014), Bogovadja (in both 2014 and 2015) and Krnjača (2015).¹²⁷ While the centre at Sjenica was described by

¹²² In 2013, 19 appeals were submitted to the Asylum Commission; two were upheld (setting aside the first instance ruling), and 10 rejected as ill-founded; others remained pending a decision. See BCHR, *Right to asylum in the Republic of Serbia 2013*, p. 17.

¹²³ “Ensure that the Asylum Office is supported with sufficient personnel and financial and technical resources to be able to timely register asylum-seekers, promptly issue their identity cards, conduct individualized interviews with the support of interpretative services and issue refugee status decisions within a reasonable time. The State should address these deficiencies in the new Draft Law on Asylum, including the lack of time-bound obligations”. See *CAT Concluding Observations: Serbia*, paras. 14(a) to 15.

¹²⁴ Amnesty International interview with the Commissariat for Refugees, March 2015. At Krnjača, asylum-seekers are accommodated in dilapidated huts alongside refugees from Bosnia and Herzegovina and Croatia, who have lived there since 1992. An estimated 88,000 internally displaced people from Kosovo and 43,000 refugees remain in need of a durable solution; *UNHCR subregional operations profile - South-Eastern Europe, Serbia, 2015*, available at www.unhcr.org/pages/49e48d9f6.html#

¹²⁵ Art. 39(1) of the Asylum Law provides that an asylum-seeker who has registered their intention to claim asylum with the police has the right to reside in Serbia for the duration of the procedure, “if necessary, he/she shall be entitled to accommodation at the Asylum Centre”.

¹²⁶ Rulebook available at www.kirs.gov.rs/docs/azil/Asylum%20Center%20Bogovadja.pdf;

¹²⁷ Amnesty International also visited the Centre for Minors in Belgrade.

one asylum-seeker as “a seven-star hotel”, conditions at ARCs visited by Amnesty International varied, both in the standards of accommodation, sanitary facilities, (often dependent on the centre manager), and the resources available to ensure that asylum-seekers receive access to adequate health care and other forms of assistance set out in law.¹²⁸

In addition, the number of beds available at ARCs since 2011 has been inadequate to accommodate the increasing numbers of refugees registering their intent to claim asylum and thus eligible for accommodation. The lack of capacity has resulted in refugees being forced to wait outside centres for admission, often in inhuman and degrading conditions.

In June 2011, more than 1,000 asylum-seekers were queuing outside Banja Koviljača centre. At that time, Banja Koviljača was the sole ARC in the country. In the same month, the first of a series of “temporary centres” was opened at Bogovadja.¹²⁹ New temporary centres have since been opened annually, sometimes in unsuitable premises, including at a private house in Vračević which operated from January to July 2013, where conditions were described by BCHR as “unhygienic and inhuman”.¹³⁰

In October 2013, pressure on places was such that up to 200 people at a time were sleeping rough in the woods outside Bogovadja ARC, often in sub-zero temperatures. With a capacity of 170, Bogovadja was at that time said to be housing 280 persons.¹³¹ Following a visit to Bogovadja, the National Preventive Mechanism described conditions for those waiting for admission as amounting to inhuman and degrading treatment.¹³² Similar concerns were

¹²⁸ Art. 21, Law on Asylum; for standards set out in Commissariat regulations, see *Rulebooks*, available at www.kirs.gov.rs/articles/ruleasyl.php?lang=ENG and *Information Booklet Regarding Persons Accommodated in the Asylum Centre*, available at www.kirs.gov.rs/docs/azil/azil_info.en.pdf. Arts.15 and 21, Law on Asylum provide for the care for those with special needs. However, in 2014, for example, Banja Koviljača ARC lacked transport to take asylum-seekers for compulsory health-checks, and relied on international and domestic NGOs for medicines and complex psychiatric care. Amnesty International interview, Robert Les Maister, Manager, July 2014.

¹²⁹ Banja Koviljača, opened in 2007 (capacity 86-100), is located on the border with Bosnia and Herzegovina, and remains the only permanent ARC. In June 2011, when more than 1,000 refugees were queuing to enter Banja Koviljača, a “temporary” ARC was opened at Bogovadja (capacity 170). As the numbers increased again, “temporary” ARCs were opened at Vračević (January - July 2013) and Sjenica (December 2013, capacity 80, raised to 170 in October 2014) and Obrenovac (capacity 170, closed in May 2014 after local flooding; asylum-seekers were dispersed to other ARCs). A “temporary” ARC opened in Tutin (capacity 80) in January 2014, Amnesty International interviews with Commissariat for Refugees and ARC staff, July 2014. Another temporary centre, (capacity 100), opened on 15 August 2014 in the Belgrade suburb of Krnjača, and another on 29 June.

¹³⁰ See BCHR, *Right to Asylum in the Republic of Serbia 2013*, pp. 62-3.

¹³¹ Amnesty International interview with the Serbian Commissariat for Refugees, July 2014. Some 2,023 asylum-seekers were provided with accommodation in 2013 in ARCs excluding Vračević. See also BCHR, *Right to Asylum in the Republic of Serbia 2013*, p. 24, footnote 32.

¹³² Protector of Citizens, *National Preventive Mechanism, Report on the Visit to the Asylum Centre in Bogovadja on 14 October 2013*, p. 5, available at

expressed by the Belgrade Centre for Human Rights.¹³³ On 27 November 2013, 170 of these asylum-seekers were transferred to a temporary ARC in a hotel at Obrenovac, Belgrade.¹³⁴

When Amnesty International visited Bogovadja in July 2014, around 30 individuals were again camped out in the centre's grounds or in the nearby woods. A group of three Somali men told Amnesty International: "We are waiting to get in. There are around 25-30 people waiting to get in. We have been here three days. The manager has our papers, but he will not let us in. They are letting Syrians in, but not Somalis."¹³⁵ An Afghan man added: "We are all waiting outside. We have no food. We all have papers, but we have spent four nights outside. I am sleeping in the woods. There is no room."

In December 2014, harsh weather conditions led to an increase in the number of migrants and asylum-seekers without shelter suffering from frostbite and ill-health. In February 2015, the humanitarian organization Médecins Sans Frontières (MSF) reported that several dozen asylum-seekers, including children and pregnant women, were sleeping rough each night, waiting for admission at Bogovadja.¹³⁶ Although by December 2014, the five Centres were able to accommodate 800 refugees at any one time, the numbers registering their intention to claim asylum has again increased in 2015, and Serbia's reception capacity may again be put to the test. Plans to build a permanent centre with a capacity of 500, in Mladenovac, near Belgrade, have been repeatedly delayed since 2012, largely due to local opposition.¹³⁷ At the end of June 2015, in order to cope with increasing numbers, the government announced its plan to open a new ARC in Preševo, in southern Serbia, close to the border with Macedonia.¹³⁸

"Today [Saturday] is not a working day, we were told by the guard that we have to wait until Monday. We arrived late yesterday afternoon. It took us 10 days to walk here from Macedonia. We left Greece a month ago.

www.npm.lls.rs/attachments/053_AC%20in%20Bogovadja%202014%20Oct%202013.pdf

¹³³ BCHR, 'Saopštenje povodom smeštaja za tražioce azila', 28 November 2013, available at www.bgcentar.org.rs/saopstenje-povodom-smestaja-za-trazioce-azila/

¹³⁴ APC, 'Latest news on evacuated asylum-seekers', 20 May 2014, available at www.apc-cza.org/en/component/content/article/8-vesti/551-latest-news-on-evacuated-asylum-seekers.html

¹³⁵ In April 2015, the Belgrade Red Cross, which owns the Bogovadja centre building, requested that the manager be dismissed for failing to provide adequate assistance to asylum-seekers, and for undignified and inhuman treatment, including by refusing entry to the Centre when space was available; see 'Crveni krst zatražio smenu upravnika Centra za azilante u Bogovađi', 15 April 2015, available at www.blic.rs/Vesti/Srbija/551055/Crveni-krst-zatrazio-smenu-upravnika-Centra-za-azilante-u-Bogovadjii

¹³⁶ MSF, 'Asylum-seekers and migrants left in cold Serbia', (Press Release) 19 February 2015, available at www.msf.org/article-serbia-asylum-seekers-and-migrants-left-cold. This was disputed by the Commissariat for Refugees in an interview with Amnesty International in March 2015.

¹³⁷ APC, 'Uskoro još jedan centar za smeštaj azilanata', 10 July 2014, available at www.apc-cza.org/en/component/content/article/8-vesti/577-uskoro-jos-jedan-centar-za-smestaj-azilanata.html

¹³⁸ B92, 'Collective centre for migrants to open in Preševo'. 29 June 2015, http://www.b92.net/eng/news/politics.php?yyyy=2015&mm=06&dd=29&nav_id=94593

We had to walk on the snow. It was really hard. Sometimes we slept in the bushes. In Macedonia, we hid from everyone. We met some bad people on the way. They beat me, if you had anything, they would take it. We have the letter which says we [are eligible to] stay in the centre. That's why we are here. We spent three months in Greece. We had a card but no place to stay. We decided to leave. I don't have future now. I don't know where I will stay. We wouldn't wish our life was like this. We just want to have a future. If there was a place to stay in Greece, I wouldn't have left."

- O., and E. O. from Ghana, interviewed at Bogovadja ARC, in March 2015.

Discussions around the new Law on Asylum are with respect to the fate of the Asylum Reception Centres. The increasing numbers of asylum-seekers and costs of providing accommodation have prompted the Ministry of Interior, supported by UNHCR, to consider a new reception model, with a fast track system to separate "genuine asylum-seekers" from migrants, some arguing for the detention of migrants.¹³⁹ The Commissariat and some NGOs, on the other hand, argue for continuation of the current open system.

"We are helping them because of our history, where so many [Serbs] were refugees or know people who were refugees. What is the purpose of arresting them? They want a better life, that's what got them on this road. It is accepted as a humanitarian impulse by people in Serbia, and because of the non-aligned period under Tito, we have an alliance with them". - Head of the Commissariat for Refugees and Migration, July 2014.¹⁴⁰

Under international law, everyone, including all migrants and asylum-seekers, regardless of migration status, has the right to liberty, including protection from arbitrary arrest and detention. A presumption against detention should be established by law.

Almost all refugees currently enter Serbia irregularly. Given the failings of the current system in recognizing refugees with a manifest claim, if a detention system is introduced, Amnesty International fears that this may result in the arbitrary detention of both refugees and migrants. Further, asylum-seekers may be treated as irregular migrants and deported from Serbia, in violation of the principle of *non-refoulement*.

¹³⁹ The EU Delegation to Serbia does not rule out the detention of migrants; Amnesty International telephone interview, EU Delegation to Serbia, April 2015. However, this is not stipulated in Serbia's Action Plan for the implementation of Chapter 24 of the *acquis communautaire*.

¹⁴⁰ Amnesty International interview July 2014. Founded in 1961 in Belgrade as a response to the cold war, the Non-Aligned Movement has 120 members, including for example, Syria and Afghanistan.

BORDERLANDS: SERBIA TO HUNGARY

“People in Subotica see migrants and think it is normal. In Hungary they say that if people see migrants, they ring the police.”

- Z., a local volunteer assisting refugees and migrants in Subotica, interviewed in July 2014.

SUBOTICA

Subotica is a town in the northern Serbian province of Vojvodina, just under 30km from one of the official border crossings into the EU at Horgoš-Röszke. Every refugee and migrant on the western Balkans route has heard of Subotica. It's the final resting place before the Serbia-Hungary border; the last stop on the bus from Belgrade, and a destination for taxis and trains carrying refugees and migrants. Here, refugees and migrants make arrangements with smugglers to help them reach the border.

“In Belgrade, we went to the police station and told the police we were from Syria and that we wanted to go to a camp [ARC]. The police officer said, ‘I will show you the way to Europe. Don’t go to a camp’. He told us to go to the EU, and said if we came back he would put us in jail. We slept at the station, we had no money, and went by bus to Subotica.” - H. from Morocco, interviewed in Békéscsaba, Hungary, in March 2015.

In Subotica, some stay in private accommodation; others sleep at the railway station, or in parks near the bus station. But the majority make for the “jungle” – a disused brick factory, surrounded by wetlands and overgrown fields. Up to 150 people may be there at any one time. Those who arrive at the brick factory are tired, stressed and hungry. They may have been separated from their friends or families along the journey and may be ill or injured. People sleep in the old kilns or roof spaces in the factory, or – in the warmer months – in the open air around the brick factory. The terrain makes it easy to hide from the police, but affords little protection from the elements. Some are there for less than 24 hours; others spend days or even weeks waiting to receive money from their relatives to pay for the next stage of the journey.¹⁴¹

Amnesty International visited the brick factory over two days in July 2014, when only four Afghan nationals were staying there, but observed four others departing. On a second visit

¹⁴¹ Amnesty International observations and interviews with refugees, migrants and NGOs in Subotica, July 2014 and March 2015.

which took place over three days in March 2015, Amnesty International met 32 people, including a group of three Afghan families, a Syrian family and 14 single males, predominantly Afghan nationals, at least eight of whom were unaccompanied minors.

HUMANITARIAN NEEDS

Until Subotica hit the international headlines in the winter of 2014-2015, when increasing numbers of reporters descended on the town to document the harsh winter conditions for refugees and migrants at the brick factory, the humanitarian needs of refugees went largely unnoticed, except by local people.

Pastor Tibor Varga, of the Eastern European Mission (EEM), has been providing clothing, shoes, food and other essentials to refugees and migrants in Subotica since the summer of 2011.¹⁴² He says: "Our organization works with people in need, a whole spectrum – we call them refugees, other people call them false asylum-seekers".

Since December 2014, MSF has established weekly mobile clinics, providing assistance to hundreds of asylum-seekers and migrants without shelter near border areas. During the winter of 2014-15, MSF treated cold-related injuries, including one amputation for frostbite, as well as scabies and lice, muscle pain from long periods of walking, pregnancy complications and injuries from assaults by police or armed gangs.¹⁴³

In January 2015, as a result of interventions by NGOs, 17 minors from Subotica were taken to an ARC.¹⁴⁴ Others, including a seriously ill woman with three children, and 20 other children, were provided with shelter at a local children's home.¹⁴⁵ Since 2011, the NGO APC has provided legal assistance to asylum-seekers and advice to migrants on their legal status, as well as organizing meetings with local authorities responsible for providing social and medical services.¹⁴⁶ However, calls for support or assistance from the national authorities have been ignored on the basis that providing a "camp", an Asylum Reception Centre or any other form of support in Subotica would encourage the presence of more migrants.¹⁴⁷

POLICING AT THE BORDER

"The migrants are moving all the time, despite the intentions of the police." - Pastor Tibor Varga, EEM

¹⁴² See www.youtube.com/watch?v=6POJu1rLVUk and www.youtube.com/watch?v=eAGk6SsY678

¹⁴³ Amnesty International telephone interview with MSF Regional Director, April 2015.

¹⁴⁴ Local authorities in Subotica transported groups of children and other vulnerable individuals to an ARC; see APC, 'Abdul na putu do Evropske unije', 13 January 2015, available at www.apc-cza.org/en/component/content/article/8-vesti/702-abdul-na-putu-do-evropske-unije.html

¹⁴⁵ Partially funded by the Commissariat, which as part of a crisis committee provided assistance to the local centres for social welfare; Amnesty International interview with the Commissariat, March 2015.

¹⁴⁶ APC, 'Pomoć migrantima u Subotici', 24 January 2015, available at www.apc-cza.org/en/apc-cza-odeljenje-subotica/705-pomoc-migrantima-u-subotici.html

¹⁴⁷ Amnesty International interviews with APC and EEM, July 2014 and March 2015.

"In the beginning, illegal crossings were organized. Now we have a situation where people are unorganized, crossing like a horde across the border to Hungary." - Zoran Jankov, Kikinda Police

Border police based at Kikinda are responsible for the Serbian side of the border, which includes the main crossing into Hungary at Horgoš.¹⁴⁸ They work with regional police directorates at Sombor (Backi Breg crossing) and Subotica (Kelebija crossing). The border area running between the official crossings, known as the "green border", is managed in co-operation with the Hungarian authorities, and with EU support via Frontex police, with whom they conduct joint patrols. Hungary, with more resources, patrols and equipment, including heat-detecting cameras, conduct around 60% of interceptions. Serbian Border Police continue to lack technical equipment and police officers with expertise in border management.¹⁴⁹

Kikinda Police are responsible for combating irregular migration and trafficking in human beings in the North Banat region, overlooking the two main routes for refugees and migrants – one towards Croatia and the other to Hungary. Persons detained near the border by Border Police are handed over to Kikinda police station, where there is a dedicated space for processing those apprehended; they are interviewed, photographed and have their fingerprints taken and entered into the Automatic Fingerprint Information System (AFIS).¹⁵⁰ They may then, depending on the circumstances, be charged with crossing the state border irregularly, or with unlawful stay in Serbia. Of the 9,104 persons found to be irregularly in Serbia in 2014, Kikinda police detained 2,920 of them and charged them with irregular border crossing or unlawful stay.¹⁵¹

"I came from Greece six days ago: I crossed the borders on foot, then was taken by car all the way to Subotica. I arrived four days ago, but was caught at the border. Three police officers – I think two of them were German – picked us up and put us in a minibus. I spent three days in Serbian detention. I was released at 11am yesterday. I was sentenced by the court; they asked us if we could pay €50 – if not, then go to jail. We were only asked this, no asylum questions." - N.S. from Afghanistan, interviewed in Subotica in March 2015¹⁵²

Those who are charged with offences may be fined by the court, or, if they are unable to pay,

¹⁴⁸ Each year, around 50 people a year are detected hidden in vehicles at Horgoš crossing. The Horgoš border post also receives those deported from Hungary, which consisted of 1,967 people in 2013 (1,659 foreign nationals, 308 Serbian citizens), and 903 people in January to June 2014 (676 foreign nationals, 227 Serbian citizens); Amnesty International interview with Mladen Mrdalj, Commander, Serbian Border Police, Horgoš Border post, July 2014.

¹⁴⁹ Amnesty International interview with Mladen Mrdalj, Commander, Horgoš Border post, July 2014.

¹⁵⁰ AFIS is compatible with the EU biometric database, EURODAC. 99% of those detained lack documents; Amnesty International interview with Zoran Jankov, police officer, PU Kikinda, March 2014.

¹⁵¹ Amnesty International interview with Kikinda police, March 2015. For legal provisions, see Art. 10, Law on Protection of the State Border, and for example, Arts. 10 & 42, Law on Foreigners.

¹⁵² N.S. showed Amnesty International documents, signed by a judge and issued by a Subotica court, sentencing him to imprisonment from 20 to 23 March 2015 for attempting to cross the border "illegally".

sentenced to a few days in custody. In some cases – as with the Afghan family group interviewed below – they are just released. Their right to remain in the country is cancelled, but – as the majority of deportation orders are not enforced – they may, (according to Kikinda police officer, Zoran Jankov), be “allowed to leave the country individually”. In only a few cases (usually concerning people from within the region, including criminal suspects), are they taken to the Reception Centre for Foreigners, a closed facility in Padinska Skela, to be deported. One police officer told Amnesty International: “*We don't have the powers to repatriate these people to Afghanistan, for example. It is in theory, but not possible in practice. The only thing we can do is to cancel their stay. These are people who are fleeing war, and I understand that.*”¹⁵³

Unaccompanied minors apprehended on the border should be referred to the local Centre for Social Support. Yet because many are reluctant to be identified as such, or because the authorities fail to recognize them, they may be also detained or imprisoned.¹⁵⁴

“We were caught in Subotica. We spent 40 hours – two days and one night – at Subotica police station. We were about 40 people, including children, in one room. Inside the room there was an open drain, no toilet. They didn't give food or water, even to the children. We were taken to court, got a €50 fine, but as we did not have money, we didn't pay. There was an Iraqi Kurd who spoke for us at the court. There was no lawyer. No-one asked us about asylum.

“We tried to cross to Hungary the day before yesterday, close to the border. We walked for 10 hours, but because the children couldn't go on any longer, we were again found by police. One woman was dragged on the ground, she was beaten by police. Also a woman who is five months pregnant was beaten. We were taken by the police and then to court again. We were there from early morning until 6pm, and then they told us to go.” - Group of three families from Afghanistan, including children and elderly people, interviewed in Subotica in March 2015.

“*The number of asylum-seekers has increased extremely. But 99% do not look at this as their final destination. Of course, if you look at what is available in Serbia, that's normal.*”¹⁵⁵ In 2014, in the Kikinda police district alone, some 2,920 people were arrested by the authorities. Of these, 477 people, including Afghan, Pakistani, Syrian and Algerian nationals, expressed an intent to seek asylum, and a total of 349 letters were issued authorizing them to travel to the nearest ARC.¹⁵⁶ However, most migrants and refugees apprehended for irregular stay in Serbia have little choice but to remain irregularly in Serbia, without any status and unable to apply for asylum, or try again to cross the border into Hungary.

Grounds for the criminalization of the irregular entry of refugees have recently been challenged. On 16 January 2015, the Municipal Court of Serbia upheld an appeal by the NGO APC on behalf of a group of Afghan asylum-seekers who had been arrested and detained

¹⁵³ Telephone interview with Zoran Jankov, police officer, PU Kikinda, March 2015.

¹⁵⁴ For examples, see Grupa 484, *Challenges of the Asylum System*, pp.49-51.

¹⁵⁵ Telephone interview with Zoran Jankov, PU Kikinda, March 2015.

¹⁵⁶ Telephone interview with Zoran Jankov, PU Kikinda, March 2015.

for illegally crossing the state border without identification documents.¹⁵⁷ The appeal was made on the basis of Article 8 of the Law on Asylum and Article 31 of the Refugee Convention, both of which provide for the principle of immunity from prosecution for the irregular entry and stay of asylum-seekers, provided they immediately apply for asylum and provide a valid explanation for their illegal entry or residence.¹⁵⁸

However, local observers have reported that instead of taking people apprehended for irregular stay in Serbia to a court, in early 2015 some police had adopted the practice of collecting their names and handing them pre-printed court documents, including an order to leave the country within a week to 10 days.¹⁵⁹ While the majority of people interviewed by Amnesty International, and who had been issued with deportation orders, held documents issued by a court, in at least three cases, their deportation orders did not bear an official signature or court stamp. Other individuals told Amnesty International that they had been issued with court documents, including deportation orders, at a police station, but that they had not attended a court.¹⁶⁰

In respect of both these issues, Amnesty International urges the authorities to decriminalize the irregular entry and stay of asylum-seekers, and to ensure that deportation orders are not issued by police officers, but are authorized by a court in accordance with procedures set out in law.

ILL-TREATMENT

"The more you dig, the more you find out. When the police catch you, they do what they want, and we hear the stories again and again. The police are acting according to directions, officially. But when they are checking, they are extracting money. They can beat you, they can threaten you, and they can do what they want with you. You don't understand the language. You cannot appeal against the police. Who do you tell?"

- Pastor Tibor Varga of EEM, interviewed in July 2014.

Some 16 of the 27 people interviewed by Amnesty International in Subotica alleged that Serbian law enforcement officers had ill-treated them, or had exploited them financially.¹⁶¹

¹⁵⁷ Art. 10(2) of the Law on the State Border, ('Illegal entry into the Republic of Serbia'; Arts 10 and 42, Law on Foreigners (relating to irregular stay).

¹⁵⁸ Decision of the Municipal Court of Appeal, Prekršajni Apelacioni Sud Doneo Prvu Oslobađajuću Presudu: Tražilac azila iz Avganistana nije odgovoran za ilegalni prelazak državne granice, 2 March 2015, available at www.apc-cza.org/fr/pravna-pomoc-pocetna/713-prekrsjajni-apelacioni-sud-doneo-prvu-oslobadajucu-presudu-trazilac-azila-iz-avganistana-nije-odgovoran-za-ilegalni-prelazak-drzavne-granice.html

¹⁵⁹ Amnesty International interviews in Subotica, March 2015.

¹⁶⁰ For example, documents seen in Amnesty International interview with M.A., Subotica, March 2015.

¹⁶¹ Interviews with refugees, migrants and Serbian and international NGOs; Amnesty International has also received reports of police abuse and attacks by gangs at borderlands in southern Serbia and on the Bulgarian border, see also Human Rights Watch, *Serbia: Police Abusing Migrants, Asylum-seekers*, 15 April 2015, available at www.hrw.org/news/2015/04/15-serbia-police-abusing-migrants-asylum-seekers

"I left Bulgaria five days ago, a smuggler took me to Serbia. I've been in Subotica for four days. The day before yesterday I tried to cross to Hungary but I got caught by Serbian police. I told them I was a minor and was let out of Subotica police station. I was asked whether I could pay €50. When we got caught by the police, they hit us, shouted at us, and we had to look down all the time. Some of us in the group were kicked. We were a group of six. I was not asked about asylum. There was nobody to communicate with at the police station. This behaviour towards asylum-seekers is terrible."

- A.A., an Afghan minor, interviewed in Subotica in March 2015

In Subotica, migrants and asylum-seekers separately reported being pushed, slapped, kicked and beaten by Serbian police near the border with Hungary. In two cases, asylum-seekers alleged that they were beaten at Subotica police station while in detention.¹⁶²

Refugees and migrants told Amnesty International that they were threatened by Serbian Border Police while waiting to cross into Hungary. Four Afghan men discovered by armed Border Police said they were each told to pay the police €100, or be arrested. Frightened that they would be shot, they paid: "The police told us, 'Go! Go! Go!'"¹⁶³ A Syrian asylum-seeker reported that when he and a group of three others were found approaching the Hungarian border, Serbian Border Police told them to pay €100 each and get directions to the border, or be returned to Serbia.¹⁶⁴ The Border Police not only exploit refugees and migrants, but also fail to protect them from theft by armed gangs, as in the case of the Afghan families quoted above.¹⁶⁵

UNHCR in Serbia has repeatedly requested access to monitor the border area and places of detention for those arrested for irregular entry or stay, to ensure that safeguards and procedures for both deportation and detention are respected by the authorities.¹⁶⁶

In May 2015, the Committee against Torture, concerned at reports of ill-treatment and extortion by law enforcement officials, urged Serbia to "establish formalized border monitoring mechanisms, in co-operation with UNHCR and civil society organizations," and "strongly combat ill-treatment and extortion of undocumented immigrants by the police, including by sending a clear and unambiguous message that such acts are unacceptable, and by prosecuting and punishing the perpetrators."¹⁶⁷

"I am stuck here. I have no money. I like it here, but I want to go to Germany. I went to Hungary; I was a month in prison there. I didn't get asylum; they sent me back to the Serbian border. I went back to Macedonia, then

¹⁶² Amnesty International interviews at Bodovadja and Krnjača ARCs, and in Subotica, and Hungary, March 2015.

¹⁶³ Amnesty International interview with R.A. and three other Afghan asylum-seekers, July 2014.

¹⁶⁴ Amnesty International interview, Hungary, March 2015.

¹⁶⁵ Refugees also reported being threatened, beaten and their money and mobile phones stolen, *en route* through Serbia, Amnesty International interviews, March 2015.

¹⁶⁶ In Hungary, by contrast, UNHCR participates in border monitoring as part of a tripartite agreement concluded in December 2006 with Hungarian Border Police and the Hungarian Helsinki Committee.

¹⁶⁷ Committee against Torture, *Concluding observations: Serbia*, para. 15.

back to Greece for one month, then back to Macedonia."
- Afghan man interviewed in Banja Koviljača ARC in July 2014

In the absence of safe and regular routes into the EU, and without access to asylum in Serbia, many refugees and migrants, issued with deportation orders by Serbian police, pushed back from the border or formally deported from Hungary, find themselves with nowhere to go. Increasing numbers, especially those whose money and luck has run out, will find themselves trapped between the EU's borders with Hungary and Greece, going round and round in circles.

HUNGARY

“I’m afraid of Hungary. The moment we give our fingerprints, the journey is finished.”

- A.H. from Syria, interviewed in Serbia in March 2015

“It took us one day and one night to walk to Hungary. The Hungarian police caught our group, we were 20 to 25 people. That was eight days ago. They took us to a police station not far from here. We were pressed to give our fingerprints. The police made the women take off their clothes; it was done by women police, but all the doors were open. We asked them to shut the doors, but they didn’t. They shouted at us and treated us as if we were animals. We were asked whether we wanted asylum. We said no, as we want to go elsewhere. The police said we would go to jail if we said no. There was no lawyer, just a translator, who said that if we did not want asylum we would be separated and put in jail. Here the translator is good and tries to help. We’ve been here for five days. We will be sent back to Serbia.” - H.D. and G.D., mother and daughter, Yazidis from Iraq, interviewed in Hungary in March 2015.¹⁶⁸

Refugees who cross the border into Hungary, finally reaching the EU, may be subject to further violations of their rights.¹⁶⁹ Those who claim asylum will be automatically detained to establish their identity and have their fingerprints entered onto the EURODAC database. They may be detained in overcrowded and sometimes degrading conditions, or ill-treated by police officers. While the majority of asylum-seekers are later released to open reception centres, those considered at risk of absconding – at times, up to 40% of single males – may be detained in asylum detention centres. Those, like the Yazidi women (above), who do not want to claim asylum in Hungary, but elsewhere in the EU, are typically deported to Serbia.

This report does not aim to describe Hungary’s asylum system in detail.¹⁷⁰ Instead, Amnesty International examines aspects of the system, including the detention of asylum-seekers and refugees. Hungary’s deportation policy is also examined in the context of concerns about

¹⁶⁸ The women are Yazidis, who left Iraq in February 2015, after men in their family were killed by ISIS and they heard that other women in their family were taken away to be raped. They travelled through Turkey to Bulgaria, before entering Serbia, and then Hungary.

¹⁶⁹ Before 2014, around 38% of refugees and migrants apprehended by Hungarian Border Police irregularly entered the country from Serbia, crossing north of Subotica. In 2014, the figure was 90% (37,283 out of 42,777), due to high numbers of citizens of Kosovo seeking asylum in the EU.

¹⁷⁰ The asylum system in Hungary has been comprehensively documented by the Hungarian Helsinki Committee (HHC), see, <http://helsinki.hu/en/kategoria/refugees-and-migrants/news> and Annual Reports.

refoulement, and in particular, the risk of chain *refoulement*.

ACCESS TO ASYLUM

Like most Syrians, A.H. wanted to end his journey in Sweden or Germany, where he knows that there is a reasonable prospect of asylum, support from established relatives or community members, and a life for himself and his family.

The recognition rate in Hungary for Syrians like A.H. is relatively high (for those who remain in the asylum process) in comparison to asylum-seekers from other countries. In 2014, of 6,857 applications by Syrian nationals, 110 were granted asylum, 61 were provided with subsidiary protection, and one with humanitarian protection; 91 applications were rejected at the first instance.¹⁷¹ However, 87% (5,991) of asylum applications by Syrian nationals were discontinued, as were most applications by other nationals. Their chances of earning a living, supporting their families and effectively integrating into Hungarian society are compromised by a lack of integration support¹⁷² and a government which is increasingly hostile to refugees and migrants.¹⁷³

Of the 42,777 asylum applications made in Hungary in 2014, 21,453 were lodged by citizens of Kosovo, 8,796 by Afghan nationals and 6,857 by Syrian citizens.¹⁷⁴ Other applications were made by nationals from countries including Bangladesh, Iran, Iraq, Nigeria, Pakistan, Palestine and Somalia. In total, Hungary granted asylum to 508 applicants in 2014, 240 of whom were provided with refugee status, 236 with subsidiary protection, and 32 with humanitarian protection.¹⁷⁵

As already noted, a significant number of asylum applications are discontinued before a final decision, as the majority of asylum-seekers leave Hungary with the aim of seeking asylum elsewhere in the EU. However, having been fingerprinted by the Hungarian authorities, and

¹⁷¹The recognition rate for Syrians was 41.82%, as compared to 4.5% for asylum-seekers from all other countries of origin. For a full breakdown of asylum applications by country of origin and outcome in 2014 see, ECRE and HHC, *Asylum Information Database: Hungary 2014*, 17 February 2015, Table 1, p. 6, available at www.asylumineurope.org/sites/default/files/report-download/aida_hungary_thirddupdate_final_february_2015.pdf. In 2013, 173 (11%) applicants, including 73 Syrian nationals (55% recognition) and 33 Afghan nationals (13%) were granted refugee status; 54 Syrian and 52 Afghan nationals received subsidiary protection: see ECRE and HHC, *Asylum Information Database: Hungary 2013*, Table 1, p. 6, available at www.asylumineurope.org/reports/country/hungary. Statistics of those granted protection for 2014 are rendered artificially low by the 99.4% rejection rate of asylum-seekers from Kosovo.

¹⁷²A. from Afghanistan, granted subsidiary protection, interviewed in Hungary in March 2014.

¹⁷³'Hungarian political activists deface xenophobic government billboards' 8 June 2015, available at <http://budapestbeacon.com/politics/hungarian-political-activists-deface-xenophobic-government-billboards>

¹⁷⁴This figure may include Palestinians formerly living as refugees in Syria.

¹⁷⁵*Asylum Information Database, Country Report: Hungary*, February 2015

their fingerprints entered into the EURODAC database, those who continue with their journey may end up back in Hungary without an examination of their asylum claim. This is because the Dublin Regulation, which sets out the criteria for determining which EU member state is responsible for determining an asylum application, provides that an asylum-seeker may be returned to the first country – in this case Hungary – to take charge of their claim, though in practice this happens infrequently.¹⁷⁶ If their claim is rejected, then they are at risk of deportation to Serbia, and possibly onward to Macedonia and/or Greece, and thus put at risk of chain *refoulement*.

DETENTION AND ILL-TREATMENT AT POLICE STATIONS

"We walked for two hours from the border and arrived in Hungary, where we were caught by police, in a group of 28 people. The Hungarian police took us to a centre for interrogation – the rooms were very small, there was no place to sleep. Women and men were separated; children were put with their mothers. We got only one piece of bread in 24 hours - we asked for more food many times, but they answered very aggressively. My wife was taken to a room where there was a male police officer. She was asked to take off her clothes to be searched, and had to ask for the male officer to leave. We were not provided with any translation.

"They took our fingerprints, and told us that they only related to Hungary. While we were locked in the room the police suddenly came in and shouted very loudly. They woke up all the children, who were so scared that some peed in their pants, poor things. I asked why they were shouting, but they just kept on. Please tell people about this inhuman attitude of Hungarian police to refugees." - U. and Y., married couple from Iran, interviewed at Kiskunhalas Immigration Detention Centre, Hungary, in March 2015

"When we crossed to Hungary, we were caught and taken to a police station. We were supposed to be fingerprinted. There were about 80 to 90 people there. I was very hungry, I hadn't eaten for 48 hours. I saw a small piece of bread in a box on the floor and I took it; two policemen started to yell at me, and one of them kicked me with his boot. One of them then took me behind a police car and kneeled in my stomach five or six times. I could barely move. I then had to go to be fingerprinted. I asked for a translator but did not get one." - S.S.Z. from Iran, interviewed in Békéscsaba Asylum Detention Centre, Hungary, March 2015

Asylum-seekers apprehended for irregularly entering Hungary from Serbia are initially taken to local police stations, including at Szeged, one of two Border Police stations nearest to the Serbian border, for identification, fingerprinting and to register their asylum claim. Four of those interviewed in Hungary by Amnesty International claimed they were subjected to beatings, and humiliating or degrading treatment including strip-searches. Some were detained in overcrowded and degrading conditions.¹⁷⁷

¹⁷⁶ In 2014, 827 applicants were returned to Hungary under the Dublin Regulation, *Asylum Information Database: Hungary 2014*. In June 2015, the Hungarian government indicated an intention to suspend returns under the Dublin Regulation, although it is as yet unclear as to whether this will take place. The Dublin Regulation (Council Regulation (EC) No 343/2003) is available at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF>

¹⁷⁷ A. was held for two days with around 180 others in a courtyard garage at the Szeged Border Control Field Office. For conditions see *Asylum Seeker' Access to the Territory and to the Asylum Procedure in Hungary 2013, 2014*, p. 7, available at <http://helsinki.hu/wp->

"We crossed on foot to Hungary and headed to Szeged. The police arrested us at a bus stop, where we were sitting because we were tired. They asked us if we were from Syria, put handcuffs on us – behind our backs – contacted someone on the walkie-talkie, and took us to Szeged. They put four of us in a small room, and then they took me and strip searched me, and did an internal examination with gloves on. I was there for five hours, totally naked. I felt that they were humiliating me, even though I didn't understand what they were saying.

"After two days they told me to give my fingerprints or they would send me back to Serbia. I didn't want to give my fingerprints and told them that I wasn't going to stay in Hungary, but they took my hands and forced me to give my fingerprints. Then at 1am, they took 10 of us in a van to another building and put us in a room with about 200 people. After one night, the translator came and told me they would give me a ticket to Győr where there was a camp." - A., a Palestinian-Syrian refugee, interviewed in Békéscsaba in March 2015.

Since January 2015, those who wish to claim asylum have been taken to the Nagyfa open centre, located within the secure grounds of a state prison 12km from the nearest village.¹⁷⁸ By March 2015, with an estimated 150 new asylum-seekers entering the country each day, people of more than 61 nationalities had been processed at the centre which can accommodate up to 300 people in pre-fabricated cabins.¹⁷⁹

At Nagyfa, asylum-seekers are briefly interviewed in the presence of an interpreter to establish personal details and their reason for seeking asylum. Vulnerable individuals, including unaccompanied minors, are identified.¹⁸⁰ Office of Immigration and Nationality (OIN) officials decide whether they should be placed in one of four open asylum centres or, if they are determined to be at risk of absconding, one of three closed centres.¹⁸¹ The majority, destined for open asylum centres, are bussed within 24 hours to Szeged, with a letter authorizing their admission and a train ticket to the centre. Not everyone reaches their destination. Some abscond when they change trains in Budapest. More than half of those who claim asylum ultimately abscond.¹⁸²

ASYLUM DETENTION

"I am not sure about where I am in the asylum procedure. My detention was ordered on 11 March 2015 and then prolonged by the judge for two months." - S.S.Z. from Iran, interviewed at Békéscsaba in March 2015.

"We were told that next week there will be something in our case. The interpreter told us that our case would

content/uploads/border_monitoring_2013_ENG_final.pdf

¹⁷⁸ Before January 2015, people were taken to Békéscsaba, the nearest centre.

¹⁷⁹ Amnesty International interview with regional director Dr Jozsef Seres, manager Elod Szabo and staff at Nagyfa open centre, March 2015.

¹⁸⁰ Continued concerns about the failure to identify unaccompanied minors have been identified by HHC and UNHCR's regional office in Hungary; Amnesty International interviews, July 2014.

¹⁸¹ The closed centres are Nyírbator, Békéscsaba, and within the open camp at Debrecen.

¹⁸² Frontex, *FRAN Quarterly, Quarter 3: July to September, 2014*, p.39,

http://frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q3_2014.pdf

be decided in a month.” - Two Turkish Kurds interviewed in Békéscsaba in March 2015.

Under international standards detention should be used only as a last resort, where it can be justified, in each individual case, that it is necessary and proportionate. Children, including unaccompanied minors should never be detained, as it is never in their best interests. In Hungary, asylum-seekers can be deprived of their liberty in order to secure their “availability to the authorities” while they make their claim, then released to an open centre if they receive a positive first-instance decision. Under an accelerated procedure, families may be detained for up to 30 days, and single men for up to six months.¹⁸³ In 2014, families from Kosovo were detained at Békéscsaba (see box below).

Hungary's policy of detaining asylum-seekers, introduced in 2010, has been extensively criticized as arbitrary and lacking an effective legal remedy, including access to a lawyer.¹⁸⁴ In 2012, UNHCR described asylum detention “as the rule rather than the exception”.¹⁸⁵

“I was in this situation in 2013. The Border Police put us into groups and told some people just to go. They didn't speak to us, they just sorted us into groups, some people to go to the open camp, and some to the closed. Out of 14 of us, three went to an open centre. It is just based on chance, but Pakistanis are detained or rejected, and Afghans are sent to detention centres.”

- Recognized refugee, interviewed in Hungary in July 2014

Despite amendments to the Asylum Act, introduced in July 2013, which sought to limit grounds for detention¹⁸⁶ the Hungarian Helsinki Committee (HHC) found in April 2014 that over 40% of adult male first-time asylum-seekers were detained while they claimed asylum. Furthermore, detention decisions lacked reasoning on the proportionality and lawfulness of detention, and failed to consider the individual's circumstances. The judicial review of detention, made after 60 days, was found to be automatic, and thus ineffective.¹⁸⁷

¹⁸³ Law on Asylum 2007/80; decree 300/1, 2007; Ministry of Interior decree 29/2013.

¹⁸⁴ UN Human Rights Council, Report of the Working Group on Arbitrary Detention, Addendum: Mission to Hungary, UN Doc. A/HRC/27/48/Add.4 (3 July 2014), paras 85-109, available at www.refworld.org/docid/53eb2f9b4.html

¹⁸⁵ UNHCR, *Hungary as a country of asylum: Observations on the situation of asylum-seekers and refugees in Hungary*, 24 April 2012, paras. 43-44, available at www.refworld.org/docid/4f9167db2.html

¹⁸⁶ The amendments provided that detention should be imposed only in cases where the asylum-seeker is at risk of absconding, or had failed to reveal their identity or has otherwise obstructed the asylum process. They also introduced alternative measures to detention, including bail, see Act LXXX of 2007 Law on Asylum (Asylum Act) Sections 31/A-31/H 2 and 29/2013. See also Ministry of Interior decree 29/2013, on implementing regulations on asylum detention and asylum bail, available at www.police.hu/sites/default/files/29-2013.pdf

¹⁸⁷ HHC, *Information Note on Asylum-Seekers in Detention and in Dublin Procedures in Hungary*, pp. 6-14, available at <http://helsinki.hu/wp-content/uploads/HHC-Hungary-info-update-May-2014.pdf>; see also, Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Hungary, from 1 to 4 July 2014, CommDH(2014)21, 16 December 2014, paras 151-157, available at

When Amnesty International visited the asylum detention centre at Békéscsaba, (capacity 185), 70 single men were detained.¹⁸⁸ Amnesty International interviewed 12 men, all of whom had travelled through Serbia and had either been detained at the border, apprehended elsewhere on Hungarian territory or returned to Hungary under the Dublin system.

ACCESS TO LEGAL ASSISTANCE IN DETENTION

All asylum-seekers in Hungary, including detainees, have the right to free legal assistance under a state-funded legal aid system.¹⁸⁹ In practice, however, asylum-seekers are not made aware of the system, which lacks sufficient lawyers with appropriate expertise to provide free legal assistance to assist asylum-seekers with their applications, or exercise their right to appeal against detention. In the absence, in practice, of state funded assistance, HHC provided legal assistance to 994 asylum-seekers in 2014.¹⁹⁰

Several detainees interviewed in Békéscsaba by Amnesty International were unsure why they had been detained, and unaware that they had the right to appeal their detention.¹⁹¹ Access to information appeared to be mediated by translators. A Syrian man, who had been at the centre for 17 days, told Amnesty International: “*I haven't seen a lawyer, and they haven't asked me anything. The translator is not helpful, he just says, wait, wait, wait. I have a copy of the papers.*” The documents, which contained details of his detention and asylum application, were in Hungarian, which he did not understand.

A man who had applied for political asylum told Amnesty International: “*The judge said I should stay in the camp for two months. After five days they interviewed me again and asked the same questions and I told them the same story. The detective interviewed me without a lawyer, only a translator. After 22 days, there was a positive final decision of admissibility in my case; in the paper it says they will interview me again. I haven't seen a lawyer and the translator did not mention that I could see a lawyer. I'm worried that if I see a lawyer, it will be a black mark against me, and I might be sent back, and I'm really scared about that*”.

KOSOVO

Between July 2014 and February 2015, tens of thousands of citizens of Kosovo, including large numbers of families, travelled by bus to Belgrade and then to the Hungarian border. Some 21,453 asylum claims were lodged in Hungary by Kosovo citizens in 2014.¹⁹² In the first two-and-a-half months of 2015, more than 30,000 people crossed the border. According to the Hungarian Ministry of Interior, around 80% of applicants absconded, the majority of them assumed to have moved on towards Germany and other EU member states,

[https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH\(2014\)21&Language=lanEnglish](https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH(2014)21&Language=lanEnglish)

¹⁸⁸ Other closed centres are located within the open camp at Debrecen (182), and in Nyírbator (105).

¹⁸⁹ Section 37(3) of the Asylum Act; and Section 4(b) and 5(2)(d) of Act LXXX of 2003 on Legal Aid.

¹⁹⁰ In the first six months of 2014, only 9% of asylum-seekers received free, state legal aid. See ECRE & HHC, *Country Report: Hungary*, 2014, pp.16-18.

¹⁹¹ Amnesty International interviews with A.M.A. and S.S.Z. in Békéscsaba in March 2015.

¹⁹² ECRE & HHC, *AIDA Asylum Database Hungary*.

where many have family members and where they hoped to claim asylum.¹⁹³

Almost all applications made in Hungary by Kosovo citizens were rejected as manifestly unfounded – 99.4% in 2014 and 100% in 2013. In 2014, out of 21,453 applicants, 21 were granted temporary protection. The procedure amounted to a near blanket refusal, without an individual assessment of individual protection needs. UNHCR continues to advise that specific groups should not be returned to Kosovo, including Roma. (More than 7,500 Roma and Ashkali were among those leaving Kosovo, where they face cumulative discrimination amounting to persecution in access to employment, education, health care and housing.)¹⁹⁴ The vast majority were deported, initially by air to Kosovo, and from March 2015, by road through Serbia.

According to Kujtim and Shkurta, detained with their three children aged nine, eight and five at Kiskunhalas Immigration Detention Centre, their asylum decision was made in 10 minutes: “*We came to Hungary, on the bus to Preševac, and then to Niš and Subotica. We paid €250 each, including for the children. We walked to the border and then went by train to Budapest; we were heading for Berlin. But the police came on the train in Slovakia, and asked for our passport. They put us in prison, with the children, for three months. They deported us to Hungary eight days ago. I asked for asylum, at the court over there, and after 10 minutes they said no. They say I have to stay one month here, and then they will send us back to Kosovo*”.¹⁹⁵

DETENTION FOR DEPORTATION

Amnesty International's visit to Kiskunhalas Immigration Detention Centre (IDC) in March 2015 raised a number of concerns about detention prior to deportation. Families with children are detained,¹⁹⁶ as are unaccompanied minors. Amnesty International met two unaccompanied minors, one of whom had told the authorities that he was 19 years old, so that he and his younger brother could be treated as a family. Decisions on continued detention were made in abbreviated administrative proceedings, often without a lawyer.

Kiskunhalas IDC is operated by the police, and is responsible for implementing an administrative procedure for the detention of “aliens”, prior to the enforcement of a deportation order.¹⁹⁷ Detainees include rejected asylum-seekers, irregular migrants, and

¹⁹³ Interviews with staff at Nagyfa in March 2015.

¹⁹⁴ Vulnerable groups also include Serbs and Albanians in minority situations or in mixed marriages, persons associated with the Serb authorities after 1990, victims of sexual violence and trafficking and people making claims based on sexual orientation. See *UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Individuals from Kosovo*, HCR/EG/09/01, November 2009, pp. 17-20.

¹⁹⁵ Kosovo's Reintegration Strategy and Regulation only applies to those who left before 28 July 2010.

¹⁹⁶ Section 56(3), Aliens Act: “(3) Families with minors shall only be detained as a measure of last resort and for not more than thirty days where the best interests of the child shall be a primary consideration, if the immigration authority is of the opinion that the objective of detention cannot be ensured by the provisions of Subsection (2) of Section 48 or Subsection (1) of Section 62. Section 51 (1) Aliens Act: and Section 31B (2), Asylum Act prohibit the detention of unaccompanied minors seeking recognition.

¹⁹⁷ Based on the Section 55 (1), Third Country Nationals Act, which provides for “Detention prior to expulsion” to be imposed in order to secure the conclusion of pending immigration proceedings if: “(1) the non-citizen's identity or the legal grounds of his residence are not conclusively established; or (2) his return under the bilateral readmission agreement to another EU Member State is pending”. Other IDCs

people who choose not to seek asylum in Hungary.¹⁹⁸ Amnesty International was given unhindered access to 30 individuals detained at the Kiskunhalas family centre. Ten originated from Kosovo, seven from Syria, three from Palestine and 10 from Iraq, including four from the Yazidi minority.

Staff at the centre include social workers, and, in co-operation with their implementing partner the NGO Menedek, a psychologist and psychiatrist. The latter have, since 2004, identified and provided support for vulnerable individuals, including those suffering from Post-Traumatic Stress Disorder (PTSD) "mainly from war-trauma".¹⁹⁹ Ildiko Hegedus from the NGO Cordelia Foundation, which also provides medical and psychological assistance to asylum-seekers including victims of torture, observed: "*People are leaving their homelands, there are shadows, and there are mental injuries. PTSD is most common from torture in jails, but it is getting worse because of what happens on the route. In Greece the situation is terrible for Afghans and Africans, racism is terrible; I have met asylum-seekers whose friends were murdered. People are afraid that they will be sent back to Serbia, even families are sent back. People tell us about Serbian police regularly beating them.*"²⁰⁰

"They asked me if I wanted to claim asylum. The translator said, if you don't give your fingerprints, they will separate you from your kid, you will not be able to get into Europe for years, and you will be in jail for 60 days. I have been here for three days. I told the translator I did not want to give my fingerprints. They took me to the court yesterday: the judge ordered me to stay one month in the centre. There was no lawyer, only the translator, who said it was five days for Syrians, so after five days they will take me back to Serbia. I will be transferred back, and then we will come back. I want to go to Holland, we have family there."

- M. from Damascus, interviewed at Kinsunhalas in March 2015

M. and his son are among more than 2,000 people deported annually from Hungary to Serbia, through a Readmission Agreement between the two countries. In 2014, 2,660 people were deported to Serbia from Kinsunhalas.²⁰¹ He and his son will be handed over to the Serbian police and be detained for being irregularly in Serbia. He may be taken to court and imprisoned, or required to pay a fine. He will then receive a deportation order, and be given between five and 10 days to leave Serbia,²⁰² with no option but to try again to enter Hungary.

Since 2012, UNHCR has raised concerns about the potential for chain *refoulement* for failed

are located at Nyírbátor (single men), Budapest Airport and Györ.

¹⁹⁸ Hungarian law qualifies illegal border-crossing as a petty offence (szabálysértés), Art. 204 of Act II of 2012 on Petty Offences (Petty offences related to illegal border-crossing and travel documents).

¹⁹⁹ Interview with Major Jozsef Rogacs, Director, Kinsunhalas, March 2015. Amnesty International generally opposes the detention of individuals with psychological needs.

²⁰⁰ Amnesty International interview, July 2014, Hungary.

²⁰¹ Data provided by Hungarian police, Kinsuhalas, March 2015. For the Readmission Agreement with the EU, see <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32007D0819>. Deportation statistics provided by Major Jozsef Rogacs, Kinsuhalas, March 2015, are: 2010, 1,841; 2011, 3,170; 2012, 3,280; 2013, 2,674 and in 2014, 2,660 (excluding citizens of Kosovo).

²⁰² Amnesty International interview with Serbian Border Police, July 2014, March 2015.

asylum-seekers formally deported to Serbia, including those who had previously been returned to Hungary as part of the Dublin system. UNHCR concluded that there was no guarantee that asylum claims would be “examined in a fair and effective procedure” in Serbia, and highlighted concerns about onward removal to Macedonia.²⁰³ Amnesty International fears that those who had previously applied for asylum in Serbia, but had subsequently left ARCs, may find their previous claims discontinued, placing them at risk of *refoulement* through return to Macedonia and/or Greece.²⁰⁴

In March 2015, Hungarian Prime Minister Viktor Orbán announced a plan to introduce legislation which would: enable the authorities to immediately detain and return all migrants and asylum-seekers irregularly entering Hungary; accelerate asylum procedures so that decisions could be taken within a few days; and oblige irregular migrants and asylum-seekers to work to cover the costs incurred while in Hungary.²⁰⁵ On 12 June, in advance of talks with the Serbian authorities, Prime Minister Orbán threatened to close the border with Serbia to refugees, stating that they should be stopped in Serbia; then, on 17 June, Foreign Minister Peter Szijjarto announced plans to build a 4m high fence along 175 kms of Hungary’s border with Serbia.²⁰⁶ On 19 June, draft amendments to the Law on Asylum were published by the Ministry of Interior: amongst other measures, they would introduce an accelerated asylum procedure, and a number of new grounds for the dismissal of applications, including that the applicant had passed through a safe country.²⁰⁷ An amendment, passed on 30 June, gave the government power to determine a list of safe countries, which is likely to include Serbia.²⁰⁸ If adopted and implemented, these measures would effectively close the route to the EU through Hungary, and would violate Hungary’s human rights obligations under international and European law, particularly the principle of *non-refoulement*.

²⁰³ UNHCR, *Note on Dublin transfers to Hungary of people who have transited through Serbia*, October 2012, available at, www.refworld.org/docid/507298a22.html<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=507298a22>;

²⁰⁴ Officers at Kanjiža police station in Serbia consider “aliens” returned from Hungary are not entitled to seek asylum in Serbia, BCHR, *The Right to Asylum in the Republic of Serbia 2014*, p. 25.

²⁰⁵ HHC, Information Note, ‘Hungarian Government Reveals Plans to Breach EU Asylum Law and to Subject Asylum-Seekers to Massive Detention and Immediate Deportation’, available at <http://helsinki.hu/wp-content/uploads/Asylum-2015-Hungary-press-info-4March2015.pdf>

²⁰⁶ B92, ‘Hungary Threatens to Close Border with Serbia’, 12 June 2015, available at http://www.b92.net/eng/news/region.php?yyyy=2015&mm=06&dd=12&nav_id=94425; Reuters, ‘Hungary to fence off border with Serbia to stop migrants’, 17 June 2015, available at <http://www.reuters.com/article/2015/06/17/us-hungary-immigration-idUSKBN00X17I20150617>

²⁰⁷ Amendment package T/5416, available at <http://www.parlament.hu/irom40/05416/05416.pdf>

²⁰⁸ Proposal T/5136 on amending the 2007 LXXX. Law on Asylum, available <http://www.parlament.hu/irom40/05136/05136.pdf>

FORTRESS EUROPE

“Why are they making us illegal? I respect laws, but I’m forced to live like a criminal.”

- A refugee from Syria interviewed at Bogovadja ARC, Serbia in March 2015

In 2014, according to the EU Border Agency Frontex, 45,827 people were apprehended in Hungary for entering the EU irregularly, having crossed the border from Serbia.²⁰⁹ Although this figure for 2014 includes an unprecedented 21,453 Kosovo citizens, the numbers show a continuing trend.²¹⁰ By June 2015, 61,474 refugees and migrants had arrived on the Greek islands, equal to the 61,256 people who had arrived irregularly at Italy’s borders by sea.²¹¹

The western Balkans route is now one of the busiest irregular routes into the EU. As at other borders, the EU has invested heavily in its efforts to prevent refugees and migrants from entering Hungary, but has allocated far less funding for improvements to the asylum system.²¹²

EU BORDER MANAGEMENT

“Something needs to change. These people are coming from the EU, from Greece; it’s an EU problem. People are leaving the EU to transit through Serbia to the EU; but the resources are in Turkey, Greece and Hungary.”

²⁰⁹ In 2014, amounting to roughly 16.41% of detections, as compared to the central Mediterranean (over 170,000) and eastern Mediterranean (50,800), Frontex, Western Balkans Annual Risk Analysis 2015, see pp. 5-6, and for example, Figure 13, p.20, available at http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_ARA_2015.pdf. Between 2010 and 2013, the numbers of people apprehended crossing the Serbia-Hungary border rose from 2,370 to 19,950, Frontex, Western Balkan Route, <http://frontex.europa.eu/trends-and-routes/western-balkan-route/>

²¹⁰ Between 2010 and 2013, the numbers of people apprehended crossing the Serbia-Hungary border rose from 2,370 to 19,950, Frontex, Western Balkan Route, <http://frontex.europa.eu/trends-and-routes/western-balkan-route/>

²¹¹ Statistics up to 22 June 2015, almost all 61,256 been rescued at sea and disembarked in Italy; for Greece, see p. 15; almost those reported for Italy had been all had

²¹² Hungary received 4% of the EU Borders Fund (€59,295,401) between 2007-13, and €23,713,477 from the Asylum, Migration and Integration Fund for 2014-20; European Court of Auditors, *Report 15*, p. 12, available at www.eca.europa.eu/Lists/ECADocuments/SR14_15/QJAB14015ENC.pdf; European Commission, ‘Press release: Investing in an open and secure Europe: €1.8 billion to fund Asylum, Migration, Integration and Security’, 25 March 2015, available at http://europa.eu/rapid/press-release_IP-15-4662_en.htm

- Mladen Mrdalj, Commander of Horgoš border post, Serbia

Despite efforts to seal land borders, the increasing numbers of refugees and migrants taking the western Balkans route can, in part, be attributed to measures taken by the EU to enhance controls at other land borders.

In mid-August 2012, for example, the Greek authorities took measures to block the land border with Turkey, deploying additional police officers and constructing a 10.5km fence; which drastically reduced the numbers of migrants and refugees crossing the land border, driving them towards the more dangerous sea route between Turkey and the Greek islands, despite routine push-backs.²¹³ Increased co-operation between Bulgaria and Turkey in 2013 and 2014 also dramatically reduced the number of people entering Bulgaria, again shifting migration patterns towards Greece.²¹⁴ By June 2015, more than 61,000 refugees and migrants had arrived in Greece.

The Serbian Head of Border Management told Amnesty International that, while they are grateful for the EU's financial support, it fails to meet the challenges Serbia faces from what he described as "[t]he threat from the EU".²¹⁵ Wedged between five EU member states,²¹⁶ increasing numbers of asylum-seekers and migrants enter Serbia from two EU member states: Greece (via Macedonia) and, to a lesser extent, Bulgaria. At the same time, the EU requires Serbia to prevent them from irregularly re-entering the EU via Hungary.

In addition, both Serbia and Macedonia have also been required to prevent their own citizens from leaving to seek asylum in the EU. Following visa liberalization in 2009, thousands of citizens from the five western Balkans states sought asylum in the EU, reaching a peak in 2014, when more than 70,000 claimed asylum.²¹⁷ Since 2010, both countries have – under EU pressure – introduced measures²¹⁸ which in effect externalize the EU's borders, and

²¹³ Amnesty International, *Greece: Frontier of Hope and Fear: Migrants and Refugees Pushed Back At Europe's Border* (Index: EUR 25/004/2014), available at www.sos-europe-amnesty.eu/content/assets/docs/Greece_Frontier_of_Hope_and_Fear_Avril_2014.pdf

²¹⁴ Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against Migrants and Refugees at Europe's Borders* (Index: EUR 05/001/2014), pp.11-12, available at www.amnesty.org/en/documents/EUR05/001/2014/en/

²¹⁵ Amnesty International interview with Milan Barac, Head of International Co-operation and Border Management, Belgrade, March 2015.

²¹⁶ Bulgaria, Greece, Hungary, Romania and Croatia. Croatia, the most recent EU member state, is not yet part of the Schengen Agreement between 26 EU member states, which allows free passage, without passport and other border controls, at their common borders.

²¹⁷ European Stability Initiative, *New facts and figures on Western Balkan Asylum Seekers*, 6 April 2015, available at <http://www.esiweb.org/pdf/New%20facts%20and%20figures%20on%20WB%20asylum%20claims%206%20April%202015.pdf>,

²¹⁸ European Commission, *Fifth Report on the Post-Visa Liberalisation Monitoring for the Western Balkan Countries in accordance with the Commission Statement of 8 November 2010*, February 2015,

prevent some citizens – predominantly Roma and Albanians – from leaving their country, denying their right to freedom of movement under Art. 12 (2) of the ICCPR.²¹⁹

EU ACCESSION

Serbia's planned accession to EU membership provides the EU with additional leverage, in that Serbia is required, as part of the accession process, to: establish an effective asylum system; combat irregular migration; implement an Integrated Border Management strategy; and combat trans-border organized crime and trafficking in human beings.²²⁰

Since the opening of accession negotiations in January 2014, Serbia is required by the EU to harmonize its domestic legislation on legal and irregular migration and asylum with EU Directives.²²¹ Serbia is also required to: improve its Asylum Reception Centres, including facilities for unaccompanied minors; develop emergency accommodation; and further develop the capacity of its Asylum Office.²²²

Macedonia, as a candidate for EU membership, has been required to take similar measures, although the opening of accession negotiations has been repeatedly deferred since 2005.²²³

PRE-ACCESSION FUNDING

Since 2001, Serbia has received €45 million from the EU, in migration-related assistance,

available at http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20150225_5th_post-visa_liberisation_report_with_western_balkan_countries_en.pdf

²¹⁹ ECRI Weekly Bulletin, Op Ed, *EU and the Balkans: When preventing migration comes before combating Roma discrimination*, 14 December 2013, available at <file:///intsec.amnesty.org/data/users/sjones/Downloads/EU%20and%20the%20Balkans.pdf>; ERRC, *Highest Court in Macedonia Upholds Freedom of Movement for all Macedonians, Including Roma*, 15 July 2014, available at www.errc.org/article/highest-court-in-macedonia-upholds-freedom-of-movement-for-all-macedonians-including-roma/4301

²²⁰ European Commission (EC), *Serbia: Progress Report 2014*, October 2014, Chapter 24 ((Justice, freedom and security), pp. 52-56, available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf

²²¹ Serbia introduced policies and legislation on migration management in 2009 and 2012 respectively, see: '[Migration Management Strategy](#)', *Official Gazette of RS*, No. 59/09, 23 July 2009, available at www.kirs.gov.rs/docs/strategija_upravljanje_migracijama.pdf; '[Law on migration management](#)', *Official Gazette of RS*, No. 107/12, available at www.kirs.gov.rs/docs/Zakon_o_upravljanju_migracijama.pdf

²²² EC, *Screening report: Serbia, Chapter 24 – Justice, freedom and security*, (MD 46/14), 15 May 2014, available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/140729-screening-report-chapter-24-serbia.pdf; *Action Plan for Chapter 24*, available at www.mup.gov.rs/cms_lat/oglasi.nsf/Treca_verzija_AP_27_03_2015.pdf

²²³ EC, *The former Yugoslav Republic of Macedonia: Progress Report 2014*, October 2014, available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf

including €20 million pre-accession funding to “improve its border management”.²²⁴ This has been allocated to improving border controls, including through surveillance infrastructure and equipment, digital communications, biometric data systems (the AFIS automatic fingerprint information system), software for a central database on foreign nationals, and training for Border Police in the detection of irregular border crossings.

Significantly less EU funding has been dedicated to improving the asylum system.²²⁵ A €3 million “twinning project”, commencing in May 2015, will provide the Ministry of Interior with expert technical assistance to draft a new asylum law in line with EU directives, and enable the Commissariat for Refugees and Migration to improve standards of accommodation at ARCs. These measures will assist the EU’s efforts to reduce the influx of irregular migrants and refugees if more asylum-seekers are, as a result, provided with international protection in Serbia. As the Director of the Commissariat told Amnesty International: “One more day in Serbia, one less day in Sweden. People ask why we are helping people who don’t want to be refugees [in Serbia], but the EU wants everything in place”.²²⁶

Macedonia has also received pre-accession funding including for border police stations, border infrastructure, communications systems and training for the border police.²²⁷

FRONTEX: THE EUROPEAN BORDER AGENCY

“We have excellent co-operation with Frontex, as if we are an EU member state.”

- Amnesty International interview with Head of Border Management, Serbia, in March 2015.

Frontex co-ordinates joint operations on the EU’s external borders to prevent irregular migration into the EU.²²⁸ It also enters agreements with third countries, including Serbia and Macedonia, which aim to prevent irregular border crossings into the EU, and ensure the return of irregular migrants from EU countries.²²⁹ Frontex also takes part in joint border-control operations in non EU-member states, and in turn provides training and ensures the introduction of measures to “prevent and combat irregular migration, cross border crime and

²²⁴ Between 2001 and 2006, Serbia received €25 million funding; Amnesty International interviews with the Ministry of Interior in March 2015, and the EU Delegation to Serbia in April 2015.

²²⁵ See Amnesty International, *The Human Cost of Fortress Europe*, pp.9-17. The Commissariat has also received €15.2 million to address the needs of the historic refugee and IDP population, www.evropa.gov.rs/Documents/Home/DACU/12/104/105/106/109/projects%20IPA%202012.pdf

²²⁶ Amnesty International interview with the Serbian Commissariat for Refugees, July 2014. Belgium, Germany, Sweden and Switzerland have provided €3 million to build the proposed new ARC.

²²⁷ Macedonia also adopted a Migration Management Strategy in early 2015. See http://eeas.europa.eu/delegations/the_former_yugoslav_republic_of_macedonia/documents/projects/overview/contractlist-web-2015-01.pdf

²²⁸ Frontex’s full title is The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU.

²²⁹ Agreements have been concluded with 17 non-EU states or ‘Third Countries’, see <http://frontex.europa.eu/partners/third-countries/>

trafficking".²³⁰ Finally, in EU accession or candidate countries, such as Serbia and Macedonia, Frontex also aims to ensure that border management structures are aligned with EU standards. These measures, combined with pre-accession funding, enable the EU to construct buffer-zones that restrict movement towards the EU's borders, and outsource migration control to those countries.²³¹

Since 2009, under working agreements with Frontex,²³² Serbia and Macedonia are required to produce regular statistical reports on the movement of irregular migrants and asylum-seekers. The figures feed into Frontex's quarterly analysis and assessment of migration trends.²³³ They also participate in joint land border operations as observers, and receive training. In Serbia, this includes training in the human rights of irregular migrants and asylum-seekers and the identification of victims of human trafficking. Serbian Border Police participate in joint operations with Hungarian Border Police at the green border, augmented by Austrian and German officers.²³⁴ Both Serbia and Macedonia, in a Frontex project with Hungary, conduct joint patrols at the Macedonia-Serbia border. Macedonia has also requested additional Frontex support at the border with Greece.²³⁵

Frontex is required to ensure that co-operation agreements not only promote European border management standards, but also include respect for fundamental rights and human dignity.²³⁶ Yet, as this report has shown, while the Serbian and Macedonian authorities have sought to comply with the EU's aims in managing their borders, in so doing, through push-backs, arrests and arbitrary detention, they have often failed to abide by their international obligations to respect and protect the rights of refugees and migrants.

²³⁰ See Article 14, Frontex Regulations on Facilitation of operational cooperation with third countries and cooperation with competent authorities of third countries, available at http://frontex.europa.eu/assets/Legal_basis/frontex_amended_regulation_2011.pdf

²³¹ See Amnesty International, *Fortress Europe*, pp. 13-15.

²³² Under Memoranda of Understanding and Working Agreements see, http://frontex.europa.eu/assets/Partners/Third_countries/WA_with_former_Yugoslav_Republic_of_Macedonia.pdf; http://frontex.europa.eu/assets/Partners/Third_countries/WA_with_Serbia.pdf,

²³³ For the basis of this agreement, see Frontex, *Western Balkans, Annual Risk Analysis 2010*, available at http://frontex.europa.eu/assets/Attachments_News/wb Ara .pdf; for the latest analysis, see fn. 208.

²³⁴ Reuters, 'German police sent to Serbia-Hungary border to stem Kosovo exodus', 12 February 2015, available at www.reuters.com/article/2015/02/12/us-germany-kosovo-migrants-idUSKBN0LG21H20150212

²³⁵ Amnesty International interview with Marinko Kocovski, Assistant Director for Border Affairs, Skopje, January 2015.

²³⁶ Article 14 (1) of the Frontex Regulation, (EU) No 1168/2011 available at http://frontex.europa.eu/assets/Legal_basis/frontex_amended_regulation_2011.pdf; Amnesty International has found that in the absence of a mechanism for investigating report of human rights abuses, Frontex's human rights framework has had little impact, see, *The Human Costs of Fortress Europe*, p. 156.

CONCLUSION

As this report has shown, it is impossible to separate the migratory pressures on Serbia and Macedonia, and the human rights violations occurring there, from the broader stresses prompted by the flow of migrants and refugees to and through the EU. The particularity of the Balkan route is that it involves refugees and migrants entering the EU (via Greece), exiting it (via Macedonia) only in order to re-enter it again (via Hungary). As the Macedonian border with Greece is much more porous than the Hungarian border with Serbia (an imbalance that will only be aggravated by the projected construction of a fence along the Hungarian-Serbian border), refugees and migrants are increasingly being trapped in what is, for them, a Balkan no-man's land. Indeed, the reality is that Serbia and Macedonia are currently serving as an overflow pipe for refugees and migrants that neither Greece nor Hungary, nor, indeed, the EU as a whole, are willing to receive. While both Serbia and Macedonia can and should be doing more to respect the rights of refugees and migrants, the fact remains that they are struggling to deal with the consequences of EU migration policies, over which they have no influence. Ultimately, the stresses on Serbia and Macedonia, as with the stresses on Italy and Greece, can only be resolved by a much broader rethink of EU migration policies.

The construction of a Fortress Europe that has severely limited the safe and legal avenues of entry for refugees to the EU at the same time as an explosion in the global refugee population, has inevitably generated considerable pressure on the EU's periphery states – particularly Greece and Italy, who are struggling to cope with the increase in arrivals of refugees and migrants. These pressures result from the failure of the EU to develop migration policies that reflect the need for both greater *global* solidarity, in response to the ever-growing refugee crisis, and greater *internal* solidarity between EU member states that currently share the responsibility for receiving asylum seekers unequally.

The challenges of managing mixed-migration flows to and within the EU in a rights compliant manner are certainly considerable. They are rendered even more complex by the awkward mismatch between EU regulations on internal migration, notably the Dublin regulation, which in practice places the primary responsibility for processing asylum applications on the first EU country of entry and the reality, in recent years, of the imbalance in the countries of arrival. The result is not just the collapse of the asylum and reception systems in Greece, and to a lesser extent, Italy, but also, increasingly, the unregulated flow of irregular migrants and asylum-seekers from these countries to other EU destinations. This situation is neither conducive to the respect for the rights of migrants – whether in need of international protection or not – nor, in the interests of EU member states themselves. The tensions and rights violations generated by the mismatch in EU migration policies and global migratory movements need to be dealt with. Solutions predicated on reducing overall numbers of arriving refugees and migrants through tackling smuggling and trafficking networks and securing greater cooperation with non-EU transit countries will not, on their own, suffice – nor would they be consistent with the responsibility on the EU, as the richest political bloc in the world, to take on a greater share of the almost 20 million refugees currently overwhelmingly located in the developing world.

While there are no doubt a variety ways in which the EU and its member states could seek to revise its migration and asylum policies, Amnesty International believes the following set of measures would go furthest to creating an equitable, rights-compliant migration management system in the EU:

- The opening of more safe and legal routes for refugees to reach EU countries. This would reduce the pressures on refugees to undertake dangerous journeys, contribute to the EU taking on a fairer share of a global refugee population and reduce the pressures on periphery EU states;
- Significantly enhanced EU financial, technical and operational support to frontline EU member states for the processing of asylum applications and the reception of asylum seekers;
- The revision of EU internal migration regulations to facilitate the freedom of movement of successful asylum seekers within the EU, including by revising the Long-Term Residence Directive and establishing a system of mutual recognition of positive decisions on international protection;
- The rigorous enforcement by the European Commission of the EU asylum acquis, regarding the processing of asylum applications and the reception of asylum seekers and irregular migrants by EU member states to ensure their human rights compliance.
- Greater EU assistance to EU member states to ensure the human rights compliant return, in appropriate cases, of foreign nationals to their countries of origin.

RECOMMENDATIONS

Amnesty International urges the European Union and its member states to:

- Offer more safe and regular routes to refugees to access protection;
- Increase resettlement, humanitarian admission places and humanitarian visas for refugees;
- Facilitate family reunification for refugees who have family members living in the EU, by applying a broad definition of family members to include extended or non-nuclear families, and applying flexibility as to documentary or other requirements;
- Ensure that refugees have access to asylum at the external land borders of the EU;
- Provide additional financial and technical support to assist both Serbia and Macedonia in the improvement of their asylum systems and for the reception of asylum-seekers.

RECOMMENDATIONS TO SERBIA

Amnesty International's recommendations to the Serbian Ministry of Interior:

With respect to asylum:

- Establish a fully independent Asylum Office, independent of the Ministry of Interior, staffed with sufficient trained, qualified and experienced civilian personnel, and provided with the financial and technical resources required to respect, protect and fulfil the rights of asylum-seekers;
- Ensure that the Asylum Office provides prompt access to an individualized asylum process, including through the timely registration and issuing of identity cards, conduct of refugee interviews, adequate consideration of accurate and updated country of origin information, and the provision of refugee status decisions within a reasonable time;
- In accordance with the principle of *non-refoulement*, ensure that refugee status determinations are initially considered, and – if necessary – appeals substantively reviewed, irrespective of whether a country – including Macedonia – is considered to be a safe third country;

- Consult fully on the new draft Law on Asylum with UNHCR and NGOs, to ensure that it is fully compliant with international standards and addresses deficiencies in the current law;
- Respect the presumption in international standards against the detention of refugees and migrants;

With respect to Border Management:

- Ensure that Border Police (and staff at ARCs) are provided with training in the identification of particularly vulnerable asylum-seekers, including unaccompanied or separated minors, victims of torture or other ill-treatment, rape and other sexual violence, and trafficked persons; establish an effective referral mechanism with relevant state agencies and NGOs to address their specific support and procedural needs;
- Ensure that refugees and migrants are not subject to ill-treatment and exploitation by law enforcement officers, including Border Police, ensuring that all reports of violations are promptly, thoroughly and impartially investigated;
- Allow UNHCR and civil society organizations access to places of detention, to monitor the respect for the rights of refugees and migrants;
- Refrain from unlawful push-backs to Macedonia, and adopt a presumption against the return, including through Readmission Agreements, of asylum-seekers to Macedonia in accordance with the principle of *non-refoulement*;
- Ensure that Border Police provide all those entering the country with the opportunity to claim asylum, and abide by the decision of the Superior Court, in refraining from detaining people who have expressed an interest in seeking asylum in Serbia;
- Ensure that any detentions for migration purposes are necessary and proportionate, and decided on an examination of individual circumstances, with all the procedures and safeguards set out in international standards.

With respect to reception conditions for refugees, the government of Serbia should:

- Provide the Commissariat for Refugees with sufficient funding, to ensure the provision of adequate reception facilities and assistance, as required by law, and ensuring the capacity of ARCs to accommodate increasing number of refugees seeking asylum.

RECOMMENDATIONS TO MACEDONIA

Amnesty International's recommendations to the Macedonian Ministry of Interior:

With respect to asylum:

- Ensure that asylum-seekers are provided with prompt access to an individualized asylum process, including through their timely registration, conduct of refugee interviews, adequate consideration of accurate and updated country of origin information, and the provision of refugee status decisions within the time set out by law;
- Guarantee the rights of unaccompanied minors, including to asylum, through the guardianship system, and the safeguards and protections set out in law;
- Ensure that the Department of Asylum is staffed with sufficient trained, qualified and experienced civilian personnel, and provided with the financial and technical resources required to respect, protect and fulfil the rights of asylum-seekers;

With respect to Border Management:

- Ensure that Border Police and staff responsible for refugee status determinations are provided with training in the identification of vulnerable asylum-seekers, including unaccompanied or separated minors, victims of torture or other ill-treatment, rape and other sexual violence, and trafficked persons; establish an effective referral mechanism with relevant state agencies and NGOs to address their specific needs;
- Ensure that refugees and migrants are not subject to ill-treatment and exploitation by

law enforcement officers, including Border Police, ensuring that all reports of violations are promptly, thoroughly and impartially investigated;

- Allow UNHCR and civil society organizations access to places of detention, to monitor the respect for the rights of refugees and migrants;
- Refrain from unlawful push-backs to Greece;
- Adopt a presumption against the return, including through Readmission Agreements, of refugees to Greece in accordance with the principle of *non-refoulement*;
- Ensure that Border Police provide all those entering the country with the opportunity to claim asylum, and refrain from the detention of people who wish to seek asylum;
- Ensure that a full investigation is conducted into all deaths which have taken place on Macedonia's railway line, and take further measures to avoid future incidents;
- Protect refugees and migrants from abuses by armed gangs, and bring the perpetrators to justice;

With respect to the detention of migrants and refugees:

- Immediately take measures to end the inhuman and degrading conditions of detention in the Reception Centre for Foreigners (Gazi Baba), and establish alternatives to detention;
- Cease the practice of detaining refugees and migrants as witnesses in criminal proceedings;
- Take immediate action to find other accommodation solutions for vulnerable individuals, including unaccompanied minors, children and pregnant or nursing mothers;
- Ensure that any detentions for migration purposes are necessary and proportionate, and decided on an examination of individual circumstances, with all the procedures and safeguards set out in international standards.

RECOMMENDATIONS TO HUNGARY

Amnesty International's recommendations to the government of Hungary:

With respect to asylum:

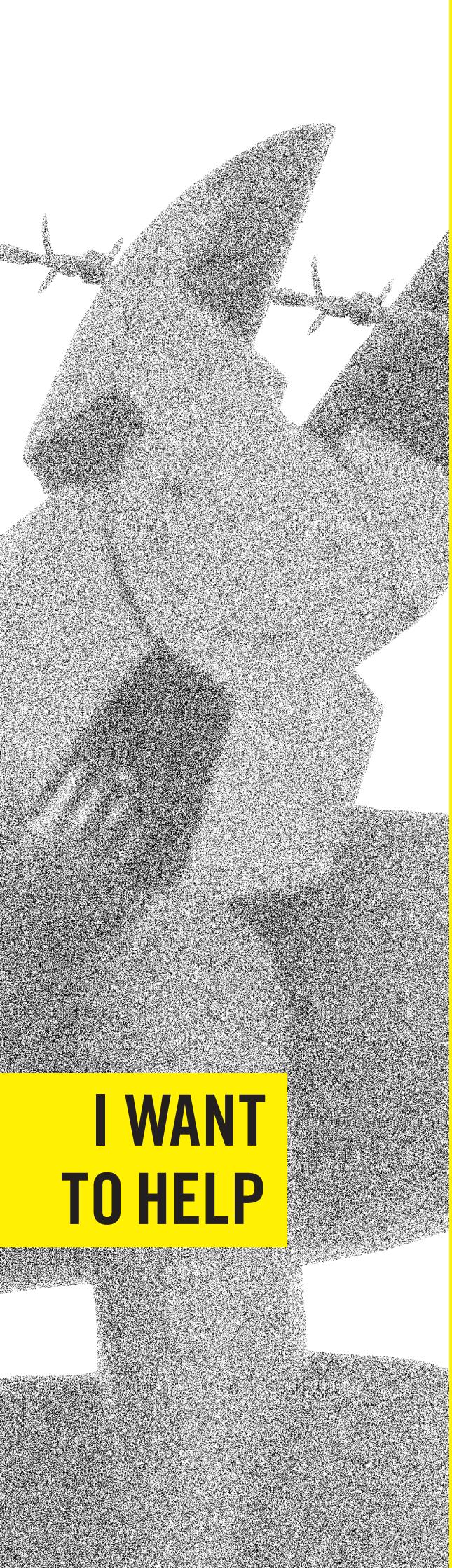
- Ensure that all refugees entering Hungary irregularly – including from Serbia – have access to a fair and effective asylum process, including through an individualized determination of their protection needs;

With respect to Border Management:

- Ensure that those intercepted at the border, or in the border area, are able to apply for asylum at regular border crossing points, and have access to an effective remedy against any deportation decision;
- Ensure that refugees and migrants seeking to enter Hungary are not subject to unlawful push-backs or ill-treatment and investigate any allegations of such practices;
- Adopt a presumption against the return, including through Readmission Agreements, of refugees to Serbia;

With respect to the detention of migrants and refugees:

- Ensure the protection of asylum seekers from ill-treatment, and from detention in inhuman or degrading circumstances;
- Refrain from detaining migrant and refugee children;
- Ensure that detentions for migration purposes are necessary and proportionate, and decided on an examination of individual circumstances, with all the procedures and safeguards set out in international standards, and prioritize the use of alternatives to detention.



WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

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EUROPE'S BORDERLANDS

VIOLATIONS AGAINST REFUGEES AND MIGRANTS IN MACEDONIA, SERBIA AND HUNGARY

Increasing numbers of refugees and migrants are travelling through the western Balkans to the European Union in search of safety and protection. But the Balkans route is far from safe, and refugees who attempt to seek asylum in Serbia or Macedonia face severe obstacles. Those making this perilous journey are met with both violence and indifference by the authorities, adding to the hardship.

Amnesty International calls for safe and regular routes into Europe, and for the respect and protection of refugees' and migrants' rights.

Through interviews with refugees and migrants in Greece, Macedonia, Serbia and Hungary, this report documents the human rights violations, including the lack of access to asylum, and other risks that migrants and refugees face on their journeys. It reveals how they are criminalized by the authorities, and provides first-hand testimony of unlawful push-backs at borders, ill-treatment by the police, unlawful detention, and deportations which leave refugees at risk of serious human rights violations.

Amnesty International calls on the governments of Macedonia, Serbia and Hungary to protect the rights of refugees and migrants, and to guarantee access to an effective asylum process.

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