

Serbia

As a Country of Asylum



Observations on the Situation
of Asylum-Seekers and Beneficiaries
of International Protection in Serbia

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Introduction

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) has a mandate to monitor the implementation of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol by virtue of its Statute in conjunction with Article 35 of the 1951 Convention and Article II of 1967 Protocol.
2. In light of the recent increase in the numbers of asylum claims lodged in the Republic of Serbia (“Serbia”), as well as the practice of some European Union (“EU”) countries of returning asylum-seekers to Serbia on the basis of the “safe third country concept,”¹ UNHCR has undertaken to assess Serbia’s asylum procedure, to making concrete recommendations for improvements, and to evaluate Serbia as a country of asylum.²
3. The present paper provides an assessment of the Serbian asylum system, including access to procedures, quality of the asylum adjudication mechanisms, treatment of unaccompanied and separated children, as well as reception, accommodation and detention issues. Particular emphasis is given to the application of safe third country considerations in assessing asylum claims.
4. UNHCR concludes that there are areas for improvement in Serbia’s asylum system, noting that it presently lacks the resources and performance necessary to provide sufficient protection against *refoulement*, as it does not provide asylum-seekers an adequate opportunity to have their claims considered in a fair and efficient procedure. Furthermore, given the state of Serbia’s asylum system, Serbia should not be considered a safe third country, and in this respect, UNHCR urges States not to return asylum-seekers to Serbia on this basis.

¹ The “safe third country concept” presumes that the applicant could and should already have requested asylum if he/she passed through a safe country en route to the country where asylum is being requested. This notion is applied in most European States, although it is less widely used elsewhere. See generally UN High Commissioner for Refugees, Global Consultations on *International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, <http://www.unhcr.org/refworld/docid/3b36f2fca.html>.

² See also, Hungarian Helsinki Committee, *Serbia as a Safe Third Country: A Wrong Presumption*, September 2011, <http://www.unhcr.org/refworld/docid/4e815dec2.html>, and Hungarian Helsinki Committee, *Serbia as a Safe Country: Revisited*, June 2012, <http://www.unhcr.org/refworld/docid/4fe86f992.html>.

General Background³

Background

5. Serbia is a party to the United Nations 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and its Constitution provides for a right to asylum.⁴ In furtherance of this right, the Law on Asylum was adopted in November 2007, and Serbia assumed full responsibility for refugee status determination (“RSD”) upon its entry into force on 1 April 2008.⁵
6. Serbia has been hosting refugees from the countries of the former Yugoslavia, since the conflicts of 1992 to 1995. Their refugee status does not derive from the 2007 Law on Asylum, and the current asylum system, which is the subject of this paper. They enjoy rights similar to nationals and most have access to simplified naturalization in Serbia. Currently, an estimated 66,000 refugees from Croatia remain in Serbia, pending the identification of durable solutions. In addition, Serbia continues to host approximately 210,000 persons who were displaced from Kosovo in 1999, some 97,000 of whom are in need of assistance.⁶ The Serbian government continues providing a range of services to these displaced populations. The international community, led by the European Union and States in the region, and facilitated by UNHCR, has committed to ensuring durable solutions for the displaced throughout the region (mainly through housing support) and which will benefit refugees in Serbia.⁷
7. Beyond the legacies of regional displacement, Serbia at present is primarily a country of transit for mixed migratory flows from Asia and the Middle East towards EU member States. Government sources have conveyed their view to UNHCR that approximately one-third of irregular migrants arriving in Serbia apply for asylum in order to avoid detention that would otherwise apply to them as irregular migrants. In comments to the State news agency (TANJUG), the Director of the Police, Mr. Milorad Veljovic, stated that between January and November 2011, some 9,500 irregular migrants were identified in Serbia.⁸ According to official figures, some 3,132 persons expressed their intention to seek asylum in 2011, albeit with the vast majority moving onward to EU countries, either before registering with the Asylum Office, or at another step in the process before the determination of their claim in Serbia.

³ Unless otherwise indicated, sources of information contained in this paper include statements from the Serbian Ministry of Interior, UNHCR offices in Serbia, Hungary, or the former Yugoslav Republic of Macedonia, and public media and reports from UNHCR’s NGO implementing partners.

⁴ *Constitution of the Republic of Serbia*, 30 September 2006, available at: <http://www.unhcr.org/refworld/docid/4b5579202.html>. Article 57 states “any foreign national with reasonable fear of persecution based on his/her race, gender, language, creed, ethnic affiliation or affiliation with another group, or his/her political opinions, shall have the right to asylum in the Republic of Serbia.” It further provides that the procedure for granting asylum shall be regulated by the law.

⁵ *Law on Asylum* [Serbia], 26 November 2007, available at: <http://www.unhcr.org/refworld/docid/47b46e2f9.html>. Prior to 1 April 2008, UNHCR carried out RSD under its mandate for asylum applicants within the territory of Serbia.

⁶ See, *Assessment of the needs of internally displaced persons in the Republic of Serbia*, carried out by UNHCR and the Commissariat for Refugees of the Republic of Serbia in 2010, available at: http://www.unhcr.rs/media/IDP_Needs_AssessmentENGLISH.pdf

⁷ See, *Joint Declaration on Ending Displacement and Ensuring Durable Solutions for Vulnerable Refugees and Internally Displaced Persons*, signed by the governments of Bosnia and Herzegovina, Montenegro, Republic of Croatia and Republic of Serbia on 7 November 2011, available at: <http://www.unhcr.org/4ec22a979.pdf>

⁸ TANJUG, *Illegal Migrants - Common Problem*, 12 December 2011, available at: <http://www.tanjug.rs/news/26947/illegal-migrants--common-problem.htm>.

Introduction to the Serbian Asylum System

8. The Ministry of Interior (“Mol”) and the Serbian Commissariat for Refugees (“SCR” -- an independent governmental body), each have pre-assigned competencies for different parts of the asylum system, as provided for in the Law on Asylum. The Asylum Office, which has yet to be officially established and currently operates on an *ad hoc* basis under the Border Police Directorate of the Mol, has the responsibility to administer the asylum procedure. In contrast, the SCR manages the reception centres for asylum-seekers.
9. With the assistance of UNHCR and EU funding, Serbia has established a legal framework on asylum that is by and large in compliance with international standards, following the adoption of the Law on Asylum in 2007. In addition to the law, Serbia has made significant efforts to develop its reception infrastructure for asylum-seekers in view of the recent increase in arrivals. However, this increase has also meant that Serbia’s *ad hoc* Asylum Office has come under pressure and presently lacks the capacity and personnel to process the number of asylum-seekers. In 2008, 77 persons were registered as asylum-seekers in Serbia. The number of asylum applications rose to 275 in 2009. In 2010, the number of asylum-seekers increased to 522. More than 3,100 persons were identified as asylum-seekers in Serbia in 2011, with fewer than 500 managing to register their claims with the Asylum Office.
10. Although many asylum-seekers simply abandon their claims at an early stage in the procedure in order to move on, there are also a number of shortcomings in the quality and efficiency of the asylum process that could support an asylum-seeker’s decision to leave Serbia. While many perceive a limited possibility to eventually receive status when applying, few asylum-seekers are registered and even fewer manage to submit full applications and to be interviewed. Since the government assumed responsibility from UNHCR for RSD in 2008 (see paragraph 36 for further detail), there has been no positive grant of refugee status. While this fact is not as such sufficient to conclusively demonstrate a problem with quality of asylum decisions (without an analysis of those cases), most of the denials are made on the basis that the applicant comes from a designated safe third country, with no evaluation of the merits of the claim.
11. While the numbers of asylum-seekers in Serbia were significantly higher in 2011 than in neighbouring countries, it shares a number of its current challenges in the field of asylum with them, including limited capacity and experience in administering asylum systems.

1. Access to the asylum procedure

12. Persons seeking international protection in Serbia may express their wish to seek asylum upon first contact with the authorities in one of two ways, either at the border or after they have entered the territory. In both cases, registration is conducted by the police. According to the Asylum Office, the vast majority of asylum-seekers apply once they are in the territory and are referred to the Asylum Office by ordinary police officers. Very few referrals are made at the border, from border police. Referrals at the border generally occur when individuals are caught attempting to exit Serbia in an irregular manner (mostly to Hungary).
13. UNHCR's Office in the former Yugoslav Republic of Macedonia has reported instances where third country nationals who are caught attempting to enter Serbia irregularly are immediately returned to the custody of the border police in that country. Some reportedly attempt to claim asylum before Serbian border guards. On some occasions, these individuals are brought before a municipal judge in southern Serbia (in Presevo, Bujanovac or Vranje), sentenced for illegal border crossing, and then after serving a short term in prison, deported to the former Yugoslav Republic of Macedonia. Interviews with asylum-seekers deported from Serbia suggest that deportations do not always follow official procedures at the border. Instead, Serbian police reportedly bring individuals in buses close to the border and order them to return to the former Yugoslav Republic of Macedonia on their own.
14. In terms of applying for asylum at the airport, Serbia reported to the European Commission that in 2009 and 2010 approximately 1,500 foreigners were denied entry at Belgrade International Airport.⁹ In the same period, only one person was admitted into the asylum procedure from the airport, and in that case, the intervention of UNHCR was required. The Border Police Directorate has stated that none of the persons denied entry at the airport had expressed an intention to seek asylum in Serbia. In contrast, when UNHCR carried out mandate RSD (from 1976 to 2008), more than a dozen individuals expressed their intention to apply for asylum at the airport annually. The Asylum Office does not visit the airport regularly and officials claim that they are not aware of, and do not receive, asylum claims from the airport. In 2011 and the first six months of 2012, the situation remained the same.

Access to the
asylum procedure

Recommendations:

- Ensure access to the country's territory for asylum-seekers in full respect of the principle of *non-refoulement* as established in international refugee and human rights law;
- Devise effective entry mechanisms (border monitoring) over the manner in which border authorities meet their obligation to provide asylum-seekers with access to regular asylum procedure.¹⁰ This would also include training and mechanisms to ensure the sustainability of training;
- Require the authorities to conduct personal interviews before any return decision is made, in order to prevent potential *refoulement*.

⁹ Information requested by the European Commission (EC) from the Government of Serbia for the preparation of the Opinion on the application of Serbia for membership of the European Union, November 2010, available at: http://www.media.srbija.gov.rs/medeng/documents/questionnaire_srb.pdf. Serbia's response to the EC Questionnaire, available on the website of the Government of the Republic of Serbia, Chapter 24, Question 14, available at: http://www.srbija.gov.rs/?change_lang-en.

¹⁰ See, UN High Commissioner for Refugees, *Protection Training Manual for European Border and Entry Officials*, 1 April 2011, available at: <http://www.unhcr.org/refworld/docid/4ddf40d12.html>

2. Detention of asylum-seekers and restrictions on freedom of movement

15. Serbia is to be congratulated for largely respecting the freedom of movement and the right to liberty of asylum-seekers. The authorities in Serbia do not generally apply restrictions to the freedom of movement of asylum-seekers, or detain them during the asylum procedure, even though there is a basis to do so in the Asylum Law.
16. Article 51 of the Law on Asylum stipulates that restrictions on movement can be imposed in three cases: (1) to establish identity; (2) to ensure the presence of a foreigner in the course of the asylum procedure, if (a) there are reasonable grounds to believe that an asylum application was filed with a view to avoiding deportation, or if (b) it is not possible to establish other essential facts on which the asylum application is based without the presence of the foreigner in question; and (3) to protect national security and public order in accordance with the law. Measures to restrict movement can entail (1) an obligation for asylum-seekers to reside at *Padinska Skela*, the Reception Centre for Foreigners, where they are under intensified police surveillance; and (2) imposing a ban on leaving the Asylum Centre, a particular address and/or a designated area.¹¹

Detention of
asylum-seekersQuality of the
asylum procedure

3. Quality of the asylum procedure

17. While the legislative framework and the national reception system are in place, Serbia's national asylum system, in particular, the Asylum Office, as currently set up, cannot process the recent significant increase of asylum-seekers. In addition, the recognition rate¹² is zero since the Government assumed its responsibility for the asylum procedure in 2008. This can be attributed to several factors, in particular, an over-reliance on the "safe third country concept" (see 3.1.5.).

Year	Declared intention to seek asylum	Registered by Asylum Office ¹³	Submitted asylum application ¹⁴	Interviewed	Refugee status	Subsidiary protection
2011	3,134	488	248	118	0	0
2012 (first 6 months)	974	298	182	47	0	0

18. The primary obstacle to ensuring the quality of the asylum procedure is the fact that the Asylum Office is yet to be officially established. It is currently operating on an *ad hoc* basis under the Border Police Directorate of the MoI. With seven out of eleven positions filled at the time of this writing, and with only four of the seven staff members directly involved in interviewing and meeting with asylum-seekers, the Asylum Office lacks a sufficient number of qualified personnel to adjudicate asylum claims in an efficient but thorough manner. Moreover, there is no budget allocated to the Asylum Office by the MoI, and essential services, such as expenses for interpretation in the asylum proceedings and free legal assistance to asylum applicants, continue to be covered by UNHCR.

¹¹ Law on Asylum, Article 52.

¹² The "recognition rate" is the percentage of positive decisions for refugee status against the total number of substantive first instance decisions for a given period.

¹³ Registered persons are those who have undergone the second step in the asylum procedure, which includes establishing an identity, fingerprinting, taking photographs. The law provides that at the end of this phase of the procedure, asylum-seekers are to be issued an ID card.

¹⁴ Submission of an asylum application is a third step in the process, when asylum-seekers actually file its asylum claim.

19. Another concern is that the Asylum Office, based within the Border Police Directorate, is not independent from the police structure. Asylum procedures are conducted by police officers who are often inadequately trained in the principles and application of international refugee protection. While Article 19 of the Law on Asylum stipulates that authorized officers conducting the asylum procedure in the Asylum Office shall be specially trained for performance of these tasks, their primary expertise, as professional police officers, is in criminal law enforcement and border control; they lack sufficient training on issues related to the asylum procedure and refugee protection. Those who are trained on protection matters are often subject to rotation within the MoI structure, necessitating further training for the newly-posted, and depriving the Asylum Office of developed skills, relevant experience and continuity.
20. Placing police in the role of interviewer during the asylum procedure may additionally undermine the perception of confidentiality and impartiality, which is crucial in creating conducive conditions for applicants during the personal interview. UNHCR recommends that a civilian authority be assigned this role, along with responsibility for taking decisions, under future development of the asylum system.¹⁵

Recommendations:

- Ensure that the Asylum Office is formally established in line with the Law on Asylum and allocated appropriate budget and staffing;
- The Asylum Office should be (part of) a civilian authority;
- Establish training programmes for law enforcement officials, police and other concerned personnel concerning the 1951 Convention, and put in place mechanisms to ensure the sustainability of training programmes.

Quality of the
asylum procedure

3.1. First instance procedure and practice

21. The first instance procedure, carried out by the Asylum Office, consists of five steps: (1) expression of intention to seek asylum and recording of data by the police; (2) registration of the asylum-seeker; (3) lodging an asylum application; (4) formal interview; and (5) decision making.
22. The Law on Asylum does not define any set period within which the Asylum Office should complete the first two steps of the asylum procedure. However, in accordance with the Law on Administrative Procedures, a maximum period of 60 days (two months) is applicable from the third step, lodging the asylum application, to the final step, the issuance of the decision of the Asylum Office. In practice, due to procedural delays described in the following sub-sections, these last three steps often exceed the prescribed 60 days deadline.

¹⁵ See UN High Commissioner for Refugees, *UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (COM(2009)554, 21 October 2009)*, August 2010, p. 10, available at: <http://www.unhcr.org/refworld/docid/4c63ebd32.html>; See also, UN High Commissioner for Refugees, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations*, March 2010, available at: <http://www.unhcr.org/refworld/docid/4bab55752.html>.

3.1.1. Expression of the intention to seek asylum and recording of data¹⁶

23. The first step of the asylum procedure is initiated when an authorized officer of the MoI, usually a police officer, registers the intention of persons to seek asylum. In the vast majority of cases, asylum-seekers are referred directly to one of the two Asylum Centres, managed by the SCR.
24. When a person expresses the intention to seek asylum at the border or with a police officer in the territory, the authorized police officer records his/her personal data. The procedure encompasses the issuance of a prescribed certificate containing personal data the person has provided or that could be established on the basis of identification papers and other documents carried by the asylum-seeker. The certificate serves as proof that the person has expressed his/her intention to seek asylum and that he/she has the right to reside at the Asylum Centre for a period of 72 hours (see 3.1.2). The police, at this stage, do not provide information regarding the asylum-seeker's rights and obligations.
25. An authorised officer is entitled to search the asylum-seeker and his/her belongings in order to find personal identification papers and other documents necessary for the issuance of the certificate. UNHCR is not aware of any complaints that this search, when performed, is done in an inappropriate manner.

Between 1 January and 31 December 2011, 3,132 persons expressed the intention to apply for asylum in Serbia. From January to the end of June 2012, 974 persons expressed the intention to apply for asylum in Serbia.

3.1.2. Registration by the Asylum Office of an asylum-seeker and securing accommodation in the Asylum Centre¹⁷

26. The second step, registration of the asylum-seeker by a member of the Asylum Office, is normally conducted at one of the two Asylum Centres in Banja Koviljaca and Bogovadja (see 5.2 and 5.3). The Law on Asylum prescribes that each asylum-seeker should arrive at the Asylum Centre or be escorted there within 72 hours from the expression of intent.¹⁸
27. In 2011 3,132 persons expressed their intention to apply for asylum in Serbia, and 488 persons were registered by the Asylum Office. The gap between the numbers of those expressing intention and those who complete the second step of registration can be attributed to several factors. While it is true that a number of persons do not appear at the Asylum Centres after their intention to apply for asylum has been registered, the lack of space in the Asylum Centres can effectively prevent an asylum-seeker from completing the second step of registration. In practice, before lodging an application for asylum, the asylum-seeker must first have secured a space within one of the Asylum Centres. While asylum-seekers who appear at the Asylum Centre may be issued with a document by the SCR (but not the Asylum Office), the document is not recognized by other State authorities, and needs to be renewed frequently (every two to three days). Through the use of this document, the authorities claim to have some control over the number of "active" asylum-seekers pending admission to the Asylum Centres. Yet, as it can take weeks or even months until a space becomes available, some asylum-seekers leave Serbia before officially lodging their asylum applications with the Asylum Office.

¹⁶ Law on Asylum, Articles 22 and 23.

¹⁷ Law on Asylum, Article 24.

¹⁸ Law on Asylum, Article 22.

28. A second reason for failure by asylum-seekers to lodge full asylum applications at the next step is the limited staffing of the Asylum Office (see paragraph 18). Currently, there are two Asylum Office staff members who travel to the Asylum Centres to register asylum-seekers, on an *ad hoc* basis. As the Law on Asylum does not set a time limit within which this second step of registration must be completed, this step can take weeks or longer.
29. While the Law on Asylum does not limit the right to the issuance of an officially recognized personal identity card to asylum-seekers with accommodation in an Asylum Centre, in practice this official proof of status is only available to those living at the Asylum Centres. Moreover, there can be delays of up to two months to receive this card, issued by the Asylum Office.

Between 1 January and 31 December 2011, 488 persons were registered by the Asylum Office and 422 persons were issued identity cards. From January to the end of June 2012, 298 persons were registered by the Asylum Office, and 154 were issued identity cards.

Recommendations:

- Ensure that all asylum-seekers are registered and issued a document immediately, including those awaiting admission or accommodated at Asylum Centers or elsewhere;
- Officially recognized ID cards should be available to all asylum-seekers in the initial stages of the procedure.

Quality of the
asylum procedure

3.1.3. Lodging an asylum application¹⁹

30. Before lodging an asylum application, the asylum-seeker is informed by the Asylum Office of his/her rights and obligations, especially regarding the rights to residence, a free interpreter/translator, legal aid and access to UNHCR. According to NGO legal aid providers, asylum-seekers are usually well informed regarding the procedure in Serbia and the availability of free legal aid provided by NGOs. A corresponding duty to inform exists as per Article 10 of the Law on Asylum.
31. Once registered with the Asylum Office, the third procedural step is that an asylum-seeker must submit his or her application for asylum within fifteen days. According to the law, the Asylum Office may extend this time limit upon the substantiated request of the applicant. In practice, the time limit is usually ignored, as filling the application form requires a second appointment with a staff member from the Asylum Office as well as, if needed, with an interpreter. The recently increased number of asylum-seekers, combined with the limited availability of the two responsible Asylum Office staff members, leads to long waiting times to lodge asylum applications. As a result, some asylum-seekers leave Serbia before completing this third step.

Between 1 January and 31 December 2011, 248 asylum applications were submitted to the Asylum Office. From January to the end of June 2012, 182 asylum applications were submitted to the Asylum Office.

¹⁹ Law on Asylum, Article 25.

3.1.4. Interview²⁰

32. The fourth step in the process is the formal asylum interview, which requires an additional visit by Asylum Office staff to the Asylum Centre. The Law on Asylum stipulates that the Asylum Office should try to establish all the facts relevant for making a decision, including, in particular: the identity of the asylum-seeker, the grounds for asylum, the asylum-seeker's travel route from his or her country of origin, and whether or not the asylum-seeker has previously sought asylum in another country.
33. Interviews focus upon the travel route taken, i.e. how many and which countries the asylum-seeker passed through, and how he or she entered Serbia. This line of questioning is standard for border police with a law enforcement background who have not received sufficient training in asylum procedure. Additionally, an overly broad interpretation of Article 26 of the Asylum Law on the concept of safe third country serves to limit the full evaluation of the substance of the asylum claim. In effect, by not focusing sufficiently on the areas of an individual's claim necessary to establish its validity (or not), the interview usually does not provide a sufficient basis for consideration of the merits. The interviews are conducted in a way to focus on assessing the applicability of the "safe third country concept" during the interview stage, rather than establishing any possible grounds for international protection.
34. While the border police officers from the Asylum Office involved in interviews do not wear police uniforms, the applicants may fear and/or distrust the police as a result of their experiences in their country of origin, and an interview conducted by police officials 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. This undermines the perception of confidentiality and impartiality, crucial in creating the conditions conducive to the complete disclosure of facts by applicants during personal interviews.

Between 1 January and 31 December 2011, 75 cases (118 persons) were interviewed. From January to the end of June 2012, 33 cases (47 persons) were interviewed.

Quality of the
asylum procedure

Recommendations:

- All personal interviews should be conducted by qualified and trained personnel focusing on establishing all relevant facts for an asylum decision based on the merits of the claim;
- The police should not be designated as determining authority and should not be involved in the conduct of personal interviews.

3.1.5. Processing and decision-making²¹

35. Following the formal interview, the Asylum Office examines the case and issues a first-instance decision. The Asylum Office may take a decision to recognize the claimant as a refugee, to grant subsidiary protection, or to refuse an asylum application and order the applicant to leave the territory, unless he/she has other grounds for residence. The Asylum Office may also decide to suspend the asylum procedure.

²⁰ Law on Asylum, Article 26.

²¹ Law on Asylum, Articles 27-34.

36. In practice, the Asylum Office has not granted refugee status since assuming responsibility for the asylum procedure in 2008 and has granted subsidiary protection in only five cases. Virtually all cases are rejected on the basis that the applicants come from a safe third country, without an evaluation of the merits. In 2011, out of 55 decisions issued by the Asylum Office, 53 were rejections on this basis. This broad application of the “safe third country concept,” found in Article 33(6) of the Law on Asylum, has been confirmed at the second and third instance levels. A 2011 Administrative Court decision confirmed that the list of safe third countries established by the Government should be applied automatically and without examination; in other words, without consideration of whether the listed country is in fact a safe third country for the person in a specific case.²²
37. The list of safe third countries adopted by the Government of Serbia is, in UNHCR’s view, excessively inclusive and broadly applied, and includes all neighbouring countries. The list includes Greece, which, according to the European Court of Human Rights,²³ has been found to be unable to provide effective international protection to refugees. In December 2009 UNHCR issued a position paper entitled “Observations on Greece as a country of asylum,”²⁴ advising Governments to refrain from returning asylum-seekers to Greece under the Dublin Regulation or otherwise. Serbia’s list of safe third countries also includes Turkey, even though Turkey maintains the geographical limitation on the 1951 Refugee Convention with regard to refugees originating from outside Europe. If asylum-seekers are to be returned to these countries, they run the genuine risk of finding themselves in limbo, without access to protection, and at possible risk of *refoulement*.
38. The Asylum Office applies the “safe third country concept” to all asylum-seekers who have transited through countries on the list, without ensuring adequate safeguards in the individual case, such as a guarantee of readmission and access to the asylum process in the so-called safe third country.
39. As per Articles 29, 30, and 31 of the Law on Asylum, an asylum application is denied if it has been established that the claim is unfounded or if there are statutory reasons for refusing asylum.²⁵ The Asylum Office is obliged to provide written justification for its decision. A foreigner whose asylum application has been rejected may lodge a new application if he/she provides evidence that the circumstances relevant for the recognition as a refugee, or for the granting of subsidiary protection, have substantially changed in the meantime (Article 32).

²² See, Administrative Court Ruling, 8 U 3815/11 7 July 2011, available at: <http://www.unhcr.rs/media/judgement8U381511formatted.pdf>.

²³ *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, available at: <http://www.unhcr.org/refworld/docid/4d39bc7f2.html>.

²⁴ UN High Commissioner for Refugees, *Observations on Greece as a country of asylum*, December 2009, available at: <http://www.unhcr.org/refworld/pdfid/4b4b3fc82.pdf>.

²⁵ Article 29: The Asylum Office shall issue a decision rejecting the asylum application of an alien if it has established that the claim is unfounded or that there are statutory reasons for denying the right to asylum. The decision referred to in paragraph 1 of this Article shall include a justification. Article 30: An asylum application shall be considered unfounded if it has been established that a person who filed the application does not meet the requirements prescribed for granting the right to refuge or subsidiary protection, and in particular: 1) if the asylum application is based on untruthful reasons, fraudulent data, forged identification papers or documents, unless the applicant can provide valid reasons for that; 2) if the statements given in the asylum application regarding facts of relevance to the decision on asylum contradict the statements made in an interview with the asylum seeker in question or other evidence gathered in the course of the procedure (if, contrary to the statements given in the application, it has been established in the course of the procedure that the asylum application was submitted for the purpose of postponing deportation, that the asylum seeker has come for purely economic reasons and the like); 3) if the asylum seeker refuses to make a statement regarding the reasons for seeking asylum or if his/her statement is unclear or does not contain information indicating persecution. Article 31: The right to asylum shall not be recognised to a person with respect to whom there are serious reasons to believe that: 1) he/she has committed a crime against peace, a war crime, or a crime against humanity, according to the provisions of international conventions adopted with a view to preventing such crimes; 2) he/she has committed a serious non-political crime outside the Republic of Serbia prior to entering its territory; 3) he/she is responsible for acts contrary to the purposes and principles of the United Nations. The right to asylum shall not be recognised to a person who enjoys protection or assistance from some of the institutions or agencies of the United Nations, other than UNHCR. The right to asylum shall not be recognised to a person to whom the competent authorities of the Republic of Serbia recognise the same rights and obligations as to the citizens of the Republic of Serbia.

40. On the basis of Article 33 of the Law on Asylum, the Asylum Office rejects an asylum application without examining the eligibility of an asylum-seeker's claim if the applicant: (i) has an internal flight alternative in the country of origin, (ii) is from a safe country of origin; (iii) already enjoys protection from another State or UN body other than UNHCR; (iv) has the citizenship of a third country; (v) arrived from a safe third country; (vi) had been denied asylum in another country which observes the Geneva Convention; or (vii) has deliberately destroyed a travel document or other documents which may be of relevance to the decision on asylum. In contrast, UNHCR would recommend an examination of the substance of the claim in all of the above instances.
41. The procedure for granting asylum is suspended *ex officio* if an asylum-seeker (i) abandons his/her asylum application; (ii) despite having received a duly served summons, fails to appear for a hearing or declines to make a statement, without providing a valid reason; (iii) without a valid reason, fails to notify the Asylum Office of a change of residential address within three days of the said change; (iv) if he/she prevents the service of a summons or another written official communication in some other way; or (v) leaves the Republic of Serbia without the approval of the Asylum Office.²⁶
42. The MoI has informed UNHCR that in 2011, not a single asylum application was reopened after the applicant left the Asylum Centre before the completion of the asylum procedure. This is confirmed by APC, a Serbian NGO providing free legal advice to asylum-seekers.
43. Several asylum-seekers, with support from UNHCR's legal assistance implementing partner, tried to reinstate their asylum claims ("*restitution in integrum*") after being deported back to Serbia from Hungary in 2011. However, none of these asylum-seekers were successful. Those who are returned from Hungary have no access to accommodation in Asylum Centres, and therefore are not able to re-register as asylum-seekers. The SCR denies accommodation to those who earlier left the Asylum Centres.

Between 1 January and 31 December 2011, 55 decisions (covering 87 asylum-seekers) were made, out of which 53 cases (85 individuals) were rejected on the basis of the "safe third country concept," and two cases were rejected on the merits of claim. From January to the end of June 2012, 29 decisions (covering 40 asylum-seekers) were made. They were all rejected on the basis of the "safe third country concept." No applicants were granted refugee status or subsidiary protection.

Recommendations:

- Appropriate mechanisms for the designation and review of safe third countries should be in place such as "benchmarks" and criteria that would trigger and inform such a review.
- The "safe third country concept" should be applied only when adequate safeguards are in place for every individual such as ensuring that he/she will be re-admitted to the territory of the safe third country and have the asylum claim examined in fair and efficient procedure;
- Serbia's list of safe third countries should be amended to include only countries where effective protection is available for asylum-seekers and refugees;
- Asylum-seekers who are returned to Serbia without having had access to a full and fair asylum system elsewhere should have their previous procedural rights and accommodation benefits reinstated.

²⁶ Law on Asylum, Article 34.

3.2. Second and Third Instance procedure and practice

44. An appeal against first-instance decisions of the Asylum Office may be lodged to the Asylum Commission (the second-instance body) within 15 days of the receipt of the decision.²⁷ According to the Law on General Administrative Procedures, the appeal has suspensive effect. The time limit for making a second-instance decision is 60 days from the day when the competent authority receives the appeal.
45. The Asylum Commission is comprised of nine members, each with a four-year term in office. It is ostensibly an independent governmental body. However, it uses the facilities of the Border Police Department, the Head of the Asylum Commission is also the Assistant to the Head of Directorate of Border Police, and the members of the Asylum Commission are police officers or other government agents, with no or limited specific training or expertise on asylum matters. All these factors present at best an appearance of lack of independence, and at worst risk compromising the impartiality and independence of the asylum appeals body.
46. The Asylum Commission, which makes its decisions by majority vote, has not overturned any negative decisions, which were based on the application of the “safe third country concept.” It should be noted the mandate for the members of the Asylum Commission expired on 17 April 2012. No new members have yet been appointed at the time of publication. At the time of this writing, the Serbian Government has explained that the delay in nominations should be quickly resolved now that the new Government has been nominated.
47. An asylum-seeker has the right to lodge an administrative appeal with the Administrative Court against the second-instance decision of the Asylum Commission.²⁸ The Administrative Court generally conducts its review based solely on errors of law, although the Court is entitled to re-examine the merits of the case as well.

Between 1 January and 31 December 2011, the second-instance Asylum Commission issued 35 decisions on appeals by asylum-seekers, and the third-instance Administrative Court issued 8 decisions. No negative decisions were overturned. From January to 17 April 2012, the Asylum Commission issued 10 decisions, and from January to the end of June 2012, the Administrative Court issued 2 decisions. No negative decisions were overturned.

Recommendations:

- In cooperation with UNHCR review the appeal system to make it fair and efficient;
- Ensure training of competent judges on relevant international standards pertaining to asylum refugee protection.

²⁷ Law on Asylum, Article 35.

²⁸ Law on General Administrative Procedure, “Official Gazette of the Federal Republic of Yugoslavia” No. 33/97, 31/01. English translation available at: http://www.mpravde.gov.rs/images/23_law_administrative_procedure.pdf.

4. Unaccompanied and separated children

48. According to the MoI, since 2008, 941 child asylum applicants were registered in Serbia, of which 567 were unaccompanied or separated. In the first six months of 2012, 176 unaccompanied and separated child asylum applicants were registered; a majority are 16 or 17 year-old Afghan males. Like most other asylum-seekers, they often leave Serbia before a first-instance decision is made. Based on the overall migration trends and increase in asylum-seekers in the region, it is possible that a number of unaccompanied or separated minors remain undetected and without institutional support while transiting through Serbia.

4.1. Identification and referral

49. Article 15 of the Law on Asylum establishes the principle of providing care for asylum-seekers with special needs, including children. It is welcomed that in most cases, when identified, unaccompanied and separated children are accorded this special care.

50. However, there are problems with the process of identification of unaccompanied children. The police typically identify and make initial contacts with unaccompanied children without the support of qualified civilian staff such as social workers or child welfare personnel. In addition, interpreters are rarely available at this point of initial contact. An additional serious concern is that there are no formal age assessment procedures. Very often it is only during the first interview with a free legal adviser and thanks to the presence of interpreters that the applicant has the opportunity to assert that he or she is a child.²⁹

51. Unaccompanied child asylum-seekers identified during their first contact with the police are referred to a local Centre for Social Work where a temporary custodian is appointed. Accompanied by the temporary custodian, the child is then transferred to the Centre for Accommodation of Underage Foreigners Unaccompanied by Parents or Custodians,³⁰ one of the units within the Institution for Education of Children and Adolescents, also known as the *Vasa Stajic* Centre in Belgrade.³¹ The *Vasa Stajic* Centre has the capacity to accommodate twelve children. Alternatively, asylum-seeking children may be taken to the Institution for Education of Children and Adolescents in Nis, which has an accommodation capacity of ten children. These institutions are able to accommodate only male children between seven and eighteen years of age. Separate *ad hoc* arrangements are made for unaccompanied female children, as necessary. In practice, however, despite these provisions, once a temporary guardian from the social welfare centre is appointed, both unaccompanied and separated children are transferred to the Asylum Centres.

52. The conditions at the Asylum Centres are not ideal for unaccompanied child asylum-seekers. While there are some activities organised for young children, there are no appropriate courses or programmes for school-age children or teenagers at the Asylum Centres. Neither accompanied nor unaccompanied children in the asylum process attend school.

²⁹ The majority of the accepted persons claim that they are aged 15 to 16. If these persons do not have personal documents to prove the claimed age, there are no other mechanisms to determine their biological age. Very often individuals who manifestly appear to be adults claim to be minors. .

³⁰ The Centre is a separate unit, founded according to the Decision on Social Protection Institution Network of the Government of the Republic of Serbia (Official Gazette RS, no. 51/08).

³¹ The Institution is partially funded by the Ministry of Labour and Social Policy and partially from the Vozdovac Municipality budget, i.e. the city of Belgrade. However, the resources were not allocated directly for accommodation of children asylum-seekers.

4.2. Reception

53. Unaccompanied asylum-seeking children often arrive in poor physical condition, most commonly with skin diseases.³² The Government asserts that it provides resources for the treatment of all uninsured patients, including asylum-seekers. During the initial reception phase, only basic medical examinations are performed. The expenses related to the purchase of medicines, medical examinations and treatments are ultimately covered, but no resources are specifically allocated by the Ministry of Health for these services.
54. Immediately after the initial reception phase, unaccompanied and separated children are informed about their rights and obligations during their stay in the institution. In case they express an intention to seek asylum, which most do immediately after admission to a reception facility, they are provided with an interpreter and given the possibility to consult with representatives of a non-governmental organization providing free legal assistance within the shortest possible time. The expenses of interpretation are covered by UNHCR.
55. After expressing the intention to apply for asylum, the unaccompanied and separated child asylum-seekers are taken to the police, specifically to the Department for Foreigners in Belgrade, where the employees of the Asylum Office implement all steps set out in the first-instance procedure. First the applicants are registered (the child is photographed and fingerprinted in the presence of the responsible adult); next they are issued identity cards, given the possibility to apply for asylum, and then interviewed. The law requires that the legal representatives, UNHCR, and the interpreter are present during the interview of unaccompanied and separated children. This rule is applied in practice.

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4.3. Guardianship

56. Although the legal framework makes provision for the appointment of guardians for unaccompanied and separated asylum-seeking children, there are a number of serious gaps in these arrangements. The first is that a child will have up to three different guardians during the asylum process. According to Article 16 of the Law on Asylum, a guardian must be appointed for an unaccompanied or separated child by the guardianship authority before the submission of an asylum application. After establishing first contact and identifying an unaccompanied child asylum-seeker, the border authorities or the police have to ensure that a temporary custodian is appointed. As described above, this is usually done in co-operation with the local Centre for Social Work. After the initial procedure and referral to either institution in Belgrade or in Nis, another temporary custodian is appointed. Finally, after referral to the Asylum Centre in Banja Koviljaca or Bogovadja, a third temporary custodian is appointed.
57. While legal representation and the presence of a custodian are secured throughout the asylum proceedings, these referrals from one custodian to another do not guarantee effective and quality guardianship for the child asylum-seekers and make it difficult, if not impossible, for a relationship of trust to develop between the child and the custodian. In addition, the guardians are not sufficiently trained to meet the needs of unaccompanied child asylum-seekers. In practice, guardians and social workers rarely visit children in the Asylum Centres beyond the first contact. Best practice in other jurisdictions point to the appointment of a single guardian throughout the asylum process.
58. The Government defends this chain of guardianship arrangements as needed since one single guardian could not ensure presence at all required locations.

³² "Underaged Asylum-seekers in Serbia: At the Verge of Dignity," Group 484, Belgrade, 2011, available at, <http://goo.gl/IY42H>.

4.4. Asylum procedures for unaccompanied child asylum-seekers

59. There is no separate asylum procedure for unaccompanied or separated child asylum-seekers. In 2011, Serbia recorded an increase in the number of unaccompanied and separated asylum-seeking children over previous years. In 2010, 76 unaccompanied and separated children expressed the intention to seek asylum in Serbia. In 2011, 257 unaccompanied and separated children expressed the intention to seek asylum. Due primarily to slow administrative processing and the delayed appointment of the legal representatives, unaccompanied and separated children in the first half of 2011 lodged only four asylum applications. From January to the end of June 2012, 176 unaccompanied and separated children expressed their intention to seek asylum, of which 8 lodged their claim and one interview was conducted.

Recommendations:

- Establish age determination procedures;
- Increase reception capacity for child asylum-seekers in specialised centres and ensure adequate arrangements for reception of female child asylum seekers are established;
- Adhere in practice to the principle of the best interest of the child in all phases of the asylum procedure;
- Ensure training of all relevant personnel involved in asylum procedure of child asylum-seekers in order to increase understanding of their needs and to secure adequate response;
- Secure effective guardianship, preferably with a single guardian throughout the asylum process;
- Secure a dedicated budget for all needed services relevant to the well-being of child asylum-seekers.

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children

5. Accommodation and other reception assistance for asylum-seekers

5.1. General situation

60. Until the final decision on an asylum application is made, asylum-seekers are to be provided with accommodation at one of the two existing Asylum Centres located in Banja Koviljaca and Bogovadja. The Centre in Banja Koviljaca is the original Centre; the Centre in Bogovadja opened in June 2011 in response to the growing number of asylum-seekers. However, it did not resolve the problem, as the capacities of the two Asylum Centres, currently at approximately 280 persons, is still not sufficient to accommodate all new asylum-seekers.
61. When the centres are full, SCR does not provide alternative accommodation or any assistance to asylum-seekers referred by the police to the Centres. Asylum-seekers pending admission arrange accommodation on their own and at their own expense by renting available rooms in the areas near the Asylum Centres. This practice is not in conformity with Article 39 of the Law on Asylum, which stipulates that asylum-seekers are entitled to accommodation.
62. While the Asylum Centre in Banja Koviljaca is an integrated institution within SCR, an employee of the SCR manages the Asylum Centre in Bogovadja under a temporary arrangement with the facility and staff belonging to the Serbian Red Cross. Both Centres are financed from the State budget. There are by-laws that regulate in detail all the issues concerning these Centres.³³
63. A person may be accommodated in the Centre provided he/she has been referred there by the responsible officials of the Mol upon expressing his/her intention to seek asylum in Serbia. Transport is provided only for unaccompanied child asylum-seekers. The majority of asylum-seekers know where the Centres are and travel on their own. According to the rules on accommodation conditions and the provision of basic living conditions in the Asylum Centre, referred individuals are admitted from 8:30 am to 4:30 pm during weekdays.
64. The Centres provide a bed with linen, access to bathrooms, heating, use of electricity and water, necessities for personal hygiene and hygiene of the facilities. As stipulated in the Law on Asylum, basic living conditions are provided along with the accommodation and these include: food (three meals a day and additional meals for persons with special health regime), clothes, and a small allowance. Further to this, limited additional facilities are available for asylum-seekers within the Centres (TV room and play room for children).
65. A medical examination is obligatory for asylum-seekers during their reception in the Asylum Centre, in accordance with the regulations of the Minister responsible for health issues. HIV/AIDS testing is not mandatory. During medical examinations, asylum-seekers are informed of the possibility for voluntary and confidential counselling and administration of tests for HIV/AIDS and syphilis.

³³ See, e.g., Rulebook on Medical Examinations of Persons Seeking Asylum upon Arrival to Asylum Centre, Official Gazette of RS, No. 93/2008; Rulebook on Housing Conditions and the Provision of Basic Living Conditions in the Asylum Centre, Official Gazette of RS, No. 31/2008; Rulebook on Social Assistance for the Persons Seeking or Having Been Granted Asylum, Official Gazette of RS, No. 44/2008; Rulebook on Method of Keeping Records and Contents on Persons Accommodated at the Asylum Centre, Official Gazette of RS, No. 31/2008; Rulebook on House Rules within the Asylum Centre, Official Gazette of RS, No. 31/2008, Rulebook on Medical Examinations of Persons Seeking Asylum upon Arrival to the Asylum Centre, Official Gazette of RS, No. 93/2008.

66. Medical care for asylum-seekers and refugees, except in the case of most serious emergencies, is not provided free of charge. There is no clear Ministry of Health instruction regarding the provision of health services to asylum-seekers and refugees. In the absence of the allocation of national financial resources to ensure such support to asylum-seekers, UNHCR, either directly or through its implementing partner, the Danish Refugee Council (“DRC”), provides basic health services to asylum-seekers in need who are accommodated in the Asylum Centres. This is based on the well-established close co-operation between DRC, UNHCR, the local primary health facilities, and the Ministry of Health. Necessary medicines and specialized medical devices, such as eyeglasses or crutches, as prescribed by local doctors, can be provided on an *ad hoc* basis to asylum-seekers through this UNHCR/DRC medical programme. However, resources are limited. As the Centres are located outside Belgrade, interpretation facilities to assist access to healthcare are also limited.
67. With respect to the conditions of accommodation, the principles of non-discrimination, family unity, gender equality and care for persons with special needs are respected. Although not mandated by law, separate accommodation is provided for single women. Asylum-seekers are obliged to respect house rules and cooperate with the relevant State officials.
68. Information leaflets in different languages are available explaining the rights and obligations of persons accommodated in the Centres. The Centres are open facilities and there are no restrictions concerning freedom of movement. Asylum-seekers may leave the area of the Centres; however, an absence for longer than 24 hours requires formal advance notice to the manager. In case an asylum-seeker who has not provided such advance notice does not return within 24 hours, he/she loses his/her place in the Asylum Centre.

5.2. Situation in the Asylum Centre in Banja Koviljaca

69. Banja Koviljaca is a town approximately 130 km from Belgrade (2.5 hour drive), near the border with Bosnia and Herzegovina. The town is under the administration of the municipality of Loznica. The Asylum Centre in Banja Koviljaca has capacity to accommodate 88 persons. There are three floors with rooms, which enable separate accommodation of single males, families and single women, with or without children. Each of the floors has two separate bathrooms with several shower cabins. There are several rooms in the main part of the building for social activities: a kindergarten, TV room and a small meeting room. UNHCR’s implementing partners regularly visit the facility and provide various psychosocial support services to asylum-seekers, including special programmes for children.
70. In the second half of 2011, an accommodation shortage led to tensions in Banja Koviljaca, with 100 to 200 asylum-seekers awaiting admission outside the Asylum Centre. These asylum-seekers were congregating in town awaiting accommodation and registration with the asylum authorities at the Asylum Centre. In addition to asylum-seekers, a substantial number of irregular migrants (those who neither applied for asylum nor had any intention of doing so) were also present in Banja Koviljaca. Police informed UNHCR that their number was around 800, whereas the media reported around 2,500.³⁴ In October 2011, after the alleged assault and rape of a female tourist in Banja Koviljaca involving a group of four migrants (none of whom were registered asylum-seekers), the local population organized public demonstrations demanding the relocation of the Asylum Centre. Currently, the presence of foreigners (asylum-seekers and migrants alike) not accommodated at the Asylum Centre has noticeably decreased. This could be attributed to increased police presence in town starting in early 2012.

³⁴ Cf. http://www.b92.net/eng/news/society-article.php?yyyy=2011&mm=11&dd=06&nav_id=77208; <http://www.smedia.rs/vesti/vest/79599/Banja-Koviljaca-Protest-Illegalni-imigranti-Azilanti-Banja-Koviljaca-odlazite.html>

5.3. Situation in the Asylum Centre in Bogovadja

71. The facility is located near the village of Bogovadja, some 70 kilometres southwest of Belgrade. It is an isolated location, situated in a forest two kilometres from the centre of village Bogovadja, twelve kilometres from the nearest town of Lajkovac, and four kilometres from the main road Belgrade-Cacak-Uzice. The population of Bogovadja is around 550 persons (212 households). There are no public transportation services between the facility and the village. The bus station is some 4 km away from the facility on the Cacak-Belgrade main highway where buses in both directions stop hourly.
72. The Serbian Red Cross premises that house the facility were previously used as a resort for children. The facility is comprised of three connected buildings for guests (accommodation, canteen with kitchen, classrooms, common recreation rooms, first aid ambulance, and offices) and two separate technical buildings (heating, warehouse, laundry and apartment for housekeeper). There are also four playgrounds, and it has the capacity to accommodate up to 200 persons.
73. There is an ambulance room with basic equipment for first aid in the facility. A visit by a medical doctor or nurse can be arranged if needed. There is an elementary health centre in the near-by village (two kilometres away), providing only basic medical services for adults. For specialized cares and examinations, there is a health centre in Lajkovac (twelve kilometres away).
74. UNHCR's implementing partners regularly visit the facility and provide various psychosocial support services to asylum-seekers, including special programmes for children.

Recommendations:

- In line with international and European standards, basic health services should be provided to asylum-seekers free of charge;
- Ensuring an adequate reception capacity for asylum-seekers is essential. The reception system needs to be flexible, in order to respond to fluctuations in the numbers of asylum applications and to the actual length of the asylum procedure;
- Enhance cooperation and coordination of all relevant state organs in the field of asylum and refugee protection.

6. Risk of deportation

75. The risk of deportation to countries of origin is relatively small for persons transferred to Serbia under readmission agreements. To UNHCR's knowledge, even though Serbia has readmission agreements with the European Community³⁵ and a number of bilateral agreements with EU and other States, foreign citizens are transferred to Serbia only from Hungary, Croatia and Bosnia and Herzegovina. Upon reception by the border police in Serbia on their return, third-country nationals are routinely taken to the local courts and sentenced for irregular border crossing with either a short term prison term (10 to 15 days) or a fine (usually equivalent of 50 Euros). They are usually issued an order to leave the territory of Serbia within three days, but this is not enforced. As there is no removal procedure in place, they are generally left to depart on their own, and many resume their journey towards Western Europe.
76. However, UNHCR received reports in November 2011 and again in February 2012 that migrants transferred from Hungary to Serbia were being put in buses and taken directly to the former Yugoslav Republic of Macedonia.³⁶ This coincides with reports in the local media in Serbia at that same time, that the police had destroyed makeshift camps near the Hungarian border on the outskirts of the Serbian city of Subotica. There have been other reports that the Serbian police have rounded up irregular migrants in Serbia and were similarly sent back to the former Yugoslav Republic of Macedonia. However, there are no reports that persons who have managed to apply for asylum in Serbia have been subject to such deportations.
77. UNHCR has not received information that unaccompanied children have been returned from Hungary. However, such returns do occur from Croatia. UNHCR was notified of one such return from Croatia and followed up on the case with the competent authorities in Serbia. The children in question were referred to the asylum procedure immediately upon transfer from Croatia. Later, however, they all left the Asylum Centre before having their asylum claims examined.
78. There is no reception assistance provided to persons transferred to Serbia under the readmission agreements. As stated above, they are immediately taken to local courts and sentenced for irregular border crossing. There is no system in place to distinguish asylum-seekers from other types of migrants, or to guarantee access to the asylum procedure for persons who might have tried to access the asylum procedure outside Serbia, or whose asylum applications were denied on the basis of Serbia being a safe third country. UNHCR is not able to systematically monitor these returns, and cannot assess what happens to these individuals upon return to Serbia.

Risk of
deportation

Recommendations:

- Third country nationals returned under readmission agreements should be given full access to the Serbian asylum procedure, particularly when there is reason to believe that access to a full and substantive procedure had been denied elsewhere, e.g. in application of safe third country considerations.

³⁵ European Union, *Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorization*, 18 September 2007, <http://www.unhcr.org/refworld/docid/47dfb110.html>.

³⁶ UNHCR in Skopje visited a group of deportees from Serbia who stated that after being returned from Hungary, they were transported through Serbia in buses, and ordered to cross into the territory of the former Yugoslav Republic of Macedonia in an irregular manner.

Conclusion

79. UNHCR has worked closely and intensively with the Serbian asylum authorities both before and after Serbia assumed responsibility for the conduct of the asylum procedure in April 2008. Despite some incremental improvements notably with regard to reception standards, Serbia's asylum system has been unable to cope with the recent increases in the numbers of asylum applicants. This has exposed significant shortcomings in numbers of personnel, expertise, infrastructure, implementation of the legislation and government support. The increase in the number of asylum-seekers has also brought to light shortcomings in the structural relationship between the Asylum Office managed by the Mol, and the Asylum Centres, managed independently by the SCR; at the time of this writing, the capacity (available bed space) in the Asylum Centres remains linked to accessing the asylum procedure. The current system is manifestly not capable of processing the increasing numbers of asylum-seekers in a manner consistent with international and EU norms. These shortcomings, viewed in combination with the fact that there has not been a single recognition of refugee status since April 2008, strongly suggest that the asylum system as a whole is not adequately recognizing those in need of international protection.
80. There is a need to set up a fair and efficient asylum procedure that is not only consistent with the existing legislative framework, but is also capable of adequately processing the claims of the increasing number of asylum-seekers in a manner consistent with international standards. This would require greater investment of resources by the government, continued and dedicated engagement with UNHCR and other relevant international actors, particularly concerning the asylum procedure, and deepened coordination among the respective ministries.
81. Until such a system is fully established in Serbia, for the reasons stated above, UNHCR recommends that Serbia not be considered a safe third country of asylum, and that countries therefore refrain from sending asylum-seekers back to Serbia on this basis.