

AN NGO PERSPECTIVE ON THE STATE OF ASYLUM IN THE REGION OF SOUTHEASTERN EUROPE



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IN THE REGION OF SOUTHEASTERN EUROPE

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An NGO Perspective on the
State of Asylum in the Region
of Southeastern Europe

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Introduction

The regional approach to asylum issues was firstly initiated by the United Nations High Commissioner for Refugees (UNHCR) and the International Organisation for Migration (IOM) who organised the round table *Refugee Protection and International Migration in the Western Balkans: Suggestions for a Comprehensive Regional Approach* (on 10–11 December 2013 in Vienna) aiming at assisting the countries of the Western Balkans in building protection sensitive systems. The representatives of Western Balkan countries¹ participated in the round table and one of the main points made by the government participants was a strong call for a more active engagement of NGOs and closer cooperation with them. In order to keep pace with this trend of intergovernmental regional cooperation and in order to enhance the cooperation with stakeholders at the regional level, in February 2014, UNHCR's implementing partners and other relevant NGOs in Southeastern Europe signed the Skopje Declaration. The Declaration envisages numerous common activities including the exchange of information, and other relevant reports and publications. The report *An NGO Perspective on the State of Asylum in the Region of Southeastern Europe*² was written as a joint endeavour of a number of signatories based on the Skopje Declaration. The report will provide UNHCR's implementing partners, other NGOs, national stakeholders as well as international organisations with facts on the asylum systems in nine Southeastern European countries and observations on their functioning in practice. The report is meant to be used as an advocacy tool for achieving systematic improvements of asylum systems.

This report portrays the asylum systems in Albania, Bosnia and Herzegovina, Croatia, Greece, Kosovo, Macedonia, Montenegro, Serbia and Slovenia. All country reports are written by UNHCR's implementing partners in respective countries and include an overview of the legislative framework and data on its implementation in practice, as well as personal views and conclusions made by the authors. The views expressed in this report should in no way be perceived as the views of the UNHCR. The report covers the period from January 2013 until June 2014 and all statistics are related to this period of time, except the report on the asylum system in Greece which covers the period from June 2013 until May 2014. Country reports were written by the Refugee and Migrant Service in Albania, *Vaša prava BiH* from Bosnia and Herzegovina, the Croatian Law Centre, the Civil Rights Program Kosovo, the Legal Centre from Montenegro, the Macedonian Young Lawyers Association, the Greek Council for Refugees, the Belgrade Centre for Human Rights from Serbia and the Legal Informational Centre for Non-governmental Organisations from Slovenia.

Given its extensive reporting experience, the Belgrade Centre for Human Rights (BCHR) took the responsibility to compile and edit the final report. The BCHR created a report template based on the format adopted by "Asylum Information Database (AIDA)"³ that was used for the production of all country reports. The same format should ensure that all country reports are comparable with AIDA reports.

The BCHR, as a publisher of this report, is not responsible for the preciseness, credibility and coherence of each country report since they present the authentic piece of work of other organisations. Hence, single country reports may differ in their style and in the amount of provided information.

This is the first report of that kind, and the BCHR hopes that, in future, reports focusing on particular relevant asylum issues in the region of Southeastern Europe will be produced on a yearly basis.

Lena Petrović, Editor

Belgrade, November 2014

1 Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia; see more at: <http://www.refworld.org/docid/531ec2104.html>.

2 For the purpose of this report, Southeastern Europe includes the following countries: Albania, Bosnia and Herzegovina, Croatia, Greece, Macedonia (the name Former Yugoslav Republic of Macedonia, often abbreviated as FYROM, is used by international organisations and states which do not recognise translations of the constitutional name Republic of Macedonia), Kosovo (this designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo declaration of independence), Montenegro, Serbia and Slovenia.

3 The Asylum Information Database (AIDA) is a project of the European Council on Refugees and Exiles (ECRE), in partnership with Forum *Refugiés-Cosi*, the Hungarian Helsinki Committee and the Irish Refugee Council. The overall goal of the project is to contribute to the improvement of asylum policies and practices in Europe and the situation of asylum seekers by providing all relevant actors with appropriate tools and information to support their advocacy and litigation efforts, both at the national and European level. See more at: <http://www.asylumineurope.org/>.

Albania



Refugee and Migrant Services in Albania Shërbimet Shqiptare për Refugjate dhe Migrante

Authors: Mariana Hereni, Executive Director and Andi Pipero, Legal Representative, Refugee and Migrant Services in Albania

Abbreviations:

BCP – Border Checking Point
COI – County of Origin Information
DfR, now DfNR – Directory for Refugees
DfNR – Directory for Nationalities and Refugees
IOM – International Organisation for Migration
MoLSA – Ministry of Labour and Social Affairs
MoPO, now MIA – Ministry of Public Order (Ministry of Internal Affairs)
NRC – National Reception Centre
RMSA – Refugee and Migrant Services in Albania

*Statistics*⁴

Asylum seekers: 281 (2013 – 230; 1 January – 30 June 2014 – 51)
Ethnic Breakdown: Congo 5, Eritrea 9, Iran 244, Kosovo 5, Mali 1, Pakistan 1, Senegal 1, Somalia 3, Syria 12
Male asylum seekers: 168
Female asylum seekers: 113
Unaccompanied minors: None
Submitted asylum applications: 264
Conducted interviews: N/A
First-instance decisions: 15
Refugee status: 10
Subsidiary protection: 2
Other protection: None
Rejections in merit: 0
Refusal: 3
Otherwise closed cases/discontinued: N/A
Second-instance decisions: 2
Positive second-instance decisions: N/A
Positive second-instance decisions on the merits: N/A
Negative second-instance decisions (refusal, rejection): 2
Third-instance decisions: None
Positive third-instance decisions: None
Negative third-instance decisions: None

⁴ All data are obtained from RMSA database.

Overview of the legal framework

The Law on Asylum of 14 December 1998 no. 8432 has been in force since 1998 and was updated with some alterations with the Law no. 10060 of 26 January 2009.⁵ On 3 July 2003, the Law on Integration and Family Unification of Persons Granted Asylum in the Republic of Albania no. 9098 was adopted. These laws are in line with the EU legislation, the Geneva Convention of 1951 and its Protocol of 1967; however, bylaws are necessary to fill in the gaps in the integration process. In June 2014, the Government prepared a new draft law merging the two laws in the new one. UNHCR, together with RMSA, made some remarks on the new draft law and the Government assured that these remarks would be considered and reflected in the new draft law.

Several Decisions of the Council of Ministers are relevant to the field of refugees in relation to the registration of refugees in the national civil register, the defining of safe third countries with the Decision of the Council of Ministers no. 1260 of 23 December 2009, as well as one Decision of the Ministry of Internal Affairs of 1 October 2009 on the pre-screening made by the Border and Migration Police.

Asylum procedure

Short overview of the general asylum procedure including all phases of the procedure and the authorities responsible in all instances (number of staff and nature of the institutions)

The asylum procedure in Albania is an administrative procedure applied under the Law on Asylum in Albania and the Law on Administrative Procedure. The Law and the administrative instructions contain a number of special procedural rules which regulate the asylum procedures from the moment of entry of foreign nationals or stateless persons in the Albanian territory, until they are granted or refused the status.

The Albanian Law prescribes one level of Administrative Procedures, whereby the first instance decision is taken by the relevant administrative body Directorate of Nationalities and Refugees in the Ministry of Internal Affairs which is not part of the Police Department but of the civil department dealing with asylum seekers, refugees and citizenship within MIA. A decision is to be taken by the majority of five members of the Office. A UNHCR official has the right to be present during the interviews, and to give their opinion on the case in a written format in cases when it is requested. While the court procedures start with a lawsuit, remedy is prescribed through the judicial review pursuant to the Law on Administrative Procedures.⁶

Responsible authorities:

- Directorate for Nationalities and Refugees (DfNR) is responsible for decision-making in the first instance on request for asylum;
- the competent administrative court, in accordance with the Law on Administrative Courts, is responsible for the examination of administrative decisions (first instance court proceedings);
- Administrative Court of Appeal (second instance court proceedings);
- High Court of Justice, in rare cases (third instance court proceedings).

Access to the procedure⁷

The Albanian law provides that an asylum request can be made before all the relevant offices of the state.

Generally, an asylum seeker fills in a *pre-screening form* at the Border and Migration Police at the moment of entry into the territory at a border crossing point, at a police station or at DfNR. Pre-screening is the stage that channels the irregular flows to three different systems; asylum, anti-trafficking and economic irregular migration. The pre-procedure of the asylum system is more than prevention of the access to asylum procedures.⁸ In the Order of the Ministry of 1 October 2009, it is prescribed that all the pre-screening interviews should be done at the regional Border and Migration Police. In the pre-screening form, there are some

5 The Law on Asylum of 14 December 1998, no. 8432 changed with the Law no. 10060 of 26 January 2009.

6 The Law no. 49/2012 on Administrative Procedures.

7 Articles 21, 27, 28, 28 (1) of the Law no. 10060 of 26 January 2009.

8 In order to assist the Albanian Government to effectively manage mixed migration flows, a *three-pronged approach* was developed, drawing upon the expert involvement of a number of organisations according to their respective mandates and capacities. The *three-pronged approach* aims to respond to the different needs of each category of migrants and is rooted in a comprehensive strategy on migration and asylum, composed of three interrelated, although independent, systems responding

general data required and three main questions which the potential asylum seeker should answer: “1. Do you wish to apply for asylum in Albania?; 2. Do you wish to return to your country of origin?; 3. Do you opt for IOM assistance in return?”.

As per the pre-screening instruction, interpretation should be provided upon arrival and prior to the interview. In practice, such service is very rarely offered or ensured, and most of the time it is performed by the interviewing police officers themselves. If a person seeks asylum, and fills in the line that they request asylum in Albania, then the Border Police inform the Directorate for Refugees and Nationalities and accompany them to the Reception Centre for Asylum Seekers. If a person is an irregular migrant, then they are accompanied to the closed centre for irregular migrants. Having completed the documents obtained from the border police officials and prior to receiving accommodation, asylum seekers are interviewed by the competent body (DfNR) and they submit asylum applications as soon as possible. The deadline of 51 days for the first instance procedure starts at the moment of filling in the application form.

First instance procedure, initiation of the procedure, submission of asylum application, personal interview, decision, access to information related to the possibility to seek asylum and to free legal aid, access to NGOs and UNHCR

The duration of the asylum procedure in the first instance is, as a general rule, 51 days since the day the asylum application has been submitted.

The interview is conducted in the presence of the asylum seeker, the lawyer who represents their case, an interpreter and a specialist from the Directorate for Refugees. The specialist of the Directorate for Refugees leads the process. A UNHCR representative may also be present at the hearing session. At the Reception Centre, the asylum seekers have internet access and they can ask the Centre staff for legal information. In case that the decision has not been reached within 51 days, if the decision is a positive one allowing the refugee status nothing happens. In case the decision is negative, then the decision is appealed before the court. Failing to respect the deadlines prescribed by the Law is one of the most important issues.

The Directorate for Nationalities and Refugees, as a competent body, takes the decisions as follows:

- recognises asylum;
- rejects the asylum request, and recognises subsidiary protection;
- rejects the asylum request;
- stops the asylum procedure.

A written decision is to be prepared by DfNR and in cases when the asylum request is refused, factual and legal reasons have to be presented in the respective decision as well as the information on legal remedy (right to appeal).

DfNR may take a decision under accelerated procedure in accordance with the basic principles and guarantees of the first instance procedure, relating to cases when a negative decision is taken pursuant to the criteria prescribed by the Law.

DfNR will reject the asylum request which is considered unfounded under accelerated procedure in accordance with the procedural guarantees which are prescribed by the Law.

DfNR will reject the asylum request in cases when:

- the asylum seeker does not meet the criteria for a refugee status as set out in the definition of a refugee, or for subsidiary protection as set out in the definition of subsidiary protection;
- in cases where it is considered that the asylum seeker does not have the right to protection according to the Law.

Second instance procedure⁹

In all cases where an asylum seeker, a person with the refugee status, a person under subsidiary protection or a person under temporary protection¹⁰ is dissatisfied with the decision on their status, they have

to the needs of refugees/asylum-seekers, economic migrants and victims of human trafficking respectively. The cornerstone of the *three-pronged approach* became the *pre-screening* of irregular migrants.

⁹ The Law no. 49/2012 on Administrative Procedures, Articles 11, 17, 18, 23, 40.

¹⁰ Article 1/1 point 9, Law on Asylum, “Temporary protection” is a special procedure of protection that ensures immediate protection and temporary protection to displaced persons by other countries, in case of mass influxes, who cannot be returned

the right to lodge an appeal at the Regional Administrative Court against a DfNR decision. The deadline for lodging an appeal against this decision is 45 days from the day of the notification of the decision, except in cases determined otherwise by this Law.

Therefore, the grounds for appeal are as follows:

- violation of the provisions of procedural law;
- violation of the provisions of material law;
- inaccurate or incomplete ascertaining of the factual situation;
- new substantial facts in support of the request.

The Administrative dispute before the Court begins with a lawsuit in the Administrative Court, which has a suspensive effect.

Third instance procedure

Second instance of the administrative dispute is the Administrative Court of Appeal and in rare cases the High Court of Justice.

The court can give such decisions:

- it approves the first instance decision;
- it annuls the first instance decision and returns it for examination at the first instance;
- it changes the first instance decision on the basis of the same evidence.

As a general rule, the Administrative Court reaches the decisions within two months of the registration of the lawsuit.

Special procedures (e.g. at the border/airport, admissibility procedure)

No special procedure is prescribed.

Guarantees for vulnerable groups

Asylum seekers, refugees, persons under subsidiary protection or persons under temporary protection with special needs will be given special treatment in accordance to their specific needs in terms of accommodation, provision of special standards for admission, necessary medical treatment.

Safe third country concept

Asylum could be denied to any foreigner that comes from a safe third country, party of the 1951 Refugee Convention or its 1967 Protocol, a country in which the asylum seeker cannot claim a well-founded fear of persecution, for at least one of the reasons stipulated in the Article 1(A) of the Geneva Convention, neither any violation of fundamental human rights or risk of expulsion; as per the provisions of this Law, and in case they can return to such country their asylum application will be reviewed in accordance to international standards. A list of these safe third countries is approved and updated regularly for this purpose only by the Council of Ministers Decision.¹¹ In a Decision of the Council of Ministers¹² a list of the safe third countries, including Greece, was created. If a person has the nationality of a considered safe third country, then a decision in an accelerated procedure is taken by the Directorate for Refugees denying them the refugee status. There are bilateral agreements between the respective countries and Albania. In case asylum seekers are found with a non-founded claim for asylum, they are returned either to their country of origin or to the country which they entered in Albania from.

to their country of origin, especially if there is a risk that the asylum system is incapable to proceed with such influx, without unfavorable effects in its effective development, on the interest of concerned persons and other persons in need of protection.

Article 1/1 point 12, of the Law on Asylum, "Complementary form of protection" is the protection form, that is granted to the foreigner who, although does not fulfill the criteria to be a refugee as stipulated under this Article of the Law, will not be subject to any expulsion order issued by the respective authorities in the Republic of Albania, taken into consideration the adequate provisions expressed in the European Convention "On the protection of fundamental human rights and freedoms" of 1950, in the Conventions of the United Nations against torture, on the civil and political rights and any other international legal instrument that the Republic of Albania is party to".

11 Article 28 (1) of the Law on Asylum.

12 Decision of the Council of Ministers no. 1260 of 23 December 2009.

Is there a breach of non-refoulement in practice?

During 2014, there were some statements of asylum seekers and irregular migrants who claimed that they were turned back by the Border and Migration Police to the border of neighbouring countries.

Treatment of specific nationalities

The Government of Albania has made a special agreement with the Government of the USA and UNHCR to offer shelter and humanitarian status to 240 Iranian citizens coming from the liberty camp in Bagdad, Iraq.

Treatment of unaccompanied minors

According to the Law on Asylum, unaccompanied minor asylum seekers will be assigned a legal guardian by the court. Anyhow, such practice does not exist on this issue.

Conclusion

- The number of asylum seekers is lower compared to other countries in the region;
- legal framework is in place;
- RSD procedures and mechanisms provided for by Law;
- treatment of asylum seekers is fair and in line with international standards;
- reception facility is in place;
- documentation of asylum seekers and refugees is a problem, no travel documents and ID cards have been issued since 2012;
- Albania is a transit country for asylum seekers.

Reception conditions

The reception of asylum seekers is managed through the National Asylum Seeker's Centre. The Centre is located only six kilometres away from the centre of Tirana, and it provides housing and other necessary living and recreation conditions for up to 150 asylum seekers. The new Asylum Seekers Centre is envisaged to provide housing and other necessary living and recreational conditions for maximum 150 asylum seekers. The Ministry of Internal Affairs has ruled the Centre since 2004 when it was handed over by the UNHCR office in Tirana.

The Centre has a full-fledged kitchen and provides hot meals through the joint dining facility. In addition, all rooms are equipped with basic cooking and hygiene facilities. The Administrative part of the Centre has necessary facilities and premises envisaged for different activities such as RSD interview room, counselling room as well as rooms envisaged for civil society.

Detention of asylum seekers

The practice of the detention of asylum applicants has only been registered in cases where detention was necessary for persons who entered the country illegally without requiring international protection, and for the possession of false documents. There was a case recorded in 2013 of an applicant being detained and held at a police detention centre due to illegal entry. At the beginning, he was treated according to the provisions of the Law on Aliens. While in the early stages of the proceedings, the applicant submitted an asylum application, the procedure was halted by the Law on Aliens and the asylum applicant automatically entered the asylum procedure and further treatment continued under the procedures of the Law on Asylum.

The detainees were adults, and they did not fall under specific categories as minors, unaccompanied minors or women.

Xenophobia and racism as a danger for asylum seekers

So far, there have been no cases which could indicate xenophobia against foreigners/asylum seekers in Albania.

Also, there have been no cases of incidents which involved asylum seekers/foreigners in Albania. The Centre for Asylum Seekers is located in the suburbs of Tirana, where local population has accepted them well. Furthermore, the persons who come from Iraq under the special agreement with the Government of Albania reside in 70 apartments in the outskirts of Tirana and they have never faced any problems with the neighbours.

Overall conclusion

The general conclusion is that the system is functional. Certain gaps exist mainly in the past procedures, in the integration process of persons granted asylum and the family unification of such persons. The practice in this area is poor and there is a lack of procedures, institutions and funds. In addition, the documentation of refugees and asylum seekers poses another problem. The Government does not issue any documents to these persons except the residence permit, due to the problems with the company that produces machine readable documents for these categories. There is a lack of staff in state offices; there are only five persons in the Ministry of Internal Affairs who deal with all matters related to asylum seekers and refugees. They need more experience and training in decision-making processes and finding necessary information on COI etc.

Bosnia and Herzegovina



Author: Vaša prava BiH

Abbreviations:

BiH – Bosnia and Herzegovina

CESI – Centre for Refugee and IDP Studies

ZKSBA – Law on Movement and Residence of Foreigners and Asylum

MoS – Ministry of Security

SFFA – Service for Foreigners Affairs

*Statistics*¹³

Asylum seekers: 108 (2013 – 85, 1 January – 30 June 2014 – 23)

Ethnic breakdown: Afghanistan 14, Algeria 9, Armenia 1, Cameroon 1, Democratic Republic of the Congo 1, Ethiopia 1, Hungary 1, Iran 1, Iraq 6, Moldova 3, Morocco 1, Nigeria 1, Pakistan 2, Palestine 1, Serbia 4, Somalia 3, Sri Lanka 1, Syria 56, Tunisia 1

Male asylum seekers: 67

Female asylum seekers: 29

Unaccompanied minors: 12

Submitted asylum applications: 96

Conducted interviews: 45

First instance decisions: 45

Refugee status: 5

Subsidiary protection: 15

Other protection: 0

Rejections in merit: 17

Refusal: 0

Otherwise closed cases/discontinued: 8

Second instance decisions: 9

Positive second instance decisions: 3

Positive second instance decisions on the merits: 0

Negative second instance decisions (refusal, rejection): 6

Third instance decisions: 1

Positive third instance decisions: 0

Negative third instance decisions: 1

Overview of legal framework

The list of laws and regulations related to the asylum system:

- Law on Movement and Residence of Foreigners and Asylum (ZKSBA) ¹⁴
- Rulebook on International Protection (Asylum) in Bosnia and Herzegovina¹⁵

¹³ Statistics only relate to the beneficiaries of NGO *Vaša prava BiH*.

¹⁴ *Official Gazette of BiH* no. 36/08 and 87/12.

¹⁵ *Official Gazette of BiH* no. 37/09, 85/10 and 63/13.

- Rulebook on Standards of Functioning and Other Issues Significant for Asylum Centre Functioning¹⁶
- Rulebook on Manner of Operation, Functioning and House Rules in Refugee-Reception Centre Salakovac in Mostar¹⁷
- Rulebook on Standards of Functioning and Other Issues Significant for the Work of Immigration Centre¹⁸
- Rulebook on the Manner of Realisation of Rights to Education for Persons with Recognised International Protection Status in BiH¹⁹
- Rulebook on the Manner of Realisation of Right to Social Protection of Persons with Recognised International Protection Status in BiH²⁰
- Rulebook on the Manner of Realisation of Right to Work for Persons with Recognised International Protection Status in BiH²¹
- Rulebook on Personal Status and Registration in Birth Registers, Weddings and Deaths of Persons with Recognised International Protection Status in BiH²²
- Rulebook on Appearance and Content of the Request for Issuance of Travel Document for Refugees, Travel Documents for Persons without Nationality and Travel Documents for Foreigners²³
- Rulebook on Identity Document for Persons with Recognised International Protection Status in BiH²⁴
- Rulebook on Travel Document for Persons without Nationality²⁵
- Rulebook on Travel Document for Refugees²⁶
- Decision on Determination of Justified Reasons of Humanitarian Nature for Approval of Temporary Stay of Citizens of Syrian Arab Republic²⁷
- Decision on Determination of Justified Reasons of Humanitarian Nature for Extension of Temporary Stay of Citizens of Syrian Arab Republic²⁸

Asylum procedure

Short overview of the general asylum procedure including all phases of the procedure and the authorities responsible in all instances (number of staff and nature of the institutions)

The asylum procedure is an administrative procedure applied under the Law on Movement and Residence of Foreigners and Asylum and the Law on Administrative Procedure, unless otherwise provided by ZKSBA. The Law and the relevant bylaws contain a number of special procedural rules which regulate the asylum procedures from the moment of entry of foreign nationals or stateless persons in the BiH territory, until they are granted or declined the status.

Authorities responsible in all instances are the following:

- Asylum Department of the Ministry of Security (responsible for decision-making on request for asylum in the first instance);
- Court of BiH – Council for Administrative Disputes (responsible for the examination of administrative decisions – first instance court proceedings);
- Court of BiH – Appeal Panel (deciding on extraordinary legal remedies).

16 *Official Gazette of BiH* no. 86/09.

17 *Official Gazette of BiH* no. 6/14.

18 *Official Gazette of BiH* no. 105/08.

19 *Official Gazette of BiH* no. 67/08.

20 *Official Gazette of BiH* no. 3/09 and 5/10.

21 *Official Gazette of BiH* no. 83/08.

22 *Official Gazette of BiH* no. 54/10.

23 *Official Gazette of BiH* no. 78/09.

24 *Official Gazette of BiH* no. 80/09.

25 *Official Gazette of BiH* no. 80/90.

26 *Official Gazette of BiH* no. 80/90.

27 *Official Gazette of BiH* no. 8/13.

28 *Official Gazette of BiH* no. 64/14.

Access to the procedure

A foreigner present in the territory of BiH may express their intention to file an application for international protection to the Border Police or a Field Office of the Service for Foreigners Affairs²⁹ (SFFA). If a foreigner expresses their intention to apply for international protection at a border crossing point in Bosnia and Herzegovina, the Border Police is obliged to inform, without delay, the nearest Field Office of SFFA which then takes jurisdiction over the foreigner.³⁰ If a foreigner states the reasons indicating the necessity to apply the principle of *non-refoulement*, the authority to which they have given such a statement must inform, without delay, the relevant Field Office of SFFA, which then takes jurisdiction over them.³¹ When a foreigner has expressed their intention to apply for international protection, the Field Office of SFFA issues them a confirmation of the expressed intention which is valid for seven days maximum. Wherever the intent is expressed in BiH, the local police authorities will direct the asylum seeker to the closest Field Office of SFFA. The confirmation is regarded as leave to stay in the country for a specified period of time, within a designated movement area.³² The Field Office of SFFA will first fax and then send by registered mail to the Asylum Department of the Ministry of Security (MoS) a copy of the confirmation of expressed intention, together with photocopies of the personal documents that the foreigner turned up with.³³ The asylum application has to be submitted personally at the offices of MoS in Sarajevo, within seven days from being granted the confirmation of the expressed intention.³⁴ However, in practice, after the asylum seeker expresses their intention to apply for international protection with SFFA, they are directed to MoS (Asylum Department) with the confirmation of the intention. They are informed, through a legal representative, that the registration will be conducted in the Asylum Centre, where their asylum application is also taken, (usually within seven days), after the interpreter is secured.

First instance procedure, initiation of the procedure, submission of asylum application, personal interview, decision, access to information related to the possibility to seek asylum and to free legal aid, access to NGOs and UNHCR

In practice, the asylum application is filed in writing while, at the same time, the registration is scheduled by having the asylum seeker, through an interpreter, give information to an official of MoS who fills in the application for the asylum seeker. After an asylum application has been submitted, an asylum officer of the Asylum Department of MoS registers the asylum seeker. The registration form must be filled in for all adult asylum seekers. Following the registration procedure, an asylum seeker card is issued to the asylum applicant and the nucleus family members accompanying them. The asylum seeker card is valid for three months and is regarded as leave to stay in BiH pending a final or enforceable determination of the asylum application. The asylum seeker card may be extended beyond the expiration date until an enforceable or final decision on the asylum application is taken. The validity period of an asylum seeker card is extended by the Field Office of SFFA, with the approval of the Asylum Department of MoS. An asylum seeker must apply for extension of an asylum seeker card no later than 15 days prior to the expiration date.³⁵

Following the registration process, an interview of an asylum seeker is scheduled by the relevant determining authority. The Law does not expressly provide for the deadline within which the interview has to be conducted, except that it has to be done “without delay”; in practice, this can take several months, depending on the number of applications as the same time. An interview is an oral hearing conducted to establish properly the facts of the case and, as a rule, pursuant to the provisions of the Administrative Procedure Act, a notification of an interview is sent to the asylum seeker or their legal representative at least eight days prior to the date of the interview.³⁶

Under ZKSBA, asylum seekers in BiH may use the services of legal counselling in an asylum procedure.³⁷ Asylum seekers exercise the right to free legal aid from the moment of the expression of their intention

29 The Service for Foreigners Affairs is an administrative department within the Ministry of Security

30 Article 107 (1) of the ZKSBA.

31 Article 107 (2) of the ZKSBA.

32 Article 107 (3) of the ZKSBA.

33 Article 107 (4) of the ZKSBA.

34 Article 107 (5) of the ZKSBA.

35 Article 107 (5) of the ZKSBA.

36 Article 143 (2) of the Administrative Procedure Act.

37 Article 109 (3) of the ZKSBA.

to apply for international protection, and from that moment, MoS, the Border Police and SFFA have a legal obligation to inform asylum seekers of this right. Free legal aid means, *inter alia*, giving information about the rights and responsibilities of the beneficiaries of free legal aid services, providing legal advice, writing various submissions, legal representation of beneficiaries of free legal aid services in all administrative, civil and other proceedings conducted before all state institutions, courts and international bodies, as well as providing other forms of legal assistance. Free legal aid is provided, with the financial support of UNHCR by NGOs specialised in providing free legal aid, Association *Vaša prava BiH*, which has been providing free legal aid to such categories since 2004, and *Foundation of Local Democracy* NGO, since 2010.

Most asylum seekers do not speak the languages in official use in BiH. An asylum seeker has the right to follow the proceedings through an interpreter or a sign language interpreter³⁸ who will be provided by MoS. It is interesting that the Law prescribes in Article 12, paragraph 2, that summons, decisions and other submissions shall be submitted in one of the languages in official use in BiH.³⁹ However, the Court of BiH ruled that in situations in which an asylum seeker does not have an agent under a power of attorney who speaks and understands the languages in official use in BiH, while the party cannot speak or understand those languages, summons and other communications have to be submitted in a language understandable to the applicant, and the failure to do so constitutes a violation of the fundamental principles in an administrative proceeding.⁴⁰ Still, the summons and other communications are still delivered to asylum seekers only in local languages.

After the asylum procedure is completed, the Asylum Department of MoS establishes whether an asylum seeker meets the qualifications for refugee or subsidiary protection status and whether it is necessary to provide protection to the asylum seeker in case their asylum application is rejected, or whether there are reasons warranting the benefit of the principle of *non-refoulement*. Accordingly, MoS may issue the following decisions: 1) a decision to approve the asylum application and to recognise a refugee status; 2) a decision to approve the asylum application and to recognise subsidiary protection status; 3) a decision to reject the asylum application, setting a deadline for voluntary departure from BiH; 4) a decision to reject the asylum application and determine that the foreigner cannot be removed from BiH since that would violate the principle of *non-refoulement*; 5) a conclusion to discontinue the asylum procedure, setting a deadline for voluntary departure from BiH and 6) a conclusion to dismiss the asylum application, setting a deadline for voluntary departure from BiH.⁴¹

Second instance procedure

A decision on the well-foundedness of an application for international protection issued by the Asylum Department of MoS is unappealable, although an applicant who is seeking international protection may challenge the decision by filing an administrative lawsuit with the Court of Bosnia and Herzegovina – Council for Administrative Disputes.⁴² A deadline for filing a lawsuit in the Court of Bosnia and Herzegovina is 60 days and in some situations it can be 30 days (if the application was rejected for clear lack of credibility and similar).⁴³ The appeal has automatic suspensive effect.

Third instance procedure

If the decision of the Court should be negative, the asylum seeker has the option of filing a request for reconsideration of the judgment (extraordinary legal remedy) before the Appeals Panel of the Court of Bosnia and Herzegovina, within 30 days from receiving the negative decision. This remedy does not have a suspensive effect. In case the asylum seeker uses this remedy, their simultaneous appeal to the Constitutional Court will be rejected as premature.⁴⁴

After the applicant seeking international protection in BiH had their complaint against a determination of the MoS rejected by the Court of BiH, a litigant who is not satisfied with a ruling in the case may file an appeal to the Constitutional Court of BiH, within 60 days of service of the court ruling.⁴⁵

38 Article 109 (3) of the ZKSBA.

39 Article 12 (2) of the ZKSBA.

40 Decision of the Appellate Division, the Court of BiH, no. S1 3 U 007440 11 Uvp, 10 November 2011.

41 Article 116 of the ZKSBA.

42 Article 109 (7) of the ZKSBA.

43 Articles 109 (7) and 109 (8) of the ZKSBA.

44 Decision on the Admissibility of the Constitutional Court of BiH, no. AP-3417/11, 12 October 2011.

45 Article 16 of the Rules of the Constitutional Court of BiH.

Special procedures (e.g. at the border/airport, admissibility procedure)

Law does not provide for special procedures.

Guarantees for vulnerable groups

There is no special procedure defined in law for the identification of vulnerable persons. Minors, particularly unaccompanied minors, are to be treated with particular care, but there are problems in practice (see below).

Safe third country concept

ZKSBA provides that the “safe country of origin” is that country in which its citizens, or stateless persons to whom it is the last country of residence, are safe from persecution, and which implies the existence of democratic institutions, democratic processes, elections, political pluralism, freedom of opinion and expression, availability and efficacy of legal protection and stability of the country. Also, the “safe third country” is the country in which the applicant for international protection had resided before coming to BiH, under the condition that: 1) there is no persecution in it or violation of human rights in meaning of ZKSBA; 2) that it respects and implements the principle of *non-refoulement* and 3) that a person can return lawfully to that country, that access to procedure for international protection is available to them and that they will be able to apply for international protection. The Law provides that the decision on the countries that are to be regarded as safe countries of origin and safe third countries is made by the Council of Ministers, on the recommendation of the Ministry of Security, after the opinion of the Ministry of Foreign Affairs and Ministry of Justice of BiH.⁴⁶ Such a decision has still not been adopted.

Is there a breach of non-refoulement in practice?

There is no documented breach of *non-refoulement* in practice.

Treatment of specific nationalities

Due to the high influx of Syrian refugees, the Council of Ministries of BiH adopted a regulation concerning the determination of justified reasons of humanitarian nature of approval of temporary stay for that category of foreigners.⁴⁷ These decisions are implemented, and in practice, foreigners coming from Syria are often directed to use these procedures, instead of applying for international protection, which might not be in their best interest, since if granted such temporary stay, they are not also granted all the other rights (health insurance, social benefits etc.) that they would be given if they were granted international protection. However, it should be mentioned, that the decision adopted in 2013 was valid for one year, and the extension of temporary stay – by decision from 2014 – related only to those Syrians that were granted temporary stay on the basis of first decision.

Treatment of unaccompanied minors

Competent authorities are under the obligation to take particular care when dealing with minors in general.⁴⁸ An unaccompanied minor who is not immediately returned to their country of entry, nor handed over to the country of nationality, needs to be accommodated temporarily by the SFFA in the section of the institution that is specialised for minors, and the competent centre for social work, which should appoint a temporary guardian, should be informed.⁴⁹ The Rulebook on International Protection also provides that unaccompanied or separated minors cannot under any circumstances be placed in an Immigration Centre.⁵⁰ In practice, it is not rare for (unaccompanied) minors to be placed/detained at the Immigration Centre. This is often the result of the erroneous interpretation of the relevant legal provisions, but also the result of the fact that in BiH there is no institution specialised for minors, or an institution that is recognised by the authorities as such.

Conclusion

The asylum procedure needs to undergo further reforms in order to be more fully harmonised with the relevant EU *acquis* and standards under the European Convention of Human Rights, but also to make it more efficient. Some of the issues of concern are the following: 1) the timelines within which the regis-

46 Article 111 of the ZKSBA.

47 Decision on determination of justified reasons of humanitarian nature for approval of temporary stay of citizens of Syrian Arab Republic (*Official Gazette of BiH* no. 8/13); Decision on determination of justified reasons of humanitarian nature for extension of temporary stay of citizens of Syrian Arab Republic (*Official Gazette of BiH* no. 64/14).

48 Article 139 (2) of the ZKSBA.

49 Article 139 (3) of the ZKSBA.

50 Article 39 (6) of the Rulebook on International Protection.

tration and interview have to take place must be clearly defined in the law; 2) where there are indications that foreigners or stateless persons in the Immigration centre or at the border crossings and transit zones, may wish to submit an asylum application, officials should provide them with information on the possibility to do so, including the availability of free legal aid, and also arrange for the interpretation to the extent necessary to facilitate access to the asylum procedure, particularly to those individuals deprived of liberty; 3) transcripts of the interview conducted with the asylum seekers should be shared with them and their legal representatives; 4) funds, or at least a certain amount, for free legal aid should be provided by BiH, particularly considering that there does not exist a state-run free legal aid service – this should also apply to the use of the interpreters by the free legal aid providers; 5) the prohibition on deprivation of liberty of minors in the Immigration centre should be strictly enforced and 6) access to an applicant's file and their personal documents and items temporarily seized by the authorities in the Immigration centre, should be (easily) accessible to the legal representatives of the asylum seeker for the purpose of use as evidence in the asylum procedure.

Reception conditions

The Rulebook on International Protection lays out in detail the rights that asylum seekers are entitled to during the asylum proceedings. They are: leave to remain in BiH pending an enforceable or final and binding decision on an application for international protection; accommodation in an asylum seekers' centre, depending on available beds; access to education; free legal aid for issues related to the asylum procedure; services of interpreter or sign language interpreter; primary health care; social care in terms of the right to temporary guardianship; right to food and hygiene products while accommodated at an asylum seekers' centre. MoS also provides the necessary medical or other assistance to asylum seekers with special needs.⁵¹ It also bears the costs arising from the exercise of those rights. Those are the costs of interpretation services provided by an interpreter/sign language interpreter within an asylum procedure and the costs of health care services provided by medical institutions in accordance with the asylum seekers' right to primary health care. MoS supports financially, with the assistance from UNHCR, the exercise of the rights to accommodation, food and hygiene at the asylum seekers' centre.

After expressing their intention to apply for international protection, SFFA issues asylum seekers a letter confirming their expressed intention to apply for international protection and defines directions of their movement and a deadline for filing an application for international protection which must be submitted in person to the seat of MoS (Asylum Department). That confirmation is regarded as leave to remain in BiH for a specified period of time, in compliance with imposed movement restrictions.⁵² In practice, after an asylum seeker expresses their intention to apply for international protection with SFFA, they are directed to MoS (Asylum Department) with the confirmation of the intention. They are informed through a legal representative that the registration will be conducted in the Asylum Centre (usually within seven days), after the interpreter is secured, where their asylum application is also taken. The asylum applicants are obliged to report their residential address and any change in address (in private sector) to SFFA within eight days.⁵³

The Law sets an obligation on the Ministry of Security to provide asylum seekers with the appropriate conditions of reception, including those relating to primary healthcare. Under the health care legislation, primary health care includes: services provided by family medicine doctors (hereinafter: family physician), general medical services, adolescent medicine, hygiene and epidemiology, dental medicine, emergency medicine, industrial medicine, health care benefits for employees, health care for women and children, diagnostic and pharmaceutical activity.⁵⁴ In practice, most of the requests by asylum seekers for a refund of the costs of medical treatment provided by health care institutions refer to the costs of medicines or hospitalisation in emergency situations, e.g. delivery or health problems that may cause death.

The applicants who asked for international protection were provided with housing at the Asylum Centre at a temporary accommodation facility at the Brnjaci motel, in Kiseljak. A new Asylum Centre in Delijaš,

51 Article 119 (2) of the ZKSBA.

52 Article 107 (3) of the ZKSBA.

53 Article 122 of the ZKSBA.

54 Article 6 of the Health Care Act of FBiH (*Official Gazette of FBiH* no. 46/10).

Trnovo municipality, is currently being prepared for official opening. Also, asylum seekers may reside in private accommodation outside the accommodation centre, at their own expense.

There have been no reports thus far that a minor asylum seeker was denied access even to secondary education, and several asylum seekers study at universities in Bosnia and Herzegovina. So far the right to education has been exercised mainly by minor school age asylum seekers who are fluent enough in the languages in official use in BiH and are able to attend school without any major difficulties. Those are mainly minor asylum seekers from the territory of Kosovo (Republic of Serbia). The number of asylum seekers from Syria, Afghanistan etc. has increased since 2012, and among them also the number of minor school age asylum seekers, which is the reason why it is necessary to organise language courses in order to ensure their access at least to primary education. If asylum seekers are housed in the Asylum Centre, MoS, according to available resources, helps them with their transportation needs by providing a van for the children who go to primary school and public transport vouchers for the children attending secondary schools and universities. The books and supplies are provided to asylum seekers through the civil society organisations or the Centre for Social Work, through the projects for the support for socially vulnerable people. In the beginning, there were problems regarding enrolment by reason of the lack of documentation (a copy of the birth record, citizen identification number, etc.). Such problems were solved through legal interventions by the NGO *Vaša prava BiH*.

Social care entitlements of asylum seekers in terms of the temporary guardianship are defined in the relevant bylaws.⁵⁵ Numerous decisions have been made in regard to this entitlement and there have been no major obstacles to their implementation. Asylum seekers do not have any other welfare entitlements such as limited support, one-time support or any other form of welfare support. Asylum seekers housed in the asylum seekers' accommodation centre receive BAM 30 to cover their own personal expenses.

Detention of asylum seekers

If an asylum seeker indicates their intention to seek international protection, or formally applies for it, *after* they had already been detained in the Immigration Centre (usually pending deportation) by the decision of SFFA, that fact will not affect their detention and they will be deprived of liberty until the detention order expires (90 days).⁵⁶ This happens in most cases with asylum seekers.

The Law also provides that the freedom of movement of asylum seekers may be restricted in certain cases if they do not respect the public order of BiH, pose a threat to the constitutional order, public peace and order or security of BiH, pose a threat to public health in BiH, if there are grounds for believing that their application is manifestly deceptive and abusive of the asylum process, if the restriction on freedom of movement is necessary for the purpose of protecting other persons or property or if restrictions on freedom of movement are necessary for the purpose of establishing the applicant's identity.⁵⁷ This measure lasts for 90 days, and may be extended once more for 90 days in exceptional circumstances.⁵⁸ In our opinion, in certain cases such restriction of movement may in fact take the form of deprivation of liberty (e.g. when movement is restricted to the Asylum Centre, or other facility), but the Constitutional Court of BiH does not share such view.⁵⁹ These measures limiting the movement of asylum seekers – handed down by MoS – are imposed very rarely, when identity of the asylum seeker is not determined.

Xenophobia and racism as a danger for asylum seekers

Centre for Refugees and IDP Studies (CESI) at the Faculty of Political Sciences (University of Sarajevo) had informed *Vaša prava BiH* that during their field work at the Asylum Centre in Brnjaci they noticed animosity and fear of local population towards asylum seekers. However, there are no reported incidents or practices of xenophobia and racism that the authors are aware of.

55 Article 40 (1) (g) of the Rulebook on International Protection.

56 Article 107 (7) of the ZKBSA.

57 Article 114 of the ZKSBA.

58 Article 114 (3) of the ZKSBA.

59 E.g. Decision no. AP-4680/10, of 22 March 2013.

Overall conclusion

Most of the asylum seekers in the past two years came from the Middle East, namely from Syria. They were almost exclusively granted subsidiary protection, although in one case a family was granted refugee protection based on well founded fear of persecution on the basis of political opinion. One of the persisting problems is the detention of (unaccompanied) minors at the Immigration Centre, which is also a result of the fact that there are no specialised facilities for them in BiH (or at least they are not recognised by the Government). The relevant asylum legislation still needs to be harmonised further with the relevant EU *acquis*, and the Government is currently preparing a new set of legislation that will separate the legal rules dealing with international protection and foreigners in general. It is expected to be adopted in 2015.

Croatia



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Abbreviations:

UNHCR – United Nations High Commissioner for Refugees

UNVFVT – United Nations Voluntary Fund for Victims of Torture

*Statistics*⁶⁰

Asylum seekers: 1318 (2013 – 1089, 1 January – 30 June 2014 – 229)

Ethnic breakdown: Afghanistan 197, Albania 1, Algeria 166, Bangladesh 19, Bosnia and Herzegovina 13, Burkina Faso 3, Cameroon 3, Comoros 10, Democratic Republic of the Congo 4, Cote d'Ivoire 11, Cuba 9, Egypt 14, Eritrea 22, Ethiopia 2, Gambia 3, Ghana 10, Guinea 3, India 1, Iran 9, Iraq 7, Jamaica 2, Kenya 1, Kosovo 10, Latvia 1, Libya 17, Macedonia 5, Mali 22, Mauritania 3, Mexico 1, Morocco 73, Myanmar 1, Niger 2, Nigeria 39, Pakistan 67, Palestine 17, Poland 1, Russia 19, Senegal 10, Serbia 4, Sierra Leone 2, Somalia 143, Sri Lanka 1, Sudan 37, Syria 26, Togo 2, Tunisia 80, Turkey 8, Uganda 2, Ukraine 4, Western Sahara 1, Zimbabwe 1, other countries 9

Male asylum seekers: 2013 – no publicly available data, 1 January–30 June 2014 – 218

Female asylum seekers: 2013 – no publicly available data, 1 January–30 June 2014 – 11

Unaccompanied minors: 57

Submitted asylum applications: no publicly available data

Conducted interviews: no publicly available data

First instance decisions: no publicly available data

Refugee status: 12

Subsidiary protection: 25

Other protection: N/A

Rejections in merit: no publicly available data

Refusal: no publicly available data

Otherwise closed cases/discontinued: no publicly available data

Second instance decisions: no publicly available data

Positive second instance decisions: 2⁶¹

Positive second instance decisions in merit: N/A

Negative second instance decisions (refusal, rejection): no publicly available data

Third instance decisions: N/A

Positive third instance decisions: N/A

Negative third instance decisions: N/A

⁶⁰ Ministry of Interior of the Republic of Croatia, Statistical summary on asylum seekers 2008–2013 http://www.mup.hr/UserDocsImages/statistika/2014/azil/azil_2008–2013.pdf; Statistical summary on asylum seekers for the first half of 2014 http://www.mup.hr/UserDocsImages/statistika/2014/azil/azil_07_2014.pdf, both accessed on 29 July, 2014.

⁶¹ Data provided by Administrative Court via e-mail dated March 10, 2014.

Overview of the legal framework

The list of laws and regulations related to the asylum system:

- Law on Asylum⁶²
- Law on General Administrative Procedure⁶³
- Law on Administrative Disputes⁶⁴
- Law on Foreigners⁶⁵
- Law on Mandatory Health Insurance and Health Care for Foreigners in the Republic of Croatia⁶⁶
- Law on Free Legal Aid⁶⁷
- Ordinance on Forms and Data Collections in the Asylum Procedure⁶⁸
- Ordinance on the Amount of Financial Assistance Provided to Asylum Seekers, Asylees and Foreigners under Subsidiary Protection⁶⁹
- Ordinance on the Accommodation of Asylum Seekers, Asylees and Aliens under Temporary Protection⁷⁰
- Ordinance on Free Legal Aid in the Asylum Procedure⁷¹
- Ordinance on the Content of the Medical Examination of Asylum Seekers, Asylees and Foreigners under Subsidiary Protection⁷²
- Ordinance on the Manner of Implementing the Programme and Tests of Knowledge of Asylum Seekers, Asylees, Foreigners under Temporary Protection and Foreigners under Subsidiary Protection, for the Purpose of Joining the Education System of the Republic of Croatia⁷³
- Decision on the Programme of Croatian Language, History and Culture for Asylum Seekers and Asylees⁷⁴
- Decision on the Programme of Croatian Language for Asylum Seekers and Asylees and Foreigners under Subsidiary Protection Who are over 15 Years of Age for the Purpose of Joining the Secondary-school Education System and the Adult Education System⁷⁵
- Decision on Establishing the Price of Passport Issued in Accordance with the 1951 Convention Relating to the Status of Refugees⁷⁶
- Decision on Establishing the Price of Identity Card for Asylees, Identity Cards for Foreigners under Subsidiary Protection and Travel Documents for Asylees⁷⁷
- Decision on the Costs of Accommodation in the Reception Centre for Asylum Seekers⁷⁸

Asylum procedure

Short overview of the general asylum procedure including all phases of the procedure and the authorities responsible in all instances (number of staff and nature of the institutions)

The asylum procedure in Croatia is an administrative procedure that is regulated by the Law on Asylum.⁷⁹ Additionally, the Law on General Administrative Procedure⁸⁰ is applied in the asylum procedure un-

62 *Official Gazette of the Republic of Croatia* no.79/07, 88/10, 143/13.

63 *Official Gazette of the Republic of Croatia* no. 47/09.

64 *Official Gazette of the Republic of Croatia* no. 20/10, 143/12.

65 *Official Gazette of the Republic of Croatia* no. 130/11, 74/13.

66 *Official Gazette of the Republic of Croatia* no. 80/13.

67 *Official Gazette of the Republic of Croatia* no. 143/13.

68 *Official Gazette of the Republic of Croatia* no. 36/08, 46/08, 10/09, 88/11, 81/13.

69 *Official Gazette of the Republic of Croatia* no. 39/08.

70 *Official Gazette of the Republic of Croatia* no. 36/08, 116/11.

71 *Official Gazette of the Republic of Croatia* no. 32/12.

72 *Official Gazette of the Republic of Croatia* no. 39/08.

73 *Official Gazette of the Republic of Croatia* no. 89/08.

74 *Official Gazette of the Republic of Croatia* no. 129/09.

75 *Official Gazette of the Republic of Croatia* no. 100/112.

76 *Official Gazette of the Republic of Croatia* no. 114/11.

77 *Official Gazette of the Republic of Croatia* no. 131/08.

78 *Official Gazette of the Republic of Croatia* no. 49/08.

79 *Official Gazette of the Republic of Croatia* no. 79/07, 88/10, 143/13.

80 *Official Gazette of the Republic of Croatia* no. 47/09.

less otherwise provided by the Law on Asylum. The main body for the implementation of the asylum policy in Croatia is the Ministry of Interior. The Ministry of Interior is the first instance competent authority in the asylum procedure⁸¹ meaning that matters concerning asylum seekers and asylees are under the remit of the Administrative and Inspection Affairs Directorate, within which the Service for Aliens and Asylum is. The Service for Aliens and Asylum, among others departments, includes the Department for Asylum and the Reception Centre for Asylum Seekers.

Access to the procedure

Before the official beginning of the procedure and in order to actually access asylum procedure a foreigner must express the intention to seek asylum. The intention to seek asylum may be expressed during border control at a border crossing point or in a police administration or police station if foreigner has already entered the territory of the Republic of Croatia. In such a case, the competent body will refer the foreigner to the Reception Centre for Asylum Seekers and determine the time period within which they must report to the Reception Centre.⁸² A foreigner may express their intention even after they have been found illegally crossing the state border or residing – at the moment of being found committing the violation, or later, during further procedure with the illegal migrant.⁸³ In practice, that means that irregular migrants very often express intention to apply for asylum during the police procedure with the illegal migrant. In such cases, the police procedure with the illegal migrant would be suspended.

The foreigner who expresses the intention to apply for asylum at a border crossing point or in a police administration/police station will be issued with a certificate, and an official note will be made.⁸⁴ After making the official note, the foreigner is referred to the Reception Centre for Asylum Seekers, and if they have no financial means, transport or the cost of transport to the Reception Centre will be provided.⁸⁵ If a foreigner fails to report to the Reception Centre within the set time period, the rules on foreigners will apply to them.⁸⁶ Although it is not specified in the Law on Asylum, in practice, the intention to apply for asylum may be also expressed at the Reception Centre for Aliens (i.e. detention and deportation centre), in which case this intention will be forwarded in writing to the Department for Asylum of the Ministry of Interior for further processing. In practice, this is often a situation when intention to apply for asylum is expressed by irregular migrants detained for the purpose of removal.

A foreigner against whom a European warrant of arrest was issued or international search was launched or a foreigner serving a prison sentence can express intention to submit an asylum application in front of the court conducting the procedure or at the accommodation institution. The Court or the institution where the foreigner is being accommodated is obliged to inform the Ministry on the foreigner's expressed intention to submit an asylum application within the shortest possible time.⁸⁷

First instance procedure, initiation of the procedure, submission of asylum application, personal interview, decision, access to information related to the possibility to seek asylum and to free legal aid, access to NGOs and UNHCR

An asylum procedure is initiated by the submission of an asylum application.⁸⁸ There is no deadline for the submission of an asylum application, as the application is given orally for the record.⁸⁹ The civil servants of the Reception Centre for Asylum Seekers are responsible for taking up the asylum application, meaning that they conduct a short interview to establish personal data of the asylum seeker, data on military service, family and other relations, the manner of leaving the country of origin and the reasons (in short) why they fled their country of origin. All documents including the minutes of the first interview are sent to the Department for Asylum, which has to continue the procedure with the interview and make a decision.

The Law on Asylum prescribes that the Ministry of Interior is obliged, within 15 days from the day of the submission of an application, to inform an asylum seeker about the procedure for granting asylum, about the rights and obligations the asylum seeker shall be entitled to in the procedure, about the possibility to get

81 Article 12 (1) of the Law on Asylum.

82 Article 20 (2, 3 and 4) of the Law on Asylum.

83 This is established in practice although it is not explicitly prescribed by law, but derives from the articles related to the expression of the intention to seek asylum.

84 Article 4 (1) of the Ordinance on Forms and Data Collections in the Asylum Procedure.

85 Article 5 (5 and 6) of the Ordinance on Forms and Data Collections in the Asylum Procedure.

86 Article 20 (3) of the Law on Asylum.

87 Article 20 (5 and 6) of the Law on Asylum.

88 Article 53 (1) of the Law on Asylum.

89 Article 53 (2) of the Law on Asylum and Article 2 (1) of the Ordinance on Forms and Data Collections in the Asylum Procedure.

free legal aid and to get into contact with UNHCR representatives and the representatives of other organisations dealing with the protection of refugees' rights. This information must be given in the asylum seeker's own language or in the language for which it can be reasonably supposed that they would be able to communicate in.⁹⁰

In practice, these information are given in writing in the form of a paper during the process of taking asylum application. The paper with information is translated in the languages spoken by the main nationalities seeking asylum in Croatia and has to be in a language the asylum seeker can reasonably be expected to understand. According to the knowledge of the Croatian Law Centre, these information are written too legalistically and might not be understood by the majority of the asylum seekers. In case the person seeking asylum is illiterate, an interpreter present at the asylum application interview reads these information to the asylum seeker. Furthermore, at the beginning of the interview, the applicant is informed about their duties in the procedure and during the interview.

After the application for asylum has been submitted, the Ministry of Interior shall, as soon as possible, interview the asylum seeker.⁹¹

The interview may be omitted:

- when a positive decision on an asylum claim may be passed on the basis of the available evidence;
- in cases where an interview shall not be feasible due to objective reasons, in particular, when an applicant is unfit or unable to be interviewed, owing to enduring circumstances beyond their control;
- when, on the basis of the complete examination of all information provided by an asylum seeker, the following circumstances exist (*the asylum seeker has stated only the information which are irrelevant or are of a minimal importance for the result of the procedure; the asylum seeker has stated inconsistent, contradictory, impossible or insufficient facts which make their application unconvincing; the asylum seeker submits an application with an obvious intention of postponing or preventing the implementation of the decision which would result in their expulsion from the Republic of Croatia*), for which reason the application shall be considered unfounded.⁹²

The decision makers conduct interviews with asylum seekers, and, on the basis of the asylum seekers' applications, the testimonies presented during the second interview, the presented evidence and available reports on the situation in the countries of origin, they render decisions on asylum applications. The Ministry of Interior should issue a decision within a six-month period from the submission of the asylum application. If the Ministry is not able to decide upon the application for asylum within this time, it shall inform the asylum seeker of the time frame in which a decision may be expected.⁹³

When deciding on the testimony of an asylum seeker, the person conducting the procedure should be led by the principle of the benefit of the doubt.⁹⁴ The first instance decision can be a decision by which the Ministry of Interior grants asylum, rejects an asylum application, rejects asylum and grants subsidiary protection, dismisses an asylum application or suspends the procedure.

In a single procedure, the Department for Asylum examines whether the applicant fulfils the eligibility criteria for the refugee status; and, only in case that they are not, subsequently whether they are eligible for subsidiary protection status. The civil servants working in the Department for Asylum decide on asylum applications.

Free legal aid is not available on the state budget during the first instance asylum procedure but only in the procedure before the Administrative Court. In practice, legal information and legal aid in the first instance procedure are provided by NGOs, primarily the Croatian Law Centre, as the implementing partner of UNHCR, and the Legal Clinic of the Law Faculty.

Second instance procedure

Against the Ministry's decision (in a regular, accelerated and in a border procedure, which is not available in practice) an administrative dispute can be initiated before the Administrative Court.⁹⁵ The Administrative Court is competent for handling appeals against all kinds of administrative decisions in the field of

90 Article 22 (2) of the Law on Asylum.

91 Article 54 (1) of the Law on Asylum.

92 Article 54 (9) of the Law on Asylum.

93 Article 57 (2) of the Law on Asylum.

94 Article 71 of the Law on Asylum.

95 Article 12 (2) of the Law on Asylum.

migration, among others against the first instance negative decisions in the asylum procedure. The claim against the first instance negative decisions has a suspensive effect. In a regular procedure, the deadline for the submission of a claim is 30 days from the delivery of the first instance decision of the Ministry of Interior.⁹⁶

Asylum cases are dealt with by single judges,⁹⁷ who are neither asylum specialists, nor are they specifically trained in the asylum law. The Court can freely assess the evidence and establish the facts without being bound by the facts established in the procedure of the Ministry of Interior while determining a refugee status, although it takes them into account when deciding.⁹⁸ In this part of the procedure, asylum seekers have a right to free legal aid. According to the Law on Asylum, free legal aid includes assistance in the preparation of a claim to the Administrative Court and representation before the Administrative Court,⁹⁹ on the request of the asylum seeker.¹⁰⁰ Legal aid may be provided by attorneys at law and lawyers from organisations registered for providing legal aid.¹⁰¹ However, this second option is not available in practice, as to date, the Ministry of Interior has not issued a call to NGOs to become providers of free legal aid funded from the state budget, although the Law on Asylum provides for such a possibility.

Third instance procedure

Third instance procedure is not available in Croatia.

Although the administrative dispute is the last instance for an asylum application to be decided on, there is also a possibility for a complaint to be lodged to the Constitutional Court in case the applicant claims a violation of a right guaranteed by the Croatian Constitution. However, in such case, a foreigner should regulate their status on other grounds (e.g. a residence permit, according to the Law on Foreigners) as stay, under the Law on Asylum, is not foreseen once the administrative dispute is over.

Special procedures (e.g. at the border/airport, admissibility procedure)

In addition to the regular procedure, the Law on Asylum regulates the possibility of an accelerated procedure and procedures at border crossing points or in transit zones. According to the Law on Asylum, an accelerated procedure is possible in cases where a positive decision may be passed on the basis of the available evidence and in the cases of manifestly unfounded decisions.¹⁰² The main difference between a regular and an accelerated procedure is that a deadline for the appeal in an accelerated procedure is shorter than in the regular procedure and the Administrative Court is obliged to decide faster than usual.

With regard to the procedures at border crossing points or in transit zones, they are regulated by the Law on Asylum; however, they are not available in practice due to the lack of centres/capacities on the border crossing points where foreigners could be accommodated while the procedure ongoing.

According to the Law on Asylum, the border procedure is applicable for the foreigner who expresses intention to submit an asylum application at a border crossing point or in a transit zone of an airport, sea port or internal water port and does not fulfil the conditions for entering the Republic of Croatia stipulated by provisions of the Law on Foreigners, and who would not be allowed the entry, if the following conditions are met:

- a foreigner is provided with adequate accommodation and food at the border crossing point or in the transit zone;
- a foreigner's stay at the transit zone does not exceed the deadline of 28 days from the day of the submission of the asylum application;
- the application is manifestly unfounded or can be decided upon in an accelerated procedure.¹⁰³

In such case, the asylum application must be received as soon as possible, and the interview must be carried out immediately.¹⁰⁴ However, if a decision concerning the application is not issued within the period

96 According to Article 70 (1) of the Law on Asylum the submission of complaints and the procedure before the Administrative Court shall be governed by the provisions of the Law on Administrative Disputes, unless otherwise provided by the Law on Asylum. According to Article 24 (1) of the Law on Administrative Disputes the complaint shall be submitted to the court within 30 days after the delivery of the disputed individual decision.

97 According to Article 14 (1) of the Law on Administrative Disputes in an administrative dispute, the sole judge shall decide.

98 Article 33 (1 and 2) of the Law on Administrative Disputes.

99 Article 34 (1) of the Law on Asylum.

100 Article 34 (5) of the Law on Asylum.

101 Article 34 (2) of the Law on Asylum.

102 Article 56 (1) of the Law on Asylum.

103 Article 67 (1) of the Law on Asylum.

104 Article 67 (3) of the Law on Asylum.

of 28 days from the day of the submission of the asylum application, the asylum seeker would be permitted the entry into the Republic of Croatia with a view to conducting of the asylum procedure.¹⁰⁵

No specific procedure is named as admissibility procedure in Croatia. However, it is possible for the Department for Asylum to make a decision without entering into a further in-depth examination of the asylum application (i.e. on the merits) when the grounds for the dismissal of an asylum application are met. In particular, that means that asylum application will be dismissed if:¹⁰⁶

- the asylum seeker has been granted asylum or similar protection in another state, including benefits which result from observation of the principle of *non-refoulement*, provided that they will be accepted in that state again;
- the asylum seeker is a national of a third country, whose protection they did not request, unless they stated justified reasons for persecution in that country;
- after an individual assessment it is established that the asylum seeker is arriving from a safe third country, where there is a relationship between the asylum seeker and that country, and therefore it would be reasonable to expect them to return to that country;
- the asylum seeker, following the enforceability of a decision on the dismissal of their asylum application, submitted a new asylum application without specifying new relevant facts and circumstances;
- the responsibility of another Member State has been established on the basis of the Dublin Regulation.

Guarantees for vulnerable groups

According to the Law on Asylum, vulnerable groups are defined as adults without legal competence, minors, elderly and infirm persons, seriously ill persons, disabled persons, pregnant women, single parents with minor children, persons with mental disorders and victims of human trafficking, as well as victims of torture, rape or other forms of psychological, physical and sexual violence.¹⁰⁷

There are little specific provisions as to the processing and assessing the case of vulnerable asylum seekers and with few exceptions the same procedural guarantees are in place for vulnerable categories as for other asylum seekers. There is a general obligation to take into consideration the individual situation and personal circumstances of the asylum seeker,¹⁰⁸ in particular the acts of persecution or serious harm already undergone.¹⁰⁹

The personal interview and decision-making mechanism is the same for all asylum seekers, regardless of their vulnerability.

It could be concluded that, according to the legislation, a vulnerable asylum seeker has the following rights in the refugee status determination procedure:

- to a special guardian if the asylum seeker is not capable of understanding the meaning of the procedure due to a temporary or permanent mental disorder or illness. The guardian should be appointed by the competent Centre for Social Welfare on proposal of a competent authority conducting the procedure and on basis of a medical documentation;¹¹⁰
- to the possibility of being interviewed by a decision maker of the same sex;¹¹¹
- to an interpreter of the same sex, if possible, on the request of the asylum seeker where there are specific reasons for this;¹¹²
- to be interviewed as soon as possible upon the submission of the asylum application;¹¹³
- in cases where it is not feasible to conduct the interview for objective reasons, in particular, when an applicant is unfit or unable to be interviewed, owing to enduring circumstances beyond their control, the interview should be omitted¹¹⁴ and their relatives shall be permitted to present evidence and give statements;¹¹⁵

105 Article 67 (2) of the Law on Asylum.

106 Article 60 of the Law on Asylum.

107 Article 2 (1.15) of the Law on Asylum.

108 Article 55 (2.3) of the Law on Asylum.

109 Article 55 (3) of the Law on Asylum.

110 Article 27 of the Law on Asylum.

111 Article 54 (6) of the Law on Asylum.

112 Article 24 (2) of the Law on Asylum.

113 Article 54 (1) of the Law on Asylum.

114 Article 54 (9. 2) of the Law on Asylum.

115 Article 54 (10) of the Law on Asylum.

- for the asylum application of an unaccompanied minor to be decided upon within the shortest term possible.¹¹⁶

Guardians of unaccompanied minors or asylum seekers, who are not capable of understanding the meaning of the procedure due to a temporary or permanent mental disorder or illness, are generally appointed from among the social workers of the competent Centre for Social Welfare. However, in practice, according to the information available to the Croatian Law Centre, due to the work overload of social workers and the language barrier existing between the guardian and the client, their role is usually formal and there is no active involvement in the procedure to protect the best interest of the child or other client.

Furthermore, in Croatia, a system for early identification of victims of torture or other forms of ill-treatment by competent authorities and professionals has not been developed. According to the Law on Asylum, asylum seekers who were exposed to torture, rape or other forms of serious violence and asylum seekers with special needs should be provided with the necessary treatment in connection with their specific condition and the consequences resulting from the mentioned acts.¹¹⁷ However, in practice, the system for prevention of torture among asylum seekers has not been established. That is why the asylum seekers who were at the same time victims of torture, until 2010 and the beginning of project lead by the Croatian Law Centre and financed by UN Voluntary Fund for Victims of Torture,¹¹⁸ did not receive any kind of special assistance with regard to their trauma apart from, on case to case basis, prescription of medication by doctors in a hospital. Because of this serious defect in the system, asylum seekers who are victims of torture or other violence, and are as such in need of specific procedural guarantees, are not timely identified which in practice lead to situations where their claims are not properly assessed.

As for the accelerated procedure, according to the Law on Asylum, this type of procedure would not apply to cases of unfounded asylum applications submitted by an unaccompanied minor or a person with psychological disability. However, practice shows that at times it is used with regard to victims of torture. Asylum border procedure is not available at the moment in Croatia; however, the Law on Asylum does not contain any exceptions with regard to unaccompanied children or victims of torture, rape or other serious forms of psychological, and physical or sexual violence.

Safe third country concept

In Croatia, safe countries of origin and safe third countries lists have never been adopted, and for this reason those concepts are not applied in practice in Croatia.

However, the Law on Asylum defines the terms ‘safe country of origin’ and ‘safe third country’. According to the Law on Asylum, the safe country of origin is the country where a foreigner resided prior to their arrival in Croatia as a national of that country, a stateless person with their last habitual residence in that country; provided that, based on the legal situation, the application of the law within the democratic system and general political circumstances, it follows that there is generally and consistently no persecution and that there is no suffering from serious harm.¹¹⁹ Safe third country means the country where a foreigner resided prior to their arrival to the Republic of Croatia, provided that they are safe from persecution there and from suffering a serious harm, including respect of the principle of *non-refoulement* and that they have the possibility to be granted asylum in that country.¹²⁰ An assessment of whether a country is considered a safe country of origin shall be based on reports of the United Nations High Commissioner for Refugees, the Council of Europe, European Union states and relevant international organisations, and in making such an assessment account shall be taken, *inter alia*, of:

- relevant laws and regulations of the country of origin and the manner in which they are applied;
- respect of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms, International Covenant on Civil and Political Rights, and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- respect of the *non-refoulement* principle according to the 1951 Refugee Convention;
- existence of an effective system of legal remedies against the violation of the aforementioned rights and freedoms.¹²¹

116 Article 26 (4) of the Law on Asylum.

117 Article 31 (2) of the Law on Asylum.

118 “Protection of Victims of Torture among Vulnerable Groups of Migrants” Project, financed by UNVFVT.

119 Article 2 (1.27) of the Law on Asylum.

120 Article 2 (1.28) of the Law on Asylum.

121 Article 2 (2) of the Law on Asylum.

In making the assessment of whether a country is considered a safe third country, apart from conditions mentioned above, the existence of an effective asylum system in that country shall also be taken into account.¹²² The Law on Asylum prescribes that the Government of the Republic of Croatia is obliged to determine the list of safe countries of origin and safe third countries, to publish them in the *Official Gazette*¹²³ as well as to review the aforementioned lists, when the conditions which determine a country as a safe country of origin or a safe third country have changed.¹²⁴ In cases where, after the individual assessment it is established that the asylum seeker is arriving from a safe third country and where there is a relationship between the asylum seeker and that country, and therefore it would be reasonable to expect them to return to that country, the asylum application shall be dismissed.¹²⁵ In such cases, the asylum seeker can challenge the application of the safe third country concept, on the grounds that they would be subject to torture, cruel, inhuman or degrading treatment or punishment.¹²⁶ The Ministry of Interior shall issue a certificate to the asylum seeker whose asylum application has been dismissed, because they had arrived from a safe third country, by which state bodies of the third country shall be informed, in a language of that country, that the asylum application has not been considered on the merits.¹²⁷ If the safe third country does not accept a foreigner, the asylum application shall be decided upon pursuant to the provisions of Croatian Law on Asylum.¹²⁸

Unfounded asylum applications shall be rejected in an accelerated procedure as manifestly unfounded if the asylum seeker has arrived from a safe country of origin and has not indicated any serious grounds for considering that country as not to be a safe country of origin in their particular circumstances.¹²⁹

Is there a breach of non-refoulement in practice?

With the aim of examining the possibility of access to the asylum procedure for potential asylum seekers, i.e. accepting the expressed intention to apply for asylum, the Croatian Law Centre, in cooperation with UNHCR, has been implementing the project *Monitoring Police Conduct in the Field of Illegal Migrations and Asylum* since 2008. In the period from 2011–2014, the Project has involved an examination of files on the conduct towards irregular migrants and potential asylum seekers in chosen police administrations. In examining the files, the possibility of access to the asylum procedure and the implementation of bilateral readmission agreements were observed. Indirectly, the work of police officers of the Ministry of Interior, as a body in charge of state border surveillance and the suppression of irregular migrations, was monitored with regard to their treatment of migrants. The results of the Project led to the conclusion that police officers in the observed police administrations in principle recognised the expressed intentions to seek asylum. According to the Project's results, there was not a breach of *non-refoulement* in observed police administrations/stations.

Treatment of specific nationalities

In Croatia, there is no official policy implemented with regard to specific nationalities as every asylum application is examined individually and on case-by-case basis. However, there is currently a trend with regard to Syrian applicants, i.e. when asylum seekers are identified as Syrian nationals, they are granted subsidiary protection.

Treatment of unaccompanied minors

According to the Law on Asylum, an unaccompanied minor is a foreigner below the age of eighteen, who arrives to the Republic of Croatia unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person, including a minor who is left unaccompanied after they have entered the Republic of Croatia.¹³⁰

The Law on Asylum does not provide for an identification mechanism for unaccompanied children. As there have been many open questions in the practice, the government has accepted the *Protocol on Treat-*

122 Article 2 (3) of the Law on Asylum.

123 Article 2 (4) of the Law on Asylum.

124 Article 2 (5) of the Law on Asylum.

125 Article 60 (1.3) of the Law on Asylum.

126 Article 60 (4) of the Law on Asylum.

127 Article 60 (2) of the Law on Asylum.

128 Article 60 (3) of the Law on Asylum.

129 Article 61 (1.10) of the Law on Asylum.

130 Article 2 (1.13) of the Law on Asylum.

ment of Separated Children – Foreign Nationals with the aim to describe a unified procedure that should be followed by relevant institutions when dealing with unaccompanied children. However, the question of age assessment has not been elaborated in more detail in the Protocol.

In practice, the majority of the unaccompanied minors – foreigners are placed in children's and young people's homes, whose primary function is to treat children with behavioural difficulties, and so the conditions of their stay and accommodation in these homes cannot be considered suitable for this group, especially when taking into account the specific and special needs of these children. When children who are accommodated in children's and young people's homes express an intention to apply for asylum, they are transferred to the Reception Centre for Asylum Seekers.

According to the Law on Asylum, unaccompanied children seeking asylum should be appointed legal guardians¹³¹ following the provisions, conditions and procedures of the national Family Law. The Family Law prescribes that for the purpose of the protection of certain personal and property rights and interests, a Centre for Social Welfare or a court shall appoint a special guardian to a child of foreign citizenship or a child without citizenship and without a legal representative, found in the territory of the Republic of Croatia.¹³² Unaccompanied minors are appointed a guardian, generally from among the social workers of the competent Centre for Social Welfare. However, in practice, due to the work overload of social workers and the language barrier existing between the guardian and the client, their role is usually formal, and there is no active involvement in the procedure to protect the best interest of the child, neither are they in a position to sufficiently support the minors in the asylum procedure. When choosing a person who would be a special guardian, the best interests of children should be considered. Also the child's opinion should be appreciated, which, in practice, is not the case, as professionals from the Centre for Social Welfare who do not know the child are usually appointed as special guardians. On the other side, the Law on Asylum prescribes that a guardian shall not be appointed to an unaccompanied minor who is over 16 years of age and is married¹³³ which can be understood that persons as of the age of 16 have the capacity "to perform procedural acts" in asylum procedures on their own behalf.

In the past, when many of asylum seekers claimed that they were minors, some Centres for Social Welfare had the practice of conducting age assessments on their own i.e. in the majority of such cases age assessment was based on the physical appearance and on an interview with the minor.

One of the questionable issues is also the appointment of a special guardian from the group of persons with whom the child came in Croatia. Such practice is not in the best interest of the child, and carries certain risks for the child, since it is impossible to determine whether such person meets the legal requirements necessary to perform the duties of a special guardian. This is due to the fact that most asylum seekers generally do not possess any personal documents or have forged documents, so it is impossible to determine their identity.

Although there is no time limit prescribed for the appointment of the representative to an unaccompanied child, from the information available to social workers of the Croatian Red Cross, there are certain delays in the appointment of a special guardian.

The Law on Asylum prescribes that the application for asylum of an unaccompanied minor must be decided upon within the shortest possible time.¹³⁴ However, there is no publicly available information on how this provision is applied and respected in practice.

Also, the Law on Asylum prescribes that the Ministry of Interior shall take necessary steps in order to find the parents of a minor.¹³⁵ There is no information available that, in practice, the Ministry took any steps to trace the parents.

Conclusion

Although a functional asylum system has been set up in Croatia, which will be upgraded with the upcoming new Law on International Protection, we consider that some issues still exist which require solutions either through the regulatory framework or through practical implementation, and these issues will require additional attention in the upcoming period.

131 Article 26 paragraph (1) of the Law on Asylum.

132 Article 240 (1.7) of the Family Law.

133 Article 26 (2) of the Law on Asylum.

134 Article 26 (4) of the Law on Asylum.

135 Article 26 (3) of the Law on Asylum.

The issues are as follows:

- the introduction of the obligation of occasional reviews by the Administrative Court of decisions on the restriction of freedom of movement of asylum seekers by placing them in the Reception (Detention) Centre for Aliens in the Law on Asylum;
- the introduction of the practice of conducting medical expertise if the allegations of the asylum seeker indicate that it is possible that they were a victim of torture or inhuman and degrading treatment;
- additional training of the staff of Social Welfare Centres who are appointed as guardians to minor asylum seekers and to those who have been declared incompetent;
- the introduction of a system of free legal aid throughout the asylum procedure;
- the regulation of the status of, and assistance to, asylum seekers whose application was rejected and who cannot be returned to their country of origin;
- the broader application of international standards and best practices in the further development of the asylum system.

Reception conditions

Asylum seekers are entitled to material reception conditions to the same extent during all types of asylum procedures in Croatia. Rights provided include accommodation, food and clothing in kind and financial support.¹³⁶

According to the Law on Asylum, asylum seekers are entitled to accommodation at the Reception Centre during the whole asylum procedure (including the phase of the administrative dispute if an appeal was lodged).¹³⁷ If they want to, they are allowed to stay at any address in Croatia, subject to prior approval by the Ministry of Interior, at their own cost.¹³⁸ Asylum seekers are entitled to accommodation at the Reception Centre for Asylum Seekers after they have expressed the intention to apply for asylum.¹³⁹

In Croatia, there are two Reception Centres for Asylum Seekers which provide 700 places altogether. One is situated in Zagreb, the capital of Croatia, and the other in the small town Kutina located approximately 80 km from Zagreb. The Ministry of Interior manages both Reception Centres.

The number of staff working at the Reception Centres is generally sufficient. The social workers of the Croatian Red Cross are also present on the daily basis from Monday to Friday in the Reception Centre for Asylum Seekers.

Asylum seekers are not entitled to financial support if they are employed and have income that is sufficient to ensure an adequate standard of living, or when they possess financial means or such financial means are provided in some other way. At the time of writing of this report, the amount of financial support was 100 Kuna per month for a single person. According to the information available to the Croatian Law Centre, there are certain delays in payments of financial support by the competent Centres for Social Welfare.

Asylum seekers are also entitled to the right to health care. The extent of health care has changed with the last amendments of the Law on Asylum stipulating that only emergency care is covered¹⁴⁰ which lead to numerous problems in practice.

Detention of asylum seekers

There is one detention centre in Croatia (Reception Centre for Foreigners) with 116 places available, which serves for the detention of illegal migrants (subject to return procedures) and asylum seekers.

Asylum seekers can be detained up to six months under the Law on Asylum i.e. detention may be ordered for a period of up to three months, and due to justified reasons, it may be extended by another three month period.

However, the majority of asylum seekers are not detained but are accommodated in open centres.

136 Article 29 (2) of the Law on Asylum.

137 Article 38 (1) of the Law on Asylum.

138 Article 38 (2) of the Law on Asylum.

139 Article 5 (1) of the Ordinance on the Accommodation of Asylum Seekers, Asylees and Aliens under Temporary Protection.

140 Article 31 (1) of the Law on Asylum.

Asylum seekers can be detained:

- if an asylum seeker leaves or attempts to leave the Republic of Croatia before the completion of the procedure;
- to prevent situations where lives and possessions of other persons are put in danger;
- to protect the national security and legal order of the Republic of Croatia;
- when an asylum seeker submits an asylum application during the expulsion procedure, with an intention to prevent further progress of the expulsion procedure;
- when there is temporary impossibility of taking fingerprints caused by intentionally damaged papillary lines.¹⁴¹

Xenophobia and racism as a danger for asylum seekers

According to the Ombudsmen report for 2013,¹⁴² research carried out by the NGO Centre for Peace Studies shows that there is a negative attitude toward asylum seekers in Croatia. According to the mentioned research, Croatian citizens showed a high level of xenophobia, which is reflected in discrimination against these individuals. For example, in some nightclubs security guards at the entrance have the practice not to let in persons who have asylum seekers' ID cards.

At the beginning of 2013, the Croatian Parliament adopted the Migration Policy for the period from 2013 to 2015. However, the Migration Policy in Croatia for now views migration as a security issue, paying attention mostly to the regulation of asylum issues and to measures for the prevention of irregular migration; whereas the economic, social and cultural effects of migration flows are still ignored.

A positive step is the establishment of the Committee for the Implementation of the Integration of Foreigners in the Croatian Society. Also, an action plan for the integration of foreigners was adopted and its measures should be carried out continuously, through the cooperation of all relevant actors.

Overall conclusion

The asylum system in Croatia has been in place since 2003, when the first Law on Asylum was adopted. However, Croatia is still not a destination but rather a transit country, with a low number of asylum seekers per year comparing to other EU Member States. The process of accession to the European Union, as well as the activities of international organisations, primarily UNHCR, gave a strong impetus to the building of the asylum system in Croatia.

So far, asylum has not played a major part in the political and public discourse. The issue of migrations and asylum does not feature in political party programmes nor has it led to the polarisation of political discourse, probably because Croatia still has a relatively small number of asylum seekers and persons under protection. It can be concluded that, at the moment, the asylum system in Croatia is functional, and the legislation has been aligned with the relevant EU *acquis* on asylum. However, there is still a need for further improvements.

There is still a need for:

- better and improved cooperation among competent ministries with regard to asylum seekers' and asylees' rights, as well as the need for further strengthening of the legislation and institutions in terms of integration of recognised refugees and persons under subsidiary protection;
- building the institutional capacities of all the actors in the asylum system;
- further monitoring of the work of public authorities concerning the asylum system by civil society;
- continuous and systematic awareness raising in Croatian society concerning the need to protect persons who were persecuted in their countries of origin, and developing tolerance towards these foreigners and other endangered groups.

141 Article 74 (1) of the Law on Asylum.

142 <http://www.ombudsman.hr/index.php/hr/izvjesca/izvjesce-pucke-pravobraniteljice/finish/20-2013/55-izvjesce-pucke-pravobraniteljice-za-2013-po-prvi-puta-objedinjeno-izvjesce-o-stanju-ljudskih-prava-u-hrvatskoj-i-radu-ureda>, accessed on July 28, 2014.

Greece



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This report benefitted from the information and research carried out in the framework of the Asylum Information Database (AIDA) project coordinated by the European Council on Refugees and Exiles

Abbreviations:

META-Action – Action for Migration and Development
BABEL – Babel Day Centre
EASO – European Asylum Support Office
FRC – First Reception Centres
FRS – First Reception Service
MRCVT – Medical Rehabilitation Centre for Victims of Torture
GCR – The Greek Council for Refugees
UNHCR – United Nations High Commissioner for Refugees

Statistics from June 2013 to May 2014¹⁴³

Asylum seekers: 8945

Ethnic Breakdown: Afghanistan 1562, Albania 799, Algeria 144, Bangladesh 446, China 147, Democratic Republic of the Congo 178, Egypt 397, Eritrea 248, Georgia 548, Iran 304, Iraq 164, Nigeria 370, Pakistan 1271, Sudan 191, Syria 522, other countries 1654

Male asylum seekers: 7000

Female asylum seekers: 1945

Unaccompanied minors: 430

Submitted asylum applications: 8945

Conducted interviews: no available data

First instance decisions: 5944

Refugee status: 643

Subsidiary protection: 283

Other protection: N/A

Rejections in merit: 3674

Refusal: N/A

Otherwise closed cases/discontinued: 1344

Second instance decisions: 2013

Positive second instance decisions: Refugee Status 198/Subsidiary Protection 82

Positive second instance decisions in merit: N/A

Negative second instance decisions (refusal, rejection): 1735

Third instance decisions: no available data

Positive third instance decisions: no available data

Negative third instance decisions: no available data

143 Source Asylum Service.

Overview of the legal framework

- Presidential Decree no. 220/2007 on the transposition into the Greek legislation of the Council Directive no. 2003/9/EC of 27 January, 2003 laying down minimum standards for the reception of asylum seekers (P.D. 220/2007)¹⁴⁴
- Relevant: Instruction no. 2/2012 Presidential Decree no. 96/2008 of 25 July 2008 Adaptation of Greek legislation to the provisions of Directive no. 2004/83/EC of the Council of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Instruction 2/2012 P.D. 96/2008)¹⁴⁵
- Presidential Decree no. 90/2008, Adaptation of the Greek legislation to the provisions of Council Directive no. 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (P.D. 90/2008)¹⁴⁶
- Presidential Decree no. 114/2010 on the establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive no. 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (P.D. 114/2010)¹⁴⁷
- Law no. 3907/2011 on the Establishment of an Asylum Service and the First Reception Service, transposition into Greek legislation of Directive no. 2008/115/EC “on common standards and procedures in Member States for returning illegally staying third country nationals” and other provisions. (Law 3907/2011)¹⁴⁸
- Instruction no. 37/2011, Law no. 4058/2012, Instruction no. 41/2012¹⁴⁹
- Decision no. 7001/2/1454-h of 26 January 2012, General Rules for the Operation of the Regional Initial Reception Services (Decision no. 7001/2/1454-h of 26 January 2012)¹⁵⁰
- Presidential Decree no. 116/2012 (P.D. 116/2012)¹⁵¹
- Presidential Decree no. 104/2012 (P.D. 104/2012)¹⁵²
- Presidential Decree no. 102/2012 (P.D. 102/2012)¹⁵³
- Presidential Decree no. 113/2013 (P.D. 113/2013)¹⁵⁴
- Presidential Decree no. 141/2013 (P.D. 141/2013)¹⁵⁵
- Decision of the Minister of Public Order and Protection of Citizens no. 334/2014, Regulation of Appeals Authority – Decision no. 334/2014¹⁵⁶
- Decision no. 3966/2014 of the Director of Asylum Service of the Ministry of Public Order and Protection of Citizens of the validity of ID cards of the applicants for international protection – Decision no. 3966/2014 (Law 4249/2014)¹⁵⁷
- Law no. 4249/2014¹⁵⁸

144 Προεδρικό Διάταγμα 220/2007, available at: <http://www.refworld.org/docid/49676abb2.html> (in English).

145 Εγκύκλιος 2/2012 Προεδρικό Διάταγμα 96/2008, available at: <http://www.refworld.org/docid/4c5272fc2.html>. (in English), <http://www.synigoros.gr/resources/docs/egkyklios2.pdf> (in Greek).

146 Προεδρικό Διάταγμα 90/2008, available at: http://emn.ypes.gr/media/17801/p.d.%2090-2008_en.pdf (in English).

147 Προεδρικό Διάταγμα 114/2010, available at: <http://www.refworld.org/docid/4cfdfadf2.html> (in English).

148 Νόμος 3907/2011, available at: <http://www.refworld.org/docid/4da6ee7e2.html> (in English).

149 Εγκύκλιος 37/2011 – Νόμος 4058/2012 Εγκύκλιος 41/2012 – Instruction 37/2011, available at: <http://www.synigoros.gr/resources/docs/egkyklios37.pdf> (in Greek); Law 4058/2012, available at: http://dide.fth.sch.gr/lows/n4058_2012.pdf (in Greek); Instruction 41/2012, available at: <http://www.synigoros.gr/resources/docs/egkyklios41.pdf> (in Greek).

150 Γενικός Κανονισμός Λειτουργίας Περιφερειακών Υπηρεσιών Πρώτης Υποδοχής, 26 Ιανουαρίου 2012, available at: <http://www.refworld.org/docid/4f33bace2.html> (in English).

151 Προεδρικό Διάταγμα 116/2012, available at: <http://www.ethemis.gr/p-d-1162012-eos-12-mines-i-kratise-ton-etounon/> (in Greek).

152 Προεδρικό Διάταγμα 104/2012, available at: <http://www.synigoros.gr/resources/docs/pd104-12.pdf> (in Greek).

153 Προεδρικό Διάταγμα 102/2012, available at: <http://www.synigoros.gr/resources/docs/pd102-12.pdf> (in Greek).

154 Προεδρικό Διάταγμα 113/2013, available at: <http://www.synigoros.gr/resources/docs/pd113.pdf> (in Greek) and at: <http://www.refworld.org/docid/525e84ae4.html> (in English).

155 Προεδρικό Διάταγμα 141/2013, available at: http://www.synigoros.gr/resources/docs/p-d-141_2013.pdf (in Greek).

156 Υπ’αρ. 334/2014 του Υπουργού Δημόσιας Τάξης και Προστασίας του Πολίτη «Κανονισμός της Αρχής Προσφυγών», available at: <http://goo.gl/IxJ0kS>.

157 Απόφαση Δ/ντριας Υπηρεσίας Ασύλου με αρ. οικ. 3966/09.05.2014 – Διάρκεια ισχύος δελτίων αιτούντων διεθνή προστασία, available at: <http://www.synigoros.gr/resources/docs/diarkeia-deltion-dprostasia.pdf>.

158 Νόμος 4249/2014 «Αναδιάρθρωση της Ελληνικής Αστυνομίας ...και άλλες διατάξεις», available at: <http://www.et.gr/idos-nph/search/pdfViewerForm.html?args=5C7QrtC22wEc63YDhn5AeXdtvSoC1rL8WgmdbhWgV47tI9LGdkF53UIxsx942>

- Presidential Decree no. 133/2013, Amendment of the provisions of Law no. 3907/2011 on the establishment of the Asylum Service and the First Reception Service, transposition into Greek legislation of Directive no. 2008/115/EC “on common standards and procedures in Member States for returning illegally staying third country nationals” and other provisions¹⁵⁹
- Ministerial Decision 3377 “Rules of the Asylum Service” (*Official Gazette of the Republic of Greece* no. B’1386/6.6.2013)¹⁶⁰

Asylum procedure

Short overview of the general asylum procedure including all phases of the procedure and the authorities responsible in all instances (number of staff and nature of the institutions)

A relatively new legal framework reforming the asylum system was adopted in 2011 with Law no. 3907/11 (hereinafter ‘Law 3907’), creating an Asylum Service, the First Reception Service and an Appeals Board. Due to the delays in the establishment of this new Asylum Service, the asylum procedure was in a transitional phase regulated by Presidential Decree no. 114/2010 (hereinafter ‘P.D. 114’). With the opening of the first office of the new Asylum Service on 7 June 2013, in Athens, and the immediate adoption of Presidential Decree no. 113/2013 on 13 June 2013 (hereinafter ‘P.D. 113’) the transitional phase officially came to an end. As of that date, Greece operates a twofold regime for applications for international protection, whereby:

- applications submitted before 7 June 2013 fall within the scope of P.D. 114 (hereinafter “Old Procedure”);
- applications submitted after 7 June 2013 fall within the scope of P.D. 113 (hereinafter “New Procedure”).

The core change brought about by the New Procedure relates to the authorities competent for handling the asylum procedure. Specifically, under the Old Procedure, the police authorities were responsible for the reception and registration of the applications for international protection, whereas under the New Procedure this function is performed by the Asylum Service. The Asylum Service is an autonomous body reporting directly to the Ministry for Citizen Protection; it is headed by a Director appointed by the Ministry for Citizen Protection, following a public call of interest, for a three-year term.¹⁶¹ Claims that were lodged under the Old Procedure and are still pending remain under the jurisdiction of the police. A number of other substantive changes to the asylum procedure were also brought about by P.D. 113; these will be explicitly referred to in the relevant sections of the present report and the distinctions between the two procedures will be specifically drawn.

Access to the procedure

To enhance the registration of asylum claims, the Greek Action Plan foresees the creation of asylum applications registration points at the Greek borders. The first “First Reception Service” (FRS) received its first “guests” in March 2013. After the initial maximum stay of 25 days at the FRS, asylum seekers are transferred to detention centres in the Evros Region. The first FRS established by Law no. 3907 shall provide for immediate sustenance needs of applicants, provide them with information, operate screening procedures to identify vulnerable groups and offer medical and psychosocial care. Since September 2013, the only FRS in operation is in Fylakio. A quasi First Reception Service had been operating in Lesvos, under the name of Screening Centre until the creation of the FRS there prescribed by Law no. 3907. The capacity is 98 people. Arriving persons are placed there and registration and nationality screening is carried out.¹⁶²

CdyqxSQYNUqAGCF0IfB9HI6qSYtMQEkEHLwnFqmgJSA5WIsluV-nRwO1oKqSe4BIOTSpEWYhszF8P8UqWb_zFi-jPvdaqVkJWgvmRxeGQQmuoSrA3iZJwU1ZCtD_WMMZwZ9d.

159 Προεδρικό Διάταγμα 133/2013, available at: file:///C:/Documents%20and%20Settings/Spiros/My%20Documents/Downloads/P.D._133_2013-AMENDMENT_OF_13907_AND_PD_104.pdf.

160 Υπουργική Απόφαση 3377 (ΦΕΚ Β’1386/6.6.2013), available at: http://www.et.gr/idoocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wEaosRGzKxO6XdtvSoClrL8aRmGcrk2DyYfP1Rf9veiteJInJ48_97uHrMts-zFzeyCiBSQOpYnTy36MacmUFCx2ppFvBej56Mmc8Qdb8ZfRjQZnsIAdk8Lv_e6czmhEembNmZCMxLMta51inJgBN2MwEDLvef2IFeta2G-dP8VHpgMNA4aJ5ZBV.

161 Available at: http://www.minocp.gov.gr/asylo.php?option=ozo_content&perform=view&id=3779&Itemid=465&lang=&lang=EN.

162 Greek Council of Refugees, *Field Mission in Lesvos Island* during 29/10/2013 – 31/10/2013. The report is published on the website of GCR.

After EASO, the FRS is currently staffed with 43 employees in the whole territory of Greece. Foreseen were 108 staff members. The First Reception Centres and two Mobile Units are the competent authorities for the screening procedure of all migrants arriving without travel documents.

The second FRS is currently being built in Lesvos and it was planned to be in operation as of autumn 2014. The third FRS is planned to be built and operable in the Attiki region by 2015. Two Mobile Units are operational in the Samos and Chios Islands.¹⁶³

According to the new legal framework, applicants for international protection can lodge a claim at entry points, at the border or in the territory before the Asylum Service offices or Asylum Service Units visiting detention centres, in written or oral form. They may also, in any other way, request not to be deported to a country on grounds of fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion according to the Geneva Convention or the risk of suffering serious harm.¹⁶⁴ The Central Office of the Asylum Service is in Athens. According to the information given by the Asylum Service, at the moment, five Regional Asylum Offices and three Asylum Service Units are operational:

- the Regional Asylum Office of Attica started operations on 7 June 2013 and it has registered (until 30 June 2014) 7157 applications, 661 out of which were submitted by aliens who were under administrative detention, on remand or incarcerated;
- the regional Asylum Service of Northern Evros started operations on 11 July 2013 and it has registered 327 applications of aliens who were under administrative detention;
- the Regional Asylum Office of Southern Evros started operations on 29 July 2013 and it has registered 620 applications, 340 out of which were submitted by applicants who were under administrative detention, on remand or incarcerated;
- the Regional Asylum Service of Lesvos started operations on 15 October 2013 and it has registered 98 applications, 27 out of which were submitted by applicants who were under administrative detention;
- the Regional Asylum Service of Rhodes started operations on 2 January 2014 and it has registered 245 applications, two out of which were submitted by applicants who were under administrative detention;
- the Asylum Unit of Amygdaleza started operations on 11 September 2013 and it has registered 375 applications of aliens who were under administrative detention;
- the Asylum Unit of Thessaloniki started operations on 20 January 2014 and has registered 79 applications of aliens who were under administrative detention, on remand or incarcerated;
- the Asylum Unit of Patras started operations on 1 June 2014 and has registered seven applications of aliens who were under administrative detention, on remand or incarcerated.

The access to the (new) Asylum Service in Athens is problematic.¹⁶⁵ An estimated number of 130–140 people arrive at the entrance of the Asylum Service in Athens every day in order to seek asylum. Approximately only 30 persons are chosen to be granted access, based on the availability of the daily changing and limited pool of interpreters. Only a limited number of aliens (40–60) can submit an asylum application at the Athens Asylum Service per day. Those who are not granted access do not receive any documents proving that they have come to apply for asylum. Their status as illegal migrants in turn puts them at a risk of being arrested by the police. There is no provision of care or priority for people coming to the Asylum Service in Athens from other areas of Greece.

The validity of the ID cards of asylum seekers is four months, except for asylum seekers coming from Albania, Bangladesh, Egypt, Georgia and Pakistan. The validity of their cards was 45 days. Now it is three months.

The police authorities or the Asylum Service (as the case may be) are responsible for examining applications for international protection at first instance, and are also responsible for carrying out Dublin procedures.

163 EASO Operating Plan for Greece, Interim Assessment of Implementation, Valetta Harbour, 28 July 2014, p. 12/17, available at: <http://easo.europa.eu/wp-content/uploads/Interim-assessment-on-the-implementation-of-the-EASO-Operating-Plan-for-Greece.pdf>.

164 Article 15 P.D. 96/2008 (*Official Gazette A' 152*).

165 See Amnesty International, Greece, *The end of the road for refugees, asylum-seekers and migrants*, 20 December 2012, EUR 25/011/2012, p. 5; Human Rights Watch, *World Report 2012*, European Union, January 2012.

First instance procedure, initiation of the procedure, submission of asylum application, personal interview, decision, access to information related to the possibility to seek asylum and to free legal aid, access to NGOs and UNHCR

The law does not set a time limit for the submission of an asylum application.¹⁶⁶ The decision on the application for international protection shall be issued and the applicant will be notified as soon as possible.¹⁶⁷

The provision to have to submit the asylum application to a competent Greek authority is problematic in practice, as the person who has claimed asylum before a non-competent authority does not have their claim officially registered and are therefore not protected from deportation until they manage to appear before the competent authority in person. Taking into consideration that the access to asylum procedure is quite limited even at the competent authorities, many refugees, even though they belong to quite vulnerable groups, can get detained if they are arrested without documents even if they tried to get access to the Asylum Service in Athens several times.

Applications falling under the scope of the New Procedure shall be registered and examined by the new Asylum Service which is an independent, civil service. According to Article 16, P.D. 113, claims shall be examined the soonest possible and, in any case, no later than six months after the application submission when the regular procedure is followed. When the applicants present themselves at the Asylum Service, an administrative employee registers the claim for international protection and sets the day of the interview – usually two weeks later. The interview is to be conducted by one interviewer only. Just where necessary, an interpreter will be present during the interview. The new procedure prescribes audio/video recording of the interviews as of April 2014. In cases where no decision is issued within the maximum time limit of six months, the asylum seeker has the right to request information from the asylum service officers on the time frame within which a decision is expected to be issued. It shall not constitute an obligation on the part of the asylum services to take a decision within a specific time limit. The first instance procedure usually does not last longer than six months under the New Procedure (asylum applications submitted after 7 June 2013 fall within the scope of P.D. 113).

According to the Old Procedure, prior to the first instance decision, a personal interview must be conducted with the applicant by a competent official with the rank of an officer of the Police Department. The official then recommends the decision to the Ministry of Citizen Protection after having completed a report on the interview. An interpreter who can ensure adequate communication should assist.¹⁶⁸ Before this interview, applicants must be given a “reasonable amount of time” in order to prepare themselves and to consult a counsellor to assist them during the procedure. There is no legal definition of “reasonable amount of time”, it is at the discretion of the responsible police officer to define this term – nevertheless it must not exceed a period of two months, including prolongations. Interviews are often postponed several times. There are only two cases, where an interview may be omitted:¹⁶⁹ either if the Authority is able to take a positive decision based on available evidence or if the applicant is unable to be interviewed due to enduring circumstances beyond their control (must be certificated). In such a case, the Determining Authority shall make “reasonable efforts” to provide the applicant with the possibility to submit further information. The recommendation shall also include the opinion of a representative of UNHCR or of some organisation cooperating with UNHCR. Where the opinions diverge, it shall be specifically reasoned.

Under the new procedure, asylum claims are registered with the new Asylum Service. When the applicants present themselves at the Asylum Service, an administrative employee registers the claim for international protection and sets the day of the interview – usually two weeks later. The interview will be conducted by one interviewer only. Just where necessary, an interpreter will be present during the interview. The new procedure envisages audio/video recording of the interviews from April 2014.

A common ground is the possibility of the UNHCR representative and the legal adviser to be present during the interview. However, under the Old Procedure, there had been cases where the office of

166 Footnote: Cf. P.D. 90/2008, Article 6, para.: “Requests are not dismissed merely on the ground that they have not been submitted the soonest possible”.

167 P.D. 113/2013, Article 8.2.

168 According to the law, the applicants must be allowed to confirm the facts stated in the application and to provide explanations, particularly in regard to their exact identity data, the reasons for which they do not hold a passport or other official travel document, the exact itinerary they followed before entering the Greek territory and the reasons which forced them to leave their country of origin, or in the case of stateless persons the country of former habitual residence, and for seeking protection.

169 Article 10 (P.D. 114/10).

UNHCR was not informed, which compromised the quality of the interviews. If the interview concerns a female applicant, a specialised female interviewer and interpreter shall guide the dialogue. Where this is impossible, relevant reasons must be reported. Adult family members shall be interviewed separately, and where children are being interviewed, their maturity and psychological consequences of traumatic experiences shall be considered.

The exact transcript of the report should be presented to the applicant after the completion of the interview, so that they can approve and sign it. It must also be signed by the interpreter. Under the New Procedure, the caseworker writes a full transcript of the interview and the applicant may, at all times, request a copy of the transcript or of the audio file – or both. The quality of the asylum interviews under the Old Procedure was criticised repeatedly by NGOs and UNHCR.¹⁷⁰ Even though they recognised some progress in 2012, they stated that for a long time the asylum procedure lacked essential procedural guarantees.¹⁷¹

According to the law, asylum seekers have the right to consult, at their own cost, a lawyer or other legal advisor on matters relating to their asylum application. In the case of an appeal before the Court, the applicant shall be provided with free legal assistance according to the procedure laid down in Law no. 3226/2004 (*Official Gazette* A 24). Lawyers who represent asylum seekers shall have access to the information in the applicant's file, except in some circumstances related to national security, if this information is relevant to the examination of the asylum application.

Other advisors, mainly NGOs who assist the applicant, shall have access to the applicant's file, if this information is relevant to the assistance provided. Given the fact that legal counsellors from NGOs in practice provide legal assistance to the applicants, there was no opportunity to see the difference between the two above-mentioned provisions of the law.¹⁷²

Access to NGOs and UNHCR is not always possible.

Second instance procedure

If they wish to submit an appeal against the decision rejecting the application for international protection as unfounded with normal procedure or revoking this status, the applicant has to do so within 30 days from the notification of this decision. The same deadline shall apply if the applicant is granted subsidiary protection status, where the applicant considers that they are entitled to refugee status.

In all these cases, the appeal before the Appeals Boards of the Old Procedure or the Appeals Authority of the New Procedure has an automatic suspensive effect.

Third instance procedure

The asylum seeker as well as the Ministry of the Citizen Protection shall have the right to request an annulment of the decision of the Appeals Board, before the Administrative Court of Appeals within sixty days after the notification of the decision. The appeal has no automatic suspensive effect. Only by interim measures before the same court can the appellant demand the suspension of deportation. It is at the discretion of the court to decide on the suspension of deportation.

Filing such a request does not automatically suspend the measures of removal of the applicant taken with the rejection of the appeal at the Appeal's Boards. Moreover, access to judicial review (on points of law) before this Administrative Court of Appeals is limited by a number of practical and legal obstacles, which undermine the effectiveness of the remedy. These include:

- complicated procedural rules for the submission of applications for annulment of negative decisions of the Appeal Boards. The applications must be well substantiated, written in Greek and registered by a lawyer;

170 See: Parliamentary Assembly of the Council of Europe, Migration and Asylum, *Mounting Tensions in the Eastern Mediterranean, Report*, Committee on Migration, Refugees and Displaced Persons, 23 January 2013, para. 36; UNHCR Greece, *Contribution to the dialogue on migration and asylum*, May 2012; Greek Ombudsman, *Findings after the 16 November 2010 visit in situ of the Ombudsman to the Attica Aliens Police Directorate in Petrou Ralli*, Athens, 25 January 2011 (in Greek).

171 UNHCR Greece, *Contribution to the dialogue on migration and asylum*, May 2012.

172 It should be noted that the law provides that the Determining Authority may, in a reasoned decision, forbid the disclosure of the source of the information if it considers that such disclosure of sources may jeopardise national security, the international relations of Greece, the security or the necessary secrecy in the actions of the organisations or person(s) providing the information. The access to this confidential information or sources is, in any case, possible to the Administrative Court of Appeal, the court competent to examine a request for the annulment of a decision by the Determining Authority provided in Article 29 (P.D 114/10).

- court decisions on request for temporary suspension of execution of the challenged decision may take from ten days to four months, leaving the applicant without protection against deportation during that time; it is up to the applicant to request this suspension;
- although free legal aid should be provided according to the law, the system does not function in practice, as there are gaps in the coverage of expenses and huge delays in payments to the lawyers for their work under legal aid. As a result, relatively few lawyers are willing to be included in the free legal aid list of the Lawyers' Associations.

The appellant can also ask for the appeal of the Appeals Court decision by a writ of error before the Council of the State. The Council of the State is hierarchically the Highest Administrative Court in Greece. This appeal does not have an automatic suspensive effect.

Special procedures (e.g. at the border/airport, admissibility procedure)

Applications for international protection shall be examined within the accelerated procedure when they are considered to be manifestly unfounded or when the applicant is a national of a safe country of origin or comes from a safe third country. There is no information about the situation in transit zones of Greek airports.

According to the Old Procedure, when applications for international protection are submitted at the border or at transit zones of sea ports or airports, the accelerated procedure (Art. 17 P.D. 114) must be applied. This means that all applicants enjoy the guarantees provided for in Art. 11 (1), Art. 8 (Communication in language that the asylum seekers are supposed to be able to understand, legal assistance offered by UNHCR or other organisations, information about the asylum procedure, free charge of the provision of an asylum seeker's card) and Art. 12 of P.D. 114 on the guarantees provided to unaccompanied minors. Nevertheless, if no decision on the asylum application is taken within four weeks, the applicant must be allowed to enter the territory of Greece in order for their application to be examined according to the regular asylum procedure. Art. 24 of P.D. 114 states that in the case the accelerated procedure cannot be practically applied at the border or in a transit zone, e.g. due to the high number of arrived persons submitting applications, this type of procedure may also be used in other locations near the border or transit zones.

Under the New Procedure, if a decision of an application submitted at the border or in a transit zone is not reached within 28 days, the applicant is allowed to enter Greece. However, this regulation only applies to cases of transit zones at the airports.

In practice, it appears to be difficult to lodge an asylum claim outside Athens, because Border authorities frequently refuse to register asylum applications and refuse entry or remove persons arriving irregularly. Greece lacks solid arrangements at points of entry at the border to ensure that people seeking international protection can be identified. The only First Reception Service is in Fylakio.¹⁷³ The alarming number of testimonies collected by Amnesty International alleging collective expulsion suggests that these practices are often employed by Greek border guards and coastguards. At sea and land entry points, there are no experienced personnel available¹⁷⁴ to deal with the needs of vulnerable persons such as unaccompanied minors or traumatised individuals. Therefore, most of the persons are left helpless and do not receive the necessary help which discourages them from proceeding with the asylum procedure.

The lack of information about the option to apply for international protection, which obviously constitutes an important obstacle to access the procedure, has been reported at the border.¹⁷⁵

There is no special admissibility procedure under Greek law. The Greek law provides the possibility to reject an application as inadmissible with a relevant act, but in practice there have been no such cases.

Guarantees for vulnerable groups

According to the law, the asylum authorities and local administrations shall make sure that special treatment is provided to applicants belonging to vulnerable groups such as disabled people, elderly people,

173 According to the Greek Action Plan, First Reception Services are planned to operate in Fylakio, Karoti, Mytilene (Lesvos) and Attica region.

174 CPT, *Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 27 January 2011*, CPT/Inf(2012)1, Strasbourg, 10 January 2012, par.42.

175 See for instance Greek Council for Refugees, GCR Mission Leros – Agathonissi – Kos (22 September 2012 – 24 September 2012) documenting the case of a group of Syrians in Leros who were first detained for 20 days on Farmakonnisi and then transferred to the Police Department of Leros, without having been informed about the asylum procedure or their legal status and rights.

and pregnant women, single parents with underage children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. The authorities competent to receive and accommodate or to receive and examine asylum applications shall ensure that persons who have been subjected to torture, rape or other serious acts of violence are referred to a specialised unit, namely, one of the NGOs, META-Action (*META-DRASI* in Greek), GCR or BABEL, the last two cooperating under the project *Prometheus*, in order to receive support and the necessary treatment of psychological and physical injuries caused by the aforementioned acts.¹⁷⁶ This referral should preferably take place prior to the interview on the examination on the substance of the asylum application. In practice, very few cases are dealt with properly and in accordance with the law. Currently, there are no public health structures specialised in working with or assisting torture survivors.

In the case of unaccompanied minors, the first screening and registration usually takes place at the borders, by the police. In most cases, no interpreters are available.¹⁷⁷

According to the law, if there are strong indications during the interview¹⁷⁸ (at first instance) that the applicant has been subjected to torture, they shall be referred to a specialised medical centre, or a doctor or a psychologist of a public hospital, who shall make a report on the existence of injuries, maltreatment or indications of torture, if any. According to the law, the above mentioned guarantee shall also be applied during the examination of appeals and during any supplementary examination. Medical and psychosocial support for asylum seekers is also expressly provided for in the Greek Action Plan.

However, in practice, such referrals take place at the Appeals Board of the Old Procedure or at the first instance of the New Procedure, if the members are not convinced about the tortures the victim had suffered, or if the torture survivor is in such psychological situation that they cannot give enough information to the Board.

Greek law foresees an identification and referral system based on Articles 17 and 20 of the Presidential Decree no. 220/2007 which transpose respectively Articles 17 and 20 of Council Directive no. 2003/9/EC laying down minimum standards for the reception of asylum seekers.

Furthermore, Article 11 paragraph 2 of Law no. 3907 concerning screening centres states that: “the Head of the Centre of Unit shall, upon recommendation of the head of the medical screening and psychosocial support cell, refer persons belonging to vulnerable groups to the competent body of social support or protection. For the purposes of the present, vulnerable groups are: victims of torture, rape or other serious forms of psychological, physical or sexual violence.” These groups are not subject to any accelerated procedure after they are identified as such at the Screening Centre.

According to Article 11 paragraph 5 “In the cases mentioned in paragraphs 2 and 3 above, the referral note to the competent authority shall be issued within fifteen days, at the latest, from the admission of the third-country national to first reception procedures. In exceptional circumstances, the period of admission to the verification and separation procedures may be extended, if reasoned, for another ten days maximum. If there is a delay in verification due to wrongful or improper conduct of the person subject to first reception procedures, this person shall be considered as refusing to cooperate for the preparation of their return and shall be transferred in view of their removal, deportation or return. Time limits and procedures of this article shall only apply in the context of the operation of the First Reception Centres.”

Law no. 3907 cannot be applied yet, because there are no screening centres. In practice, referrals are done by NGOs working in the field or in the few reception centres.

In practice, in past, torture survivors were referred to the Medical Rehabilitation Centre for Victims of Torture (MRCVT), when it used to operate as an NGO on such issues. A decision by the Council of State has recently reflected on doubts concerning the probative value of medico-legal reports by MRCVT.¹⁷⁹ As mentioned above, torture survivors are referred to META-Action (*META-DRASI* in Greek), an NGO providing *inter alia* legal-medical reports. However, these reports are also considered to lack probative value, pursuant to the abovementioned Council of State decision. Under the New Procedure and according to the Asylum Service, given that there are no specialised state institutions for alleged torture victims to be referred to, when during the registration of their application applicants claim that they have been torture victims, they

176 Article 20 of P.D. no. 220/2007.

177 UNHCR, France Terre d’Asile, Save the Children and PRAKSIS, *Protection Children on the Move: Addressing protection needs through reception, counselling and referral and enhancing cooperation in Greece, Italy and France*, July 2012.

178 The eligibility interview follows the Directive no. 2005/85/EC “on minimum standards on procedures in Member States for granting and withdrawing refugee status” (L 326/13.12.2005).

179 Council of State Decision no. 1482/2011.

are referred to NGOs, which have developed this kind of expertise, by the Asylum Service. Moreover, case-workers can refer an applicant to these NGOs if they consider it necessary for the decision making purposes. However, during the past few months, due to the lack of funding, these NGOs have been unable to document torture victims. Thus, the Asylum Service has stopped issuing referrals until further notice. It should be explained that, according to the information available to the author, there is one NGO named META-Action (*META-DRASI* in Greek) which certifies if somebody has been a victim of torture, according to the principles of Istanbul Protocol, and the project *Prometheus*, run until September 2014 by the Greek Council for Refugees and Babel Day Centre, providing rehabilitation for victims of torture. It has to be mentioned that a relatively recent decision of the Appeals Authority recognising a victim of torture as a refugee refers to a document provided by the project *Prometheus*, which played a crucial role to the above mentioned decision.

Safe third country concept

Applications for international protection shall be examined in the accelerated procedure within the duration of three months, when they are manifestly unfounded or when the applicant is a national of a safe country of origin or comes from a safe third country.

Compared to other EU countries, the GCR is not aware of an official list of safe countries used by the Greek Asylum authorities. However, in practice, applications of persons of certain countries of origin are treated under the accelerated procedure, as it is the case of the new regulation concerning immigrants from Egypt, Georgia, Albania, Bangladesh and Pakistan.

Is there a breach of non-refoulement in practice?

There are registered cases of push-backs at the Evros river and the Mediterranean Sea. Amnesty International interviewed 79 migrants and refugees in the period between March and May 2013;¹⁸⁰ out of that number, there were at least 39 separate instances of collective expulsions from Greece to Turkey, which the interviewees claimed to have experienced themselves between August 2012 and May 2013. Seven interviewees claimed they were pushed back more than once. Twenty-six instances concerned push-backs across the land border with Turkey and 13 concerned push-backs on the Aegean. The number of alleged push-backs reported by this small sample size still works out an average of roughly one such incident per week. The alarming number of testimonies collected by Amnesty International alleging collective expulsion suggests that these practices are regularly employed by Greek border guards and coastguards. In April 2013, UNHCR also reported that in Greece “some testimonies of Syrians received by UNHCR make reference to informal forced returns (push-backs) or attempted informal returns to Turkey”. In response to a query by Amnesty International, Frontex also wrote on 6 June 2013 that since 2012, Frontex Headquarters had received 18 reports of alleged violations of fundamental rights which included “unofficial returns (push-backs) involving groups of migrants (up to ten people) or single individuals that had allegedly been returned to Turkey by the Hellenic Police”. Frontex informed Amnesty International that it had raised such allegations with the Greek authorities in writing on three separate occasions and received a response denying that such push-backs had taken place.¹⁸¹

More recently, UNHCR received information that around 150 Syrian refugees, among whom there were many women and children, were being held in police custody in Northern Greece (Evros region) and were later taken on police vans to an unknown destination. UNHCR sought clarifications on the fate of these refugees whose whereabouts it had not been able to trace.¹⁸² Furthermore, UNHCR highlighted that Greece is obligated, under Law no. 3907, to refer all newly arriving third-country nationals to the First Reception Centre for registration and screening purposes.

The life-threatening and one-sided migration policy of the EU is criticised by Amnesty International¹⁸³ and push-back operations are documented in reports by PRO Asyl and Amnesty International.¹⁸⁴

Treatment of specific nationalities

According to the Decision of the Director of the Asylum Service issued in May 2014, asylum seekers from Albania, Bangladesh, Egypt, Georgia and Pakistan are provided with an ID card valid for 45 days,

180 See: <http://www.amnesty.org/en/library/asset/EUR25/008/2013/en/d93b63ac-6c5d-4d0d-bd9f-ce2774c84ce7/eur250082013en.pdf>.

181 Amnesty International, *Frontier Europe. Human Rights Abuses on Greece's border with Turkey*, July 2013.

182 UNHCR, “UNHCR Seeks Clarifications on the Fate of Syrian Refugees in Evros”, Press release, 13 November 2013.

183 See: <http://www.amnesty.org/en/news/eu-migration-policies-put-lives-and-rights-risk-2014-07-09>.

184 Amnesty International, available at: https://www.amnesty.org.uk/sites/default/files/greece_0.pdf, PRO Asyl, available at: http://www.proasyl.de/fileadmin/fm-dam/l_EU_Fluechtlingspolitik/proasyl_pushed_back_24.01.14_a4.pdf.

while those of other nationalities receive an ID card valid for four months. Asylum seekers from Bangladesh, Pakistan and Georgia are usually examined under the accelerated procedure. It often happens that even nationals of Syria or Somalia or other countries in political/humanitarian crisis get examined under the accelerated procedure.

Most Syrians are granted subsidiary protection or, for those claims lodged under the Old Procedure, humanitarian protection.

Treatment of unaccompanied minors

According to the law, asylum applications submitted by unaccompanied minors must always be examined by priority and according to the regular procedure. The Police officials or the Asylum Service (as the case may be) conducting interviews with unaccompanied minors and making recommendations for the decision on their application for international protection must have the necessary knowledge of the special needs of children and conduct the interview in a child-sensitive manner taking account, in particular, of the child's age in order to ensure that the child fully understands the questions and the process as such.

As of 29 October 2013, an age assessment procedure for young people is established for the first time in Greece with a Ministerial Decision of the Ministry of Health.¹⁸⁵ According to this, the determination of the age of a child shall be conducted by a team of medical doctors. The macroscopic characteristics of the child such as physical appearance shall constitute the first indicators of age assessment. If a decision cannot be taken based on these characteristics, a psychologist and a social worker shall examine the cognitive, behavioural and psychological development of the person.

According to the Ministerial Decision, only as the last resort shall the examinee be referred to a state medical institution for medical examinations by means of dental x-rays and x-rays of the left wrist, but age determination with these methods always include a margin of error.

Conclusion

The newly established asylum system could improve the processing of asylum cases significantly in the long run. However, at present, it is far from being thoroughly installed, being able to work electively and provide obligatory legal safeguards to the high number of asylum applicants and refugees.

The proposed initiation of a special asylum seeker's card of a significantly shorter validity (45 days instead of four months) for people of certain origin countries is worrisome insofar as it most likely discriminates against asylum seekers of certain origin countries with regard to their chances to find and hold a workplace.

Alarming is also the continuity in push-backs of irregular migrants at the Border at the Evros river and the Mediterranean Sea. These push-back manoeuvres do not only breach international law and open the door to *refoulement*, but put human lives at risk, as the documentation and numerous interviews conducted by Amnesty International, Human Rights Watch, PRO Asyl, the Greek Council for Refugees and other organisations on push-back operations have proven. In some cases, the push-backs involve overtly criminal actions like the shooting and beating of migrants, non-assistance in cases of emergency and even actively scuttling vessels of migrants.

Reception conditions

At the time of writing this report, there were in total about 1000 reception places available for asylum seekers in Greece, whereas 16000 asylum applications were submitted in 2009, 10273 during 2010, 9311 in 2011 and 9577 in 2012. However, asylum seekers in Greece, including those transferred back to Greece or waiting for a transfer to another EU Member State under the Dublin Regulation, in most cases, in practice, have no material support, notwithstanding the legal obligation of the State to provide accommodation and minimum financial assistance laid down in legislation. Most of them seem to be accommodated in dormitories, due to lack of funding.

Detention of asylum seekers

During their visit to Evros in October 2010, UNHCR observed a severe deterioration of the detention situation for new arrivals in Greece due to the overcrowding of existing detention centres. Men, women and children were crammed together with little space, in dire hygiene conditions and without access to open air.

185 *Official Gazette B' 2745/29-10-2013.*

Essential services such as information to persons in detention, language interpretation and legal counselling on the asylum procedure were completely absent. Access to medical treatment or care was very limited. The situation was particularly serious for persons with special needs, such as unaccompanied and/or separated children and single mothers with small children. UNHCR called for urgent measures to address the detention conditions and the lack of functioning screening procedures, including those for persons in need of international protection. UNHCR had characterised the current situation at the borders as a humanitarian crisis.¹⁸⁶

Administrative detention orders for the purpose of removal are systematically issued for third country nationals entering Greece illegally upon their arrest at the borders or in the Greek territory. According to UNHCR, until recently, the measure of administrative detention was being imposed systematically and for extended time periods to Syrian nationals as well, despite the *de facto* inability of deportation in their case. Additionally, administrative detention was being applied indiscriminately without individual examination or sufficient and specific reasoning, as required by international and national legislation for every measure of deprivation of liberty. Upon their release, Syrian nationals were provided with a police note instructing them to leave Greece within a deadline following which they could be subject to renewed arrest and detention.

In many cases, either on coast guard boats, islands or in informal detention places in Evros, refugees were arbitrarily detained for some hours, without access to the outside world and without any food or water. In all cases, push-back victims were not officially registered by the competent authorities, nor were they asked for any personal details apart from their nationality. All victims reported not being given the opportunity to request international protection (access to asylum barred) or to challenge their illegal removal. Furthermore, ill-treatment – such as humiliation by obliging refugees to take off their clothes, or by stealing the items they are carrying on them – seems to be the norm in these cases, with a report of nine male Syrians describing treatment that could amount to torture.¹⁸⁷

The Director of the First Reception Centres (FRC-Screening Centres) can decide on the retention of the aliens staying at the FRC. A Regulation on the Appeals Authority under the Asylum Service was in force until January 2014. According to a Decision of the Minister of Public Order and the Protection of Citizens, which endorsed Legal Opinion no. 44/2014 of the Legal Council of the State,¹⁸⁸ after the 18-month maximum detention period under EU law, a new detention order can be issued (without time limitation) if the alien does not cooperate with the authorities to be repatriated. The Greek Council for Refugees lodged the first appeal against the “endless detention duration”. The Athens Administrative Court of First Instance ruled on 23 May 2014¹⁸⁹ that indefinite detention (in the form of compulsory stay in a detention centre as defined by the Legal Council of the State Opinion no. 44/2014) is unlawful. As a consequence, an Afghan refugee that had already been in detention for 18 months was released.

Xenophobia and racism as a danger for asylum seekers

Racist hate crimes are on the rise at an alarming rate in Greece. The impunity of perpetrators and even the discouragement of victims by the police to file an official complaint leave victims stuck between a rock¹⁹⁰ and a hard place.¹⁹¹ They are left homeless and at an increased risk of being subject to xenophobic violence. UNHCR qualified the situation as a “humanitarian crisis”.

The critical scope that racism and racist violence have reached in Greece are corroborated by the European parliamentary election results, leaving the right extremist party Golden Dawn (*Chrisi Avgi* in Greek) with 10% of the votes enter the European Parliament as Greece’s third biggest party after the left-wing party *Syriza* and the conservative *Nea Demokratia*.

Moreover, a Belgium court decision to grant asylum to a Guinean asylum seeker who was under threat from Golden Dawn after having filed for asylum in Greece, presents a hallmark decision, in which, for the first time, a person living in a European Union country was granted refugee status by another EU member state. This decision is even more illustrative in depicting the dire situation of asylum seekers living under racist threats by Golden Dawn in Greece.¹⁹²

186 Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report, November 2010.

187 Pro Asyl, *Pushed Back: Systematic Human Rights Violations against Refugees in the Aegean Sea and at the Greek-Turkish Land Border*, 7 November 2013.

188 Greek Refugee Council, *Indefinite detention: a direct infringement of national, European and international law*, 8 April 2014.

189 Decision no. 2255 of 23 May 2014.

190 See: Human Rights Watch, *Hate on the Streets. Xenophobic Violence in Greece*, July 2012, pp. 78–87.

191 UNHCR, *Contribution to the dialogue on migration and asylum*, May 2012.

192 *Equal Times*, “Greece Judged ‘incapable of protecting its migrants’”, 30 June 2014.

Overall conclusion

The newly established asylum system could improve the processing of asylum cases significantly in the long run; albeit at present it is far from being thoroughly installed, working effectively and providing obligatory legal safeguards to the high numbers of asylum applicants and refugees.

In general, accommodation conditions, the state of food supply, health provision and prioritised treatment for vulnerable groups, the detention conditions and the reasons provided especially for long-term detention by the authorities are appalling in most cases and non-compliant with international humanitarian standards.

Detection, accommodation and protection of unaccompanied minors are not satisfactory. Many unaccompanied minors pass themselves off as adults; others are willingly not recognised by authorities as minors, even though such claims were made. Furthermore, a significant number of unaccompanied minors live in Greece irregularly.

The proposed initiation of a special asylum seeker's card of a significantly shorter validity (45 days instead of four months) for people of certain countries of origin is a reason for concern, since it most likely discriminates against migrants from certain countries of origin.

Greece continues to extend immigration detention beyond the maximum detention limit of 18 months of the EU Return Directive, even though the Administrative First Instance Court of Athens ruled this practice breaches national, European and international law.

Furthermore, alarming is the continuity of push-backs of irregular migrants at the border to Bulgaria, at the Evros river and the Mediterranean Sea. These push-back manoeuvres do not only breach international law and open the door to *refoulement*, but put human lives at risk, as documentation and numerous interviews conducted by Amnesty International, Human Rights Watch, PRO Asyl, the Greek Council for Refugees and other organisations on push-back operations have proven. In some cases, the push-backs involve overtly criminal actions like the shooting and beating of migrants, non-assistance in cases of emergency and even actively scuttling vessels of migrants.

Kosovo*



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Abbreviations:

CRP/K – Civil Rights Program in Kosovo

DCAM – Department of Citizenship Asylum and Migration

MIA – Ministry for Internal Affairs

NCR – National Commission for Refugees

UNHCR – United Nations High Commissioner for Refugees

RSD – Refugee Status Determination

Statistics ¹⁹³

Asylum seekers: 104 (2013 – 62, 1 January–30 June 2014 – 42)

Ethnic Breakdown: Albania 4, Algeria 7, Comoro Islands 1, Eritrea 2, Mali 2, Morocco 2, Nigeria 8, Pakistan 12, Palestine 1, Senegal 5, Syria 59, Tunisia 1

Male asylum seekers: 93

Female asylum seekers: 11

Unaccompanied minors: None

Submitted asylum applications: 104

Conducted interviews: 19

First instance decisions: 94

Refugee status: None

Subsidiary protection: 4

Other protection: None

Rejections in merit: 8

Refusal: 13

Otherwise closed cases/discontinued: 69

Second instance decisions: 1

Positive second instance decisions: 1

Positive second instance decisions on the merits: 1

Negative second instance decisions (refusal, rejection): None

Third instance decisions: None

Positive third instance decisions: None

Negative third instance decisions: None

* This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo declaration of independence.

¹⁹³ Source CRP/K Database.

Overview of the legal framework

The new Law on Asylum¹⁹⁴ was adopted by the Kosovo Assembly and entered into force on 15 September 2013. This Law is in line with the EU legislation, with the Geneva Convention of 1951 and its Protocol of 1967.

Moreover, in November 2013, MIA approved two bylaws for the implementation of the Law on Asylum:

- Administrative Instruction (MIA) no. 16/2013 on Procedures and Standards of Admission and Initial Treatment of Asylum Seekers,¹⁹⁵ and
- Administrative Instruction (MIA) no. 17/2013 on Procedures and Standards of Review and Ruling on Request for Asylum.

Other new relevant legislation include:

- Law on Administrative Proceedings;¹⁹⁶
- Administrative Instruction on Determining the Conditions and Criteria for Acquisition of Social Assistance for the Foreigners in the Republic of Kosovo;¹⁹⁷
- Regulation on the Functioning of the Asylum Seekers Centre;¹⁹⁸
- Regulation on the Work of the National Commission for Refugees.¹⁹⁹

Asylum procedure

Short overview of the general asylum procedure including all phases of the procedure and the authorities responsible in all instances (number of staff and nature of the institutions)

Asylum procedure in Kosovo is an Administrative Procedure applied under the Law on Asylum in Kosovo and the Law on Administrative Procedure. The Law and the Administrative Instructions contain a number of special procedural rules which regulate the asylum procedures from the moment of the entry of foreign nationals or stateless persons in Kosovo territory, until the granting or refusing the status.

The Kosovo Laws proscribe two levels of Administrative Procedures, whereby the first instance decision is taken by the relevant administrative body, the Department of Citizenship Asylum and Migration (DCAM) of the Ministry of Internal Affairs (MIA), which is outside of the police division. A Decision is to be taken by the decision-maker of the case, in consultation with the Head of DCAM. There are four refugee status determination officers. The Law prescribes the National Commission for Refugees (NCR) as the second instance/appellate body in the Asylum Procedure and according to the Law on Asylum, a decision should be taken by three members of the NCR officials. NCR is the second instance administrative body composed of seven officials, while a UNHCR official has the right to be present during the interview, and give their opinion on the case in written format. While the court procedures start with a lawsuit, remedy is provided through the judicial review pursuant to the Law on Administrative Proceedings.²⁰⁰

Responsible authorities:

- Department of Citizenship, Asylum and Migration (DCAM) is responsible for decision-making at the first instance on request for asylum, (Administrative Proceedings);
- the National Commission for Refugees (NCR), as a second instance body, is responsible for examining appeals lodged against decisions taken at the first instance (administrative proceedings). The NCR consists of the president, vice-president, and five regular members, but the NCR decides on the cases in the council of three members, headed by the president or vice-president of the NCR. In accordance with the Law on Courts, the competent court responsible for examining administrative decisions is the Basic Court in Pristina (court proceedings first instance);²⁰¹

194 Law no. 04/L-217.

195 Administrative Instruction (Ministry of Internal Affairs) no. 16/2013.

196 Law no. 02/L-28.

197 Administrative Instruction (Ministry of Labor and Social Welfare) no. 16/2013.

198 Regulation (MIA) no. 02/2014.

199 Regulation (Government of the Republic of Kosovo) no. 10/2014.

200 Article 42 of the Law on Asylum (Law no. 04/L-217).

201 Article 14 of the Law on Courts (Law no. 03/L-199).

- Court of Appeal (court proceedings second instance);²⁰²
- Supreme Court in rare cases (court proceedings third instance).²⁰³

Access to the procedure

The asylum application can be submitted at the moment of entry in Kosovo, at a border crossing point, in a police station or at the DCAM.

Both the Police and the DCAM are responsible for receiving the application, filling out of an initial form, and taking the fingerprints, photographs, travel documents and other proof with regard to the asylum request. Upon the completion of the initial procedure, the asylum seekers are accommodated in the Centre for Asylum Seekers or in another location assigned by the DCAM.

First instance procedure, initiation of the procedure, submission of asylum application, personal interview, decision, access to information related to the possibility to seek asylum and to free legal aid, access to NGOs and UNHCR

The asylum application will be filled in by the Kosovo Police, and it will be submitted to DCAM. One DCAM official will be in charge of the case, and will organise the interview with the asylum seeker.²⁰⁴ After filling in and submitting the form, the DCAM official in charge of the case shall organise an interview with the asylum seeker.²⁰⁵ In accordance with Article 49 of the Law on Asylum, the interview with the asylum seeker will be conducted in confidential conditions and it will not be open to public.²⁰⁶ UNHCR and its Implementing Legal Partner CRP/K are informed by DCAM on arriving of new asylum seekers in Kosovo. CRP/K offers free legal assistance and advice to asylum seekers and refugees in Kosovo. CRP/K lawyers represent asylum seekers in all RSD stages with asylum seekers' authorisation, UNHCR can be present at the Hearing sessions as an observer. During the interview, DCAM enables the asylum seeker to present, explain and prove all facts and circumstances related to their request for asylum.²⁰⁷ After the interview, in accordance with Article 53 of the Law on Asylum, DCAM will take a decision which will: recognise the asylum; reject the request for asylum and recognize supplementary protection; reject the request for asylum or terminate the asylum procedure.²⁰⁸

The asylum procedure in the first instance as a general rule has a duration of six months from the day when the request is submitted.²⁰⁹ The Republic of Kosovo grants asylum to a foreign national or stateless person, at their request, if they fulfil the refugee criteria according to the Article 2, paragraph 1.10 of the Law on Asylum no. 04/L–217 and the 1951 Convention Relating to the Status of Refugees.

A written decision should be prepared by DCAM and in cases when the asylum request is refused, the factual and legal reasons have to be shown in the respective decision as well as information on legal remedy (right to appeal).²¹⁰

According to the Law on Asylum in Kosovo, Article 52, DCAM may take a decision under an accelerated procedure in accordance with the basic principles and guarantees of the first instance procedure, relating to cases when: 1) a positive decision is based on the evidence available and 2) a negative decision is taken pursuant to Article 54 of the Law on Asylum.

Article 54 of the Law on Asylum prescribes the rejection of the asylum request and subsidiary protection in cases when: 1) the asylum seeker does not meet the criteria for refugee status as set out in the definition of a refugee or for subsidiary protection, as set out in the definition for subsidiary protection and 2) in cases where it is considered that the asylum seeker does not have the right to protection according to Articles 7 and 9 of this Law.

202 Article 18 of the Law on Courts (Law no. 03/L–199).

203 Article 22 of the Law on Courts (Law no. 03/L–199).

204 Article 5 of the Administrative Instruction (MIA) no. 17/2013 on procedures and Standards of review and ruling on Request for Asylum.

205 Article 5 of the Administrative Instruction (MIA) no. 17/2013 on procedures and Standards of review and ruling on Request for Asylum.

206 Article 7.1 of the Administrative Instruction (MIA) no. 17/2013 on procedures and Standards of review and ruling on Request for Asylum.

207 Article 43.2 of the Law on Asylum.

208 Article 10 of the Administrative Instruction (MIA) no. 17/2013 on Procedures and Standards of Review and Ruling on Request for Asylum.

209 Article 43.2 of the Law on Asylum.

210 Article 53 (2) of the Law on Asylum (Law no. 04/L–217).

Article 7 foresees the criteria for the exclusion from asylum in cases when the asylum seeker has: 1) committed a crime against peace, war crimes or crimes against humanity as defined in the international instruments drawn up to make provision in respect of such crimes; 2) committed a serious non-political crime outside the Republic of Kosovo prior to their admission as a refugee, to that country as a refugee and 3) been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

While the Article 9 of the Law on Asylum prescribes the criteria for exclusion from subsidiary protection when the asylum seeker: 1) has committed crimes against peace, war crimes or crimes against humanity according to the international provisions that define these crimes; 2) has committed serious and punishable crimes; 3) is guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and 4) constitutes a danger to the community or to the security of the Republic of Kosovo.

DCAM will reject the request for asylum in cases when:

- the asylum seeker does not meet the criteria for a refugee status as set out in the definition of a refugee or for subsidiary protection, as set out in the definition of subsidiary protection, and
- in cases where it is considered that the asylum seeker does not have the right to protection according to Law²¹¹ and according to Articles 7 and 9 of this Law which foresee the criteria for exclusion from asylum and subsidiary protection.

Moreover, DCAM will reject the request for asylum which is considered unfounded under accelerated procedure in accordance with the procedural guarantees which are foreseen by law.²¹²

DCAM will suspend a procedure in case where one of the following conditions is met: 1) the asylum seeker withdraws the asylum application; 2) the asylum seeker departs from the last place of residence for over three days without informing the competent authority, except in cases when the asylum seeker proves within a reasonable time that announcement of the asylum seeker and non-announcement had happened within the circumstances out of their control and 3) the asylum seeker leaves the Republic of Kosovo during the procedure.²¹³

At the end of the procedure, if the request for asylum is rejected by the final decision or stopped, DCAM decides, as a general rule, on return from Kosovo and orders the decision to be executed. DCAM takes into consideration the principle of family unity. After the decision on rejection of the request or termination of the asylum procedure is final, the official in charge with conducting the procedure shall lay in stock the respective case file and submit it to the Division for Return and Readmission with the purpose of organising the return.²¹⁴

Second instance procedure²¹⁵

In all cases where the asylum seeker, a person with refugee status, a person under subsidiary protection or a person under temporary protection is dissatisfied with the decision on their status, they have the right to lodge an appeal at the NCR against the DCAM decision. Upon the submission of the lawsuit, the procedure will be suspended until the final decision has been reached. The deadline for lodging an appeal against a first instance decision is 15 days from the day of the notification of the decision, except in cases determined otherwise by this Law.

Therefore, the grounds for appeal are as follows:

- violation of the provisions of a procedural law;
- violation of the provisions of a material law;
- inaccurate or incomplete ascertaining of the factual situation;
- new substantial facts in support of the request.

An asylum seeker has the right to lodge an appeal at the National Committee for Refugees within seven days against a decision taken under accelerated procedures.

211 Article 54 of the Law on Asylum (Law no. 04/L-217).

212 Article 55(1) of the Law on Asylum (Law no. 04/L-217).

213 Article 56 of the Law on Asylum (Law no. 04/L-217).

214 Article 12 of the Administrative Instruction (MIA) no. 17/2013 on Procedures and Standards of Review and Ruling on Request for Asylum.

215 Article 69 of the Law on Asylum (Law no. 04/L-217).

On the basis of evidence gathered during the asylum procedure in the first instance and on the basis of other evidence presented by the asylum seeker, the NCR decides:

- it approves the first instance decision;
- it annuls the first instance decision and returns it for examination at the first instance;
- it remedies noted shortcomings by taking appropriate decision;
- it changes the first instance decision on the basis of the same evidence.

As a general rule, the NCR decides within 30 days on the examination of the appeal.

Third instance procedure

The Administrative dispute before the court begins with a lawsuit before the Basic Court. Upon the submission of the lawsuit, the procedure will be suspended until the final decision is reached. Second instance is the Appeal Court of Kosovo and in rare cases the Supreme Court of Kosovo as a third instance.²¹⁶

Special procedures (e.g. at the border/airport, admissibility procedure)

Kosovo is a small country and the capital city of Pristina can be reached from every boundary/entry point in two hours the most and perhaps it is for this reason that special procedures are not prescribed to be undertaken at the airport or any border point.

Guarantees for vulnerable groups

The Kosovo Laws pay special attention to the treatment and care of persons with special needs, particularly children, unaccompanied minors, the elderly, disabled people, pregnant women, single parents with underage children, and persons who have been victims of torture, rape or another serious form of psychological, physical and sexual violence. According to the applicable law, special needs are defined on the basis of an individual assessment of each asylum seeker, refugee or person under subsidiary protection or persons under temporary protection.²¹⁷

The Government will pay special attention to the treatment and care of persons with special needs, particularly children, unaccompanied minors, the elderly, disabled people, pregnant women, single parents with just one underage child, and persons who have been victims of torture, rape or another serious form of psychological, physical and sexual violence.

Asylum seekers, refugees, persons under subsidiary protection or persons with special needs under temporary protection will be given special treatment in accordance to their specific needs in terms of accommodation, provision of special standards for admission, necessary medical treatment, and required psycho-social counsellor.²¹⁸

Safe third country concept

A list of safe countries does not exist in Kosovo, at least not an official one.

Is there a breach of non-refoulement in practice?

During 2012, there were some statements of asylum seekers who claimed that they had been pushed back by Kosovo Police to the border of neighbour countries; however, so far such claims could not be formally documented.²¹⁹

Treatment of specific nationalities

Treatment of special nationalities is not available in Kosovo.

Treatment of unaccompanied minors

According to the Law on Asylum, unaccompanied minor asylum seekers will be assigned an official for social services appointed by the Centre for Social Affairs as their representative as soon as is it possible. In no circumstances can an unaccompanied minor be interrogated without being accompanied by an official for social services.²²⁰

216 Article 14 of the Law on Courts (Law no. 03/L-199).

217 Article 16 (1, 2) of the Law on Asylum (Law no. 04/L-217).

218 Article 16 (3) of the Law on Asylum (Law no. 04/L-217).

219 CRP/K- reports.

220 Article 14 (1) of the Law on Asylum (Law no. 04/L-217).

Unaccompanied minor asylum seekers are accommodated in rooms with people of the same gender, the same linguistic and cultural traditions, with siblings and their families.

In the case of the recognition of refugee status, subsidiary protection and temporary protection, an unaccompanied minor is assigned to child custody. Ministry of Internal Affairs must begin with efforts to quickly find parents or other close relatives of unaccompanied minors in cooperation with relevant adult relatives; or, with an adoptive family; or in specialised centres for accommodation of children; or in other accommodation suitable for children.²²¹ In this context, the opinion of the child shall be considered in accordance with the age and degree of their maturity.²²²

During 2011, there were a total of 12 unaccompanied minors, mainly from Afghanistan, seeking asylum in Kosovo. Some of them were assigned an officer for social services from the Centre for Social Work. However, these children had left the Asylum Centre at an early stage of the asylum procedure and went to unknown destinations.²²³

Conclusion

- The number of asylum seekers is lower in comparison to other countries in the region;
- legal framework is in place;
- RSD procedures and mechanisms provided for by law;
- treatment of asylum seekers is fair and in line with international standards; special procedures and safeguards for vulnerable categories among asylum seekers are in place.

Reception conditions

The reception of asylum seekers is managed through the New Asylum Seekers Centre which was inaugurated in February 2012. The Centre located only a few kilometres away from the Pristina International Airport, provides housing and other necessary living and recreation conditions for up to 50 asylum seekers. The New Asylum Seekers Centre consists of two main buildings (the administration building and the accommodation building) and is intended to provide housing and other necessary living and recreational conditions for 50 asylum seekers. The design/layout of the Centre was entrusted to *STD/Safege* Consortium from Belgium, who appear to have largely utilised a similar existing concept project in the region (Republic of Macedonia) and the lessons learned from its construction and operationalisation.²²⁴

UNHCR and CRP/K have helped authorities in the development of this reception facility, including the drafting of Regulation for the Operationalisation of the Asylum Seekers Centre.

The New Centre

The accommodation building is of 1400m² surface in total and is meant to provide all housing conditions for 50 persons, whereby the layout of the rooms is designed in compliance with the requirements for specific needs of persons with disabilities, necessary privacy of the beneficiaries as well as the protection of the family unity. There are 16 rooms in total available for accommodation of beneficiaries and each room is equipped with basic cooking facilities. The capacity of the rooms is as follows: 7 rooms with 4 beds each = 28 beds, 4 rooms with 1 bed each = 4 beds, 3 rooms with 2 beds each = 6 beds, 2 rooms with 6 beds each = 12 beds.

The Centre has a fully-fledged kitchen and provides hot meals through the joint dining facility. In addition, all rooms are equipped with basic cooking and hygiene facilities.

The administrative part of the Centre has necessary facilities and premises intended for different activities such as RSD interview room, counselling room as well as rooms intended for civil society.

Detention of asylum seekers

The practice of detention of asylum applicants occurred only in cases where detention was necessary for persons entering illegally without requiring international protection and also for the possession of false

221 Article 14 (7) of the Law on Asylum (Law no. 04/L-217).

222 Article 14 (8) of the Law on Asylum (Law no. 04/L-217).

223 Data obtained from the CRP/K.

224 Reports of the CRP/K.

documents. One such case was recorded in 2011, when an applicant was detained by reason of illegal entry and was held in a police detention centre. At the beginning, he was treated under the provisions of the Law on Foreigners and was very correct. At the early stages of the proceedings the applicant filed an asylum application, but the procedure was halted by the Law on Foreigners and the asylum applicant automatically entered the asylum procedure and further treatment continued under the procedures of the Law on Asylum.

Persons who were detained were adults, and they did not fall under specific categories as children, unaccompanied minors or women.

Xenophobia and racism as a danger for asylum seekers

So far, there have been no cases which could indicate xenophobia against foreigners/asylum seekers in Kosovo.

Also, there have been no cases of incidents which involve asylum seekers/foreigners in Kosovo. The Centre for Asylum Seekers is located in the centre of the village Magure in Kosovo, where the asylum seekers have been accepted well by the local population.

Overall conclusion

Given that the issue of asylum and migration in Kosovo has been treated only since a few years ago (2008), the general conclusion is that the system is quite good and functional. With strong international support, the legal framework is in place, while Kosovo authorities, supported by the EU, have constructed one of the most modern Reception Centres in the region, which provides adequate conditions for asylum seekers, based on the international standards in this area.

Currently, Kosovo is not an attractive place/country for the asylum seekers. Kosovo is a transit country for asylum seekers. Concurrently, their number might increase once Kosovo becomes part of the EU, which is why the Kosovo authorities should focus on increasing their human capacities in order to be prepared for this upcoming stage. Despite the establishment of the RSD process by the institutions, the staff still lacks satisfactory preparations, i.e. they need to attend more training sessions relevant to this process. RSD officers should at least have a proficient level of knowledge of English so that they have no difficulties finding necessary information on COI, etc.

Macedonia*



The Macedonian Young Lawyers Association

Authors: Irena Zdravkova, Project Manager and Vera Martinoska, Research Associate and Data Analyst, Macedonian Young Lawyers Association

Abbreviations:

HAC – High Administrative Court
AC – Administrative Court
CSW – Centre for Social Work
LATP – Law on Asylum and Temporary Protection
LFLA – Law on Free Legal Aid
LGAP – Law on General Administrative Procedure
MYLA – Macedonian Young Lawyers Association
MOI – Ministry of Interior
MTSP – Ministry of Labour and Social Policy
SfA – Section for Asylum

*Statistics*²²⁵

Asylum seekers: 1820 (2013 – 1353, 1 January – 30 June 2014 – 467)
Ethnic breakdown: Afghanistan 399, Algeria 94, Bangladesh 63, Benin 1, Bulgaria 1, Burkina Faso 8, Cameroon 3, Central Africa 1, Comoros 47, Congo 2, Cote d'Ivoire 20, Egypt 2, Eritrea 31, Ethiopia 2, Gambia 10, Ghana 21, Guinea 15, Greece 1, India 5, Iran 1, Iraq 6, Kosovo 1, Mali 26, Mauritania 14, Morocco 46, Myanmar 5, Nigeria 41, Pakistan 108, Palestine 35, Rwanda 1, Senegal 26, Serbia 6, Sierra Leone 4, Somalia 99, Sudan 10, Syria 639, Togo 4, Tunisia 7, Tanzania 1, Ukraine 1, West Sahara 9
Male asylum seekers: 1664 (2013 – 1259, 2014 – 405)
Female asylum seekers: 156 (2013 – 94, 2014 – 62)
Unaccompanied minors: 134
Submitted asylum applications: 1820
Conducted interviews: 43
First instance decisions: 45
Refugee status: 10
Subsidiary protection: 1
Other protection: /
Rejections in merit: 23
Refusal: 18
Otherwise closed cases/discontinued: 564
Second instance decisions: 32
Positive second instance decisions: 16
Positive second instance decisions in merit: 0
Negative second instance decisions (refusal, rejection): 10
Third instance decisions: 2
Positive third instance decisions: 0
Negative third instance decisions: 2

* The name Former Yugoslav Republic of Macedonia, often abbreviated as FYROM, is used by international organisations and states which do not recognise translations of the constitutional name Republic of Macedonia.

Overview of the legal framework

The list of laws and regulations related to the asylum system:

- Constitution of the Republic of Macedonia
- Law on Asylum and Temporary Protection (LATP)²²⁶
- Law on General Administrative Procedure²²⁷
- Law on Administrative Disputes²²⁸
- Law on Aliens²²⁹
- Law on Social Protection,²³⁰
- Law on Health Insurance²³¹
- Law on Family²³²
- Law on Citizenship of the Republic of Macedonia²³³
- National Strategy on Migration, Asylum and Integration (2011–2020)²³⁴
- National Strategy for Integration of Refugees and Foreigners in the Republic of Macedonia (2008–2015)²³⁵
- Manual for the Standard Procedure for Reception of Asylum Seekers in the Republic of Macedonia

Asylum procedure

Short overview of the general asylum procedure including all phases of the procedure and the authorities responsible in all instances (number of staff and nature of the institutions)

The asylum procedure is initiated by the submission of an asylum application according to the Law on Asylum and Temporary Protection (LATP). Upon request, an asylum seeker is transferred to the Reception Centre for Asylum Seekers or other place approved by the Ministry of Labour and Social policy (MLSP). The Section for Asylum within the Ministry of Interior is the first instance authority responsible for the examination of the submitted asylum applications. There are 11 inspectors at the Section for Asylum, four of which work exclusively with new asylum seekers. In a regular procedure, the Section for Asylum is obliged to take the decision within six months from the day of the application submission. Before a decision is taken, an asylum seeker has an opportunity of a personal interview and, upon request, the asylum seekers have the right to be interviewed by a same sex official of the Section for Asylum.

There are three types of decisions that can be made by the Section for Asylum: 1) a decision for the recognition of a refugee status; 2) a decision for the recognition of subsidiary protection and 3) a decision that rejects the application for the recognition of asylum.

225 Source MYLA

226 Law on Asylum and Temporary Protection, *Official Gazette of the Republic of Macedonia* no. 49/2003, 66/2007, 142/2008, 146/2009 and 166/2012, available at: <http://moi.gov.mk/Uploads/azil%20neoficijalen%20precisten%20tekst%2008.01.2013.pdf>
The law defines the right to asylum as an international protection which the Republic of Macedonia grants under the conditions and in the procedure defined by this Law, to the following categories of persons recognised refugee (refugee according to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees) and person under subsidiary protection.

227 Law on General Administrative procedure, *Official Gazette of the Republic of Macedonia* no. 38/2005, 110/2008 and 51/2011.

228 Law on Administrative Disputes, *Official Gazette of the Republic of Macedonia* no. 62/2006, 150/2010.

229 Law on Aliens, *Official Gazette of the Republic of Macedonia* no 35/2006, 66/2007, 117/2008, 92/2009, 156/2010, 158/2011, 84/2011, 13/2013, 147/2013.

230 Law on Social Protection, *Official Gazette of the Republic of Macedonia* no. 50/97, 16/2000, 17/2003, 65/2004, 62/2005, 111/2005, 40/2007, 98/2008, 161/2008.

231 Law on Health Insurance, *Official Gazette of the Republic of Macedonia*, no.65/2012, 16/2013 and 91/2013.

232 Law on Family, *Official Gazette of the Republic of Macedonia*, no. 80/92, 9/96, 38/2004, 33/2006, 84/2008, 67/10, 156/10, 39/12, 44/12, 38/14, 115/2014.

233 Law on Citizenship, *Official Gazette of the Republic of Macedonia*, no 8/2004, 98/2008, 158/2014.

234 National Strategy on Migration, Asylum and Integration (2011–2020), <https://www.mvr.bg/NR/rdonlyres/EBCD864F-8E57-4ED9-9DE6-B31A0F0CE692/0/NationalStrategyinthefieldofMigrationAsylumandIntgrationENG.pdf>

235 National Strategy for Integration of Refugees and Foreigners in the Republic of Macedonia (2008–2015) adopted by the Government of the Republic of Macedonia.

In the case of a rejecting decision, the asylum seeker may instigate an administrative dispute to the Administrative Court within 30 days from the day of the delivery of the decision. The lawsuit suspends the execution of the decision. If the verdict is in favour of the plaintiff, the Administrative Court will annul the decision and return back the case to the Section for Asylum which should act in accordance with the court guidelines. If the verdict is in favour of the Section for Asylum, the applicant has the right to appeal to the High Administrative Court within 15 days from the receipt of the decision. The High Administrative Court is the last instance in the asylum procedure after which the decision of the Section for Asylum becomes effective and gives certain period for the asylum seeker to leave the country.

Access to the procedure

When a person intends to seek asylum in the Republic of Macedonia (RM), they must apply when entering the territory of the country at the border crossing point (airports included) or at the nearest police station. After stating their will to request asylum, the person will be escorted by a police officer to the Section for Asylum or to the Reception Centre.²³⁶ When a person residing in the country intends to submit an asylum application, they can do this in the Section for Asylum at the MOI. In cases of family reunification, an asylum application can be submitted to the diplomatic/consular mission of the Republic of Macedonia.²³⁷

In 2012, 636 new asylum applications were submitted, a decrease from 740 in 2011. In 504 cases (95%) the asylum procedure had to be stopped due to the applicants leaving the Reception Centre before the termination of the asylum procedure.

First instance procedure, initiation of the procedure, submission of asylum application, personal interview, decision, access to information related to the possibility to seek asylum and to free legal aid, access to NGOs and UNHCR

When a person residing in Macedonia wishes to submit an asylum application, they can do this in the Section for Asylum at the Ministry of Interior.²³⁸ Most commonly an asylum seeker submits an oral application at a police station and after they have been accommodated at the Reception Centre, they submit a written application in front of an inspector from SfA and a lawyer from MYLA.

An identity document for the asylum seeker shall be issued within 15 days from the day of the submission of the asylum application.²³⁹ Also, with this document, the right to residence for a period of the validity of the ID is established. However, in practice, this is not the case and the IDs are not issued in time prescribed with by the Law, in most cases, due to the delays in the process of fingerprinting of the asylum seekers, usually performed once per week. There were 28 IDs for asylum seekers issued in 2013. MYLA registered some progress in the increasing rate of the issuing of IDs for asylum seekers in the first half of 2014. According to MYLA, the Section for Asylum, at the MOI, issued 24 IDs for new asylum seekers (January – 2; February – 0; March – 4; April – 8; May – 3; June – 7). This means that the number of issued IDs in the first half of this year is approximately the same as the number for the entire previous year, 2013. Therefore it can be concluded that some progress was made towards accelerating the process of providing asylum seekers with ID papers, with more than double the number of persons being issued with documentation during this reporting period, compared with the previous one. However, there is still a need for improvement.

Once the asylum seekers' application has been registered, a competent inspector from the Section for Asylum (organisational unit within the MOI/Section for civil affairs in charge of the asylum procedure) schedules an RSD (Refugee Status Determination) interview with the asylum seeker through their legal representative, and within the period of maximum six months the first instance decision must be issued.²⁴⁰

The interview takes place at a remote MOI office, at the Reception Centre, in circumstances that ensure appropriate confidentiality. The persons present are: the asylum seeker, their legal representative, the inspector/s and an interpreter for a language that the asylum seeker is capable of communicating in and which they are reasonably presumed to understand. Members of the family of the asylum seeker shall not be present at the interview, unless the inspector considers it relevant for an appropriate examination of the interviewed asylum seeker's application.

236 Article 16 of the Law on Asylum and Temporary Protection.

237 Article 16 of the Law on Asylum and Temporary Protection.

238 Article 16 of the Law on Asylum and Temporary Protection.

239 Article 40 of the Law on Asylum and Temporary Protection.

240 Article 27 of the Law on Asylum and Temporary Protection.

According to the LAMP, the asylum seeker has the right to be interviewed by a person of the same sex, on their request.²⁴¹ In practice, the Section for Asylum takes a gender sensitive approach and appoints a female inspector in cases when the asylum seeker is a female.

Generally, the purpose of the interview is the presentation of the facts, evidence and circumstances from the side of the asylum seeker, which should show that their fear of persecution is well-founded and the risk of suffering serious harm if returned to their country of origin (or the state of their habitual residence) is real. Keeping minutes at the interview is compulsory. At the end, the persons present at the interview sign the minutes. If the asylum seeker does not approve of the content of the minutes and refuses to sign them, this is recorded in their case file.

In the first half of 2014, 18 interviews with new asylum seekers were properly conducted and 88 conclusions for stopping the procedure were reached due to the fact that the asylum seekers had left the Reception Centre. The number of days from registration to the first instance interview for all persons who underwent the first instance interview during the reporting period in 2013 is 70 days on average.

According to the latest changes of the LAMP in terms of the implementation of the regular procedure, SFA is obliged to reach the decision within six months from the day of submission of the application. With this decision, an asylum seeker can be granted status of a recognised refugee or person under subsidiary protection or the application can be rejected. This change is unfavourable for asylum seekers because the longer they wait for a decision the more likely is that they will leave the country. Additionally, these changes are contrary to the EU directives in which it is established that the Member States shall ensure that the examination procedure is concluded within six months of the lodging of the application".²⁴² This means that six months is the maximum time frame for reaching a decision in the asylum procedure, but at the same time not the recommended period that should be prescribed with the law.

LAMP provides two types of the procedure: regular and accelerated, the accelerated being implemented when the asylum application is manifestly unfounded, with the exception of situations when the application has been submitted by an unaccompanied minor or a mentally disabled person.²⁴³ An asylum application can be considered as manifestly unfounded if: 1) there are no grounds for fear of persecution because the application has not been submitted for reasons established by law, but for the possibility of employment and better living conditions or when the asylum seeker provides no data that they would be subject to persecution or when the claims are impossible or contradictory; 2) the application is based on a deliberate deception or an abuse of the procedure for the recognition of the right of asylum; 3) the asylum seeker has arrived from a safe country of origin, unless the asylum seeker can prove that the country of origin is not safe; 4) the asylum seeker has arrived from a safe third country, where they could have applied for asylum, unless they prove that the third country is not safe for them and 5) the asylum seeker has arrived from a safe country of origin which is a Member State of the European Union, unless they prove that the country of origin is not safe for them.

The decision made in an accelerated procedure needs to be issued within 15 days from the day of the submission of the asylum application. The asylum seeker can submit a lawsuit against the decision rejecting the asylum application within seven days from the day of the receipt of the decision, therefore suspending the execution of the decision. A competent court should decide upon this lawsuit within 30 days from the day of the submission of the lawsuit. However, the accelerated procedure is not used, which is a good practice established by the authorities, except in two cases in 2013. In practice, it can be noticed that 99% of the asylum applications have been reviewed in a regular procedure, where the principle of hearing has been respected.

The most common grounds for the rejection of asylum applications in status determination procedure are the lack of the existence of well-founded fear of persecution in the sense of Article 4²⁴⁴ of the Law on Asylum and Temporary Protection (LAMP) and the existence of reasons for exclusion under Article 6²⁴⁵ of the Law. In 2013, out of 19 decisions, there were seven rejecting decisions²⁴⁶ for asylum seekers on the

241 Article 28 of the Law on Asylum and Temporary Protection .

242 Directive 2013/32/EU of the European Parliament and of the EU Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

243 Article 34 of the Law on Asylum and Temporary Protection.

244 Article 4 of the Law on Asylum and Temporary Protection.

245 An alien cannot enjoy the right to asylum in the Republic of Macedonia if there is a well-grounded suspicion that they have: committed a crime against peace, humanity or a war crime, according to the international acts in which such crimes are provided for; committed a serious non-political crime, outside the territory of the Republic of Macedonia prior to being admitted in it as a refugee; or has been guilty of acts contrary to the purposes and principles of the United Nations [...]

246 The total number of reached decision in 2013 is 19.

grounds of Article 6 of the LTP, rejecting the applicants because they constitute danger to the security of the state. In 2014, this number has significantly increased. In the first half of 2014, the Section for Asylum (SfA) reached 16 decisions on the same grounds, out of 26 decisions. The most problematic issue in these cases is that the applicant does not have access to the evidence provided against by the State Security Bureau of the Republic of Macedonia.

However, in most cases, the negative decisions reached by the Section for Asylum (SfA) are incomplete, particularly in terms of the statement of reasons for the rejection of applicants.²⁴⁷ There is a lack of established facts for the cases. In addition, the country of origin information are not taken into account, nor are other information relevant for the Section for Asylum in order to assess whether there are circumstances that might lead to persecution of the applicant. The closing statements of the legal representative submitted to the SfA after an interview has been conducted are not taken into consideration; at least they are not mentioned in the explanation of the decisions.

However, at the beginning of 2014, the Section for Asylum granted refugee status to 10 asylum seekers from Syria (three families) accommodated in a private apartment in the city of Stip.

According to Article 14 of the LTP, an asylum seeker has the right of legal assistance and explanation regarding the conditions and the procedure for the recognition of the right to asylum as well as the right to free legal aid at all stages of the procedure. Since the beginning of the implementation of the Law on Free Legal Aid,²⁴⁸ there has been only one amendment, in 2011, according to which the option of free legal aid was also provided for the asylum seekers in the procedure for the recognition of the right to asylum. Until mid 2012, a request for free legal aid for obtaining the right to asylum was not submitted, due to the fact that the persons who were asylum seekers were accommodated at the Reception Centre and did not have access to the information on free legal aid, nor was there a mechanism for them to fill in a form in Macedonian and send it to the regional department of the Ministry of Justice as required in the Law on Free Legal Aid. Legal issues for which these persons need legal aid include: procedures on the right to asylum, exercise of the right to health insurance and social protection for foreigners, acquiring the right to work permit in the Republic of Macedonia, regulating the status of foreigners, obtaining citizenship, etc.

LFLA (Law on Free Legal Aid) must cover these people as categories of citizens who may be granted free legal aid without verifying their material status. In that regard, cooperation should be established between the Ministry of Interior and the Ministry of Labour and Social Policy as the competent authorities for these people, in order to ensure efficient promotion of free legal aid.²⁴⁹

MYLA is one of the eight organisations in the Republic of Macedonia authorised to provide free legal aid in general and MYLA, is the only NGO which, with the support of UNHCR, provides free legal assistance and representation to asylum seekers in the Republic of Macedonia.

Second instance procedure

Upon receiving a negative decision by SfA, an applicant has the right of legal remedy and an administrative dispute can be instigated at a competent court within 30 days from the day of delivery of the decision.²⁵⁰ This stands for the regular procedure; however, in the accelerated procedure, a lawsuit against the decision rejecting an asylum application should be submitted within seven days from the day of delivery of the decision. The accelerated procedure is implemented when the asylum application is manifestly unfounded, unless an unaccompanied minor or a mentally disabled person has submitted the application. The decision of SfA in the accelerated procedure shall be issued within 15 days from the day of submission of the asylum application. The lawsuit has a suspensive effect in both types of procedures. According to Article 32 from the LTP, the Court shall decide within two months (30 days in accelerated procedure) from the day of submission of the lawsuit. In practice, the Court decides only in procedural aspects of the procedure regarding the lawfulness of the conducted procedure before the first instance authority. The Administrative Court does not make decisions in the cases on the merits, even if the same case is before the Administrative court for the second or third time. This practice makes the legal remedy ineffective.

247 Article 18-a of the Law on Asylum and Temporary Protection.

248 Law on Free Legal Aid, *Official Gazette of the Republic of Macedonia* no. 161/2009, 185/11, 27/2014.

249 Analysis of the Implementation of the Law on Free Legal Aid 2010 – 2012; Macedonian Young Lawyers Association – Skopje, National Roma Centrum – Kumanovo, Youth Cultural Centre – Bitola, ROMA S.O.S. – Prilep, Foundation Open Society – Macedonia, Skopje, January 2013; available at: <http://www.myla.org.mk/images/pdf/ailfa.pdf>.

250 Article 32 of the Law on Asylum and Temporary Protection.

Third instance procedure

If the verdict of the Administrative Court is negative, and this dissatisfies the asylum seeker, they have the right to an appeal to the High Administrative Court. This appeal has a suspensive effect. The High Administrative Court is a newly established court, which officially started operating on 30 June 2011, in line with Article 45 of the Law on Administrative Disputes.²⁵¹ The third instance legal remedy was previously under the jurisdiction of the Supreme Court. The High Administrative Court took all the cases pending before the Supreme Court and there is still no important caseload in asylum cases.

Special procedures (e.g. at the border/airport, admissibility procedure)

An asylum seeker can submit an asylum application at the border, meaning at the airport as well, but the number of persons seeking asylum at the airport remains low. Otherwise, the procedure at the border is the same as the one at the police station. If an asylum seeker is under accelerated procedure, a decision on their application should be issued within 15 days from the day of submission of the asylum application.²⁵²

Guarantees for vulnerable groups

In accordance with Article 23 of the LAMP, a guardian shall be assigned to unaccompanied minors and mentally disabled persons who are seeking asylum in accordance with the Law on Family. In practice, there is an increase in the number of unaccompanied minors, but we cannot be sure if the numbers are real due to the fact that there is no formal age assessment procedure for the determination of the age of a child. All of the minors are registered as such according to their statements that they are under age.

Also, MYLA noticed the delays in the procedures for placement of the minors under guardianship. Even though, according to the Article 121 of the Family Law, this procedure is urgent, it takes 21 days on average for the appointment of a guardian starting from the day when the request is submitted to the Centre for Social Work, as a body responsible for appointing the guardian. The long period for appointing of guardians is not in the best interest of the minors, and it is contrary to the provision of the Action Plan of EU for Unaccompanied Minors (2010–2014),²⁵³ according to which, the states are obligated to decide about the future of the minor within the period of six months.

Safe third country concept

The concept of a safe third country is defined in Article 10 of the LAMP, and according to the text, an asylum seeker may prove that the third country is not safe for him.

In 2011, SFA at the MOI issued decisions rejecting asylum seekers without conducting interviews, on the ground that they came to Macedonia from the safe third country – Greece or Serbia. The Section for Asylum issued 56 decisions within a two-month period without hearings and without individual examination of the application. Taking in consideration this practice of the rejection of applications according to the safe third country concept, MYLA organised a round table at which this practice of the authorities was discussed. The impact of the verdict of the European Court for Human Rights in the case *MSS v Greece and Belgium*²⁵⁴ had a lot of influence on the decision making process of the authorities in the following years. Also, the report of the Hungarian Helsinki Committee²⁵⁵ about the procedure in Serbia had an impact on the rejecting decision on the grounds that Serbia was a safe third country for the applicant.

In 2013 and 2014 no decisions were issued on this ground.

Is there a breach of non-refoulement in practice?

MYLA has not recorded a case of the breach of the *non-refoulement* principle in practice.

Treatment of specific nationalities

There is no special treatment for certain nationalities.

251 Official Gazette of the Republic of Macedonia no. 150/2010.

252 Article 36 of the Law on Asylum and Temporary Protection.

253 Action Plan of EU for Unaccompanied Minors (2010–2014), see at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>

254 Case of *M.S.S. v Belgium and Greece*, Application no. 30696/09; available at: <http://ec.europa.eu/anti-trafficking/entity.action;jsessionid=GRvwRP1JyZVyKxGpJpk3X2qNNQzRz5JTg1vcJ1qJb9G5wQlyTncy!1062222535?path=Legislation+and+Case+Law%2FCASE+Law%2FCASE+OF+M.S.S.+v.+BELGIUM+AND+GREECE>.

255 Serbia as a Safe Third Country: Revisited, available at <http://helsinki.hu/wp-content/uploads/Serbia-report-final.pdf>.

Treatment of unaccompanied minors

According to Article 23 of the LAMP, the unaccompanied minors will be appointed a legal guardian as soon as possible, in accordance with the Law on Family. This legal guardian is allowed to inform the unaccompanied minor of the meaning and the possible consequences of the interview and can actively participate during the interview conducted by the inspector from SFA. The Law on Family provides that the Centres for Social Work at the Ministry of Labour and Social Policy are competent to work on guardianship matters directly, through the guardians or through other persons working on guardianship issues. The Centre for Social Work appoints a special guardian in accordance to Article 173 of the Law on Family.

One of the main issues is the appointment of a special guardian to the unaccompanied minors. It should be done as quickly as possible in order for the minor to receive the needed protection and to receive information on their rights in the asylum procedure. In practice, a guardian is appointed with certain delay and the communication and the contacts between the legal guardian and the unaccompanied minor are not at the satisfactory level.

Conclusion

The Law on Asylum and Temporary Protection (LAMP) is in its entirety approximated with the international law and standards. However, there are a number of challenges regarding its further improvement, interpretation and implementation:

- the principle of the “intention for asylum” prior to the submission of the asylum application is not applicable in the Republic of Macedonia. The state should improve the access of the asylum seekers to the asylum procedure at the border crossing points (airports included);
- the process of identification of asylum seekers should be implemented at the moment the application is submitted (photographing and fingerprinting) because there are delays in the practice which could cause deportation due to lack of identity documents;
- the first instance negative decisions are not elaborative enough and the reasons for rejection are not sufficiently explained in the decision. This is of particular importance for the cases rejected with the explanation that asylum seekers pose “danger for the security of the state”, where the state is not providing any evidence for rejecting the asylum seeker except a single document issued by the State Security Bureau which they consider to be confidential;
- the Administrative Court decides only about the procedural aspects of the asylum cases. The practice should be established in which the Court would grant the right of the asylum seekers to be heard in front of a judge who would gain better insight into the case and for the asylum seeker to once more explain the circumstances that led them to leave their country of origin/habitual residence. This practice would lead to the proactive role of the Court and deciding on the asylum cases on the merits.

Reception conditions

All asylum seekers have access to accommodation and basic support provided by the Ministry of Labour and Social Policy to cover their basic needs during their stay at the Reception Centre while they await the final decision on their case.²⁵⁶ However, not many asylum seekers stay until the final outcome of the procedure. There is only one Reception Centre for asylum seekers in the country and it is located in Vizbegovo which is around 3km distant from the centre of Skopje.

The shelter has the capacity for 150 people. It offers separate accommodation units for single male or female asylum seekers and families. Also, access to services is available only through the Reception Centre. Persons may reside outside the Centre, however, at their own expense. MYLA has an office at the Centre and our lawyers provide the asylum seekers with legal aid regarding their rights and duties in the country. In addition, the asylum seekers have the right to work within the Reception Centre for Asylum Seekers, as well as the right to free access to the labour market after the expiration of one year period from the day of the submission of their asylum application.²⁵⁷

²⁵⁶ Article 48 of the Law on Asylum and Temporary Protection.

²⁵⁷ Article 48 of the Law on Asylum and Temporary Protection.

Detention of asylum seekers

The Reception Centre for Foreigners in Gazi Baba, under the jurisdiction of the Department of Border Affairs and Migration at the MOI, is the place where irregular migrants detected in the territory of Macedonia are accommodated. This Centre is of closed type. Migrants, victims of human trafficking and potential asylum seekers are accommodated at this Centre. The number of persons in the Reception Centre for Foreigners is constantly on the rise. According to the practice, the irregular migrants who are accommodated at the Reception Centre for Foreigners have the possibility to submit an asylum application while they reside there, and once they submit the asylum application, they are transferred to the Reception Centre for Asylum Seekers in Vizbegovo.

In 2014, the number of persons detained in the Centre has constantly been on the rise, and one of the reasons for this is the increase in the migration movements through the country. As part of the signed Memorandum for Cooperation between MYLA²⁵⁸ and National Preventive Mechanism, Ombudsman of the Republic of Macedonia,²⁵⁹ MYLA representatives have taken part in several visits to places where the persons are deprived of their liberty and had an unannounced visit to this Centre. Most of our findings and recommendations from the visit are included in the Annual Report of the National Preventive Mechanism for 2013.²⁶⁰

In September 2013, representatives from MYLA took part in some of the visits of the National Preventive Mechanism of the Macedonian Ombudsman. One of the visits was the visit of the above-mentioned Reception Centre in Gazi Baba. During the visit, it was observed that among the others, the Centre accommodates children (unaccompanied minors). During the visit of the National Preventive Mechanism several male and female persons as well as minors were interviewed.

Xenophobia and racism as a danger for asylum seekers

There are no evident cases of xenophobia and racism that would represent danger for the asylum seekers.

Overall conclusion

Macedonia has seen a rapid increase in the arrival of asylum seekers. Whilst in 2010 there were only 180 asylum seekers, in 2013, 1343 people claimed asylum in the country, including 360 people who had fled the violence in Syria. Most asylum seekers leave Macedonia before they receive the final decision on their case. The average stay of Syrians in the country is very short, less than ten days after the submission of their asylum application. As soon as they leave the country, the Asylum Department within the Ministry of Interior, which is the body deciding on the asylum applications, issues decisions terminating the procedure due to the applicants' absence from the scheduled interviews.

In the anticipation of the early departure of asylum seekers from the country, the Ministry of Interior is delaying the issuance of IDs and interviews for refugee status determination. Asylum seekers who do not have IDs have limited freedom of movement and are exposed to the threat of deportation by the regular police when they are outside the Reception Centre.

The candidacy of the Republic of Macedonia for EU membership is definitely a driver of positive changes in terms of asylum policy. The Republic of Macedonia has taken further steps for the approximation of its national legislation with the EU *acquis* laying down minimum standards for the reception conditions for asylum seekers and on procedures for granting and withdrawing the refugee status.

However, the implementation of the law in some parts is still weak and requires improvement, particularly regarding the access to the asylum procedure and the quality of the decision-making process in the asylum procedure.

258 Memorandum for Cooperation signed between MYLA and Ombudsman <http://myla.org.mk/index.php/en/collaboration/ombudsman-of-rm>

259 Ombudsman of the Republic of Macedonia, National Preventive Mechanism http://www.ombudsman.mk/MK/nacionalen_preventiven_mehanizam/izveshtai/godishni_izveshtai.aspx

260 Annual Report of National Preventive Mechanism for 2013 <http://ombudsman.mk/upload/NPM-dokumenti/2014/NPM%20Godisen%20izvestaj-2013.pdf>

Montenegro



Author: Luka Kovačević, Legal Counsellor, Legal Center

Abbreviations:

The State Commission – The State Asylum Appeals Commission

UNHCR – United Nations High Commissioner for Refugees

*Statistics*²⁶¹

Asylum seekers: 4064 (2013 – 3554, 1 January – 30 June 2014 – 510)²⁶²

Ethnic Breakdown:²⁶³ Algeria 713, Eritrea 495, Morocco 302, Pakistan 999, Syria 468, other countries 1024

Male asylum seekers: 3731

Female asylum seekers: 320

Unaccompanied minors: 71 minors accompanied by one or both parents and 7 unaccompanied minors

Submitted asylum applications: 4064

Conducted interviews: 402

First instance decisions: 4034

Refugee status:²⁶⁴ 1

Subsidiary protection: 2²⁶⁵

Other protection: 0

Rejections in merit: 402

Refusal: 3571

Otherwise closed cases/discontinued: 65

Second instance decisions: 277

Positive second instance decisions: N/A

Positive second instance decisions on the merits: N/A

Negative second instance decisions (refusal, rejection): 277

Third instance decisions: N/A

Positive third instance decisions: N/A

Negative third instance decisions: N/A

261 Ministry of Interior, *Report on the Work of the Ministry of Interior and Human Resources Management Authority for 2013*.

262 UNHCR Representation in Montenegro, *Asylum System in Montenegro, Monitoring Report January-December 2013*.

263 UNHCR Representation in Montenegro, *Asylum System in Montenegro, Monitoring Report January-June 2014*.

264 Since the beginning of the application of the Law on Asylum (25 January 2007) until 30 June 2014, three persons have been granted refugee status (Former Yugoslav Republic of Macedonia, Syria and the Republic of Yemen). Soon after acquiring refugee status, two persons left Montenegro so their refugee status ceased to exist. Currently, one person holding refugee status has been residing in Montenegro.

265 Since the beginning of the application of the Law on Asylum (25 January 2007) until 30 June 2014, six persons were granted subsidiary protection. At this moment, five persons under subsidiary protection have been residing in Montenegro, while one person left Montenegro so their status ceased to exist.

Overview of the legal framework

The list of laws and regulations related to the asylum system:

- the Law on Asylum²⁶⁶
- Decree on the Content and Manner of Keeping Records in the Area of Asylum²⁶⁷
- Regulation on Financial Assistance for Asylum Seekers Who were Granted Refugee Status and Accorded Subsidiary Protection²⁶⁸
- Rules of Asylum Application Forms and Record of Orally Submitted Asylum Applications²⁶⁹
- Book of Regulations on the Procedure and Method of Taking Photographs, Fingerprints, Signature and Other Data from Asylum Seekers²⁷⁰
- Rulebook on the Manner of Realisation of Health Care for Asylum Seekers, Persons Who were Granted Refugee Status, Persons Accorded Subsidiary Protection and Persons Accorded Temporary Protection²⁷¹
- Professional Methodological Guidelines on Medical Examinations of Persons Seeking Asylum in Montenegro²⁷²
- Decision on the Establishment of the State Commission to Adjudicate Asylum Appeals²⁷³

Asylum procedure

Short overview of the general asylum procedure including all phases of the procedure and the authorities responsible in all instances (number of staff and nature of the institutions)

The implementation of the asylum system in Montenegro began by the enactment of the Law on Asylum which entered into force on 25 July 2005, but its application started on 25 January 2007.²⁷⁴

After the Law on Asylum was enacted, a separate organisational unit within the Ministry of Interior was formed – the Asylum Office, currently employing four officers. The Asylum Office, which is a civilian part of MOI, receives asylum applications, conducts the procedures and makes decisions on applications, makes decisions on the cessation and revocation of asylum, conducts the procedures and makes decisions on the status of persons who already have the status, issues identity documents and travel documents, legal status and rights in line with the regulations, keeps records about the situation in the country of origin, conducts the procedure of approval, i.e. revocation of subsidiary protection, temporary protection and performs other tasks in accordance with this Law.

The procedure on appeals against decisions of the first instance body is conducted by the State Asylum Appeals Commission, which was established by the decision of the Government of Montenegro in November 2007. The State Commission consists of the President and four members who are judges of the Administrative Court of Montenegro or associates in the same Court.

Access to the procedure

An alien may declare their intention to submit an asylum application at a border crossing, after which they are permitted to enter Montenegro and enabled to submit their asylum application to the competent body as soon as possible.²⁷⁵ If an alien has already resided in the territory of Montenegro, the asylum application can be directly filed to the Asylum Office. Asylum may be sought before other state authority, a body of local self-government or another non-competent body, which is obligated to record the claim and inform the Asylum Office about it without delay.²⁷⁶

266 *Official Gazette of the Republic of Montenegro* no. 45/06.

267 *Official Gazette of the Republic of Montenegro* no. 09/08.

268 *Official Gazette of the Republic of Montenegro* no.56/08.

269 *Official Gazette of the Republic of Montenegro* no. 004/07–5.

270 *Official Gazette of the Republic of Montenegro* no. 004/07–14.

271 *Official Gazette of the Republic of Montenegro* no. 31/2010.

272 *Official Gazette of the Republic of Montenegro* no. 501–37/2014.

273 *Official Gazette of the Republic of Montenegro* no. 10/07, of 4 December 2007.

274 Information about the asylum system in Montenegro – The Ministry of Interior of Montenegro.

275 Article 24(1) of the Law on Asylum.

276 Article 24 (4) of the Law on Asylum.

First instance procedure, initiation of the procedure, submission of asylum application, personal interview, decision, access to information related to the possibility to seek asylum and to free legal aid, access to NGOs and UNHCR

After declaring intention to submit an asylum application, an alien is enabled, as soon as possible, to submit their asylum application and to receive confirmation of the submitted application.²⁷⁷ An asylum application is submitted to the Asylum Office, in the written form or orally on the record, in a language that is in official use in Montenegro. If the asylum seeker does not speak the language in official use, they may submit the application in the language of their country of origin, or in a language they are familiar with.²⁷⁸ In order to verify or establish identity, the Asylum Office takes fingerprints, photograph, signature and other information from the asylum seeker.²⁷⁹

An asylum seeker is enabled, as soon as possible, after the submission of the asylum application, to present the facts and circumstances of relevance to the decision-making.²⁸⁰ The public is excluded from the asylum procedure. The asylum seeker is informed in writing, in a language that they have indicated they understand, about the date, time and venue of the asylum seeker's testimony. During the testimony, minutes are taken and signed by the persons who took part in the procedure. The testimony may be audio recorded, provided that the asylum seeker is informed of this.

The decision on the asylum application is made by the Asylum Office within three months from the day the application was submitted.²⁸¹ Asylum applications of unaccompanied minors or persons incapable of work have priority in decision-making and are made within 30 days of the submission of the application.²⁸² The decision on asylum applications which are manifestly unfounded is made within 15 days of the submission of the application.²⁸³

After the conducted procedure, the Asylum Office may issue the following types of decisions:

- a decision to adopt the asylum application and recognise refugee status or approve subsidiary protection;
- a decision to reject the asylum application as unfounded;
- a conclusion to suspend the procedure;
- a conclusion to reject the asylum application.²⁸⁴

Decisions on asylum applications are made in writing, with an explanation of the right to appeal.

Asylum seekers have the right to free legal aid in all stages of the procedure. On one hand, asylum seekers are entitled to receive free legal aid through the system of free legal aid financed by the state. This free legal aid system, which has been effective since 1 January 2012, has proved to be totally non-functional in practice and inaccessible to asylum seekers.²⁸⁵ First of all, it is about free legal aid system based on the concept of judicial protection, which is excluded from the asylum procedure. Obstacles also appear in the determination of the financial standing of asylum seekers. The procedure of granting free legal aid is complicated. Application forms of requests for legal aid are complex. Approval of free aid does not follow the dynamics of the procedure for which free legal aid is granted. So far, the asylum seekers have not received any free legal aid through this system. On the other hand, free legal aid provided by a non-governmental organisation Legal Centre and financed by UNHCR is available to asylum seekers. Upon receiving power of attorney signed by asylum seekers, they are provided with legal aid in each stage of the procedure.

The asylum seeker is provided with necessary aid and is informed, in writing (multilingual brochures, maps, etc.), and in a language they are reasonably expected to understand, about the conditions and procedures for granting asylum, rights and obligations and realisation of communication with persons who provide legal aid, UNHCR and other organisations that deal with the protection of refugee rights. The asylum seeker is entitled, in each stage of the procedure, to realise communication with persons who provide free legal aid and organisations that deal with the protection of refugee rights in order to receive aid.

277 Art. 24(2) of the Law on Asylum.

278 Art. 24(3) of the Law on Asylum.

279 Art. 26(1) of the Law on Asylum, Art. 3 of the 5. Book of Regulations on the procedure and method of taking photographs, fingerprints, signature and other data from asylum seekers.

280 Art. 35(1) of the Law on Asylum.

281 Art. 19(3) of the Law on Asylum.

282 Art. 28(2) of the Law on Asylum.

283 Art. 41(4) of the Law on Asylum.

284 Art. 38(1) of the Law on Asylum.

285 Article 12 of the Law on Free Legal Aid (*Official Gazette of Montenegro* no. 20/11).

A UNHCR representative is guaranteed and enabled, at each stage of the procedure, to communicate with the asylum seeker and to collect information about the course of the procedure. The first instance and second instance authorities cooperate with UNHCR at all stages of the asylum procedure and deliver information and statistical data about the asylum seekers or persons who were granted asylum, as well as the Convention relating to the Status of Refugees and other international documents relating to refugees, laws and other regulations that are being applied or will be passed.²⁸⁶ Representatives of the NGO Legal Centre have access to the Centre for Reception of Asylum Seekers, both through regular visits and extra visits, if necessary, and by appointment.

Second instance procedure

An appeal may be lodged against each decision made by the first instance authority. The appeal has suspensive effect. The appeal should be lodged within 15 days of the reception of the first instance decision.²⁸⁷ The law regulates the shorter periods of eight days to lodge an appeal against the decision on the suspension of the proceedings and dismissal of the applications and the decision to refuse the asylum applications as manifestly unfounded. In the majority of the cases, the appeal is lodged directly for the record at the Asylum Directorate. Such appeal does not include the explanation, i.e. the reasons for the appeal which may provide the grounds for the appellant being dissatisfied with the decision. The appeal includes the name of the organ which brought the decision being appealed against, the number and the date of the decision and the conclusion that the appeal is lodged for the reasons prescribed by law.

The State Asylum Appeals Commission (hereinafter referred to as “State Commission”) adjudicates appeals lodged against decisions of the first instance body. The State Commission makes a decision on each appeal by a majority of votes of the total number of members, within two months from the day on which the appeal was lodged, unless a shorter period is provided by this Law.²⁸⁸ A decision on the appeal against the decision rejecting the asylum application of an unaccompanied minor and an adult person incapable of work, as well as a decision rejecting the asylum application as manifestly unfounded, is made by the State Commission within 15 days from the day the appeal was lodged. A decision on the appeal against the decision to suspend the procedure is made by the State Commission within 30 days from the day the appeal was lodged.²⁸⁹

Third instance procedure

An administrative dispute cannot be initiated against the decision of the second instance authority, which means that the judicial review of the legality of second-instance decisions is excluded, which is not in accordance with Article 148 of the Constitution of Montenegro.²⁹⁰

Special procedures (e.g. at the border/airport, admissibility procedure)

Special procedures are not defined in the asylum system of Montenegro. At this stage, a large part of the Border Police branch offices lack the capacity to effectively control the border and do not have established procedures for screening and profiling of migrants at the border.

Guarantees for vulnerable groups

The protection of persons with special needs is one of the basic principles in the current asylum system.²⁹¹ The Law on Asylum taxatively lists those persons considered to have special needs: minors, persons completely or partially deprived of legal capacity, unaccompanied minors, persons with mental or physical disabilities, elderly persons, pregnant women, single parents with minor children, persons subjected to torture, rape or other serious forms of mental, physical or sexual violence and other vulnerable persons. A person with special needs is provided with special accommodation and care.²⁹² Identifying people with special needs and taking care of them is problematic in practice. The role and responsibility of various authorities included in the asylum system (Asylum Office, Directorate for the Care of Refugees, the Centre for Social Welfare, etc.) is not precisely defined in relation to this category of persons so transfer of competences occurs frequently. Although, according to the law provision, the asylum seeker is entitled to communication

286 Article 18 of the Law on Asylum.

287 Article 17(2) of the Law on Asylum.

288 Article 20 of the Law on Asylum.

289 Article 39(3) of the Law on Asylum.

290 Article 17(3) of the Law on Asylum.

291 Article 11 of the Law on Asylum.

292 Article 25(2) of the Law on Asylum.

with an official and interpreter of the same gender, in practice, applicants are not given the opportunity to choose between a male and a female official, i.e. social worker, because the Asylum Office does not employ a male social worker although it is so prescribed.

Safe third country concept

Safe third country concept has not been introduced in the asylum system in Montenegro and it is not applicable in practice.

Is there a breach of non-refoulement in practice?

Cases of violation of the *non-refoulement* principle have not been registered in the previous practice. A person who has been granted asylum or whose asylum has ceased or been revoked, must not be returned or expelled to the border of a state where: their life or freedom would be threatened on account of race, religion, citizenship, membership of a particular social group or political opinion; they could be subjected to torture, inhuman or degrading treatment or punishment; their life, safety or freedom would be threatened on account of generalised violence, foreign aggression, internal conflict, massive violations of human rights or other circumstances which seriously threaten life, safety or freedom.²⁹³

Treatment of specific nationalities

Although there has been an increase in the number of filed asylum applications and a change in the profile of asylum seekers, accelerated procedures in relation to asylum seekers who come from certain countries have not been introduced or applied. In 2013, 285 asylum applications were submitted by asylum seekers from Syria, 186 asylum applications were submitted by asylum seekers from Afghanistan, while 183 asylum applications were submitted in the first half of 2014 by asylum seekers from Syria. Over 95% of these persons left Montenegro before the scheduled interview, so their applications could not be essentially considered.

Treatment of unaccompanied minors

An unaccompanied minor is provided with a guardian.²⁹⁴ During the entire procedure, accommodation, mental and physical condition and the best interests of the minor are taken into account and measures are taken to find their family members. The determination of identity and age of unaccompanied minor asylum seekers is a real challenge for the state authorities. So far, methods of medical science in the determination of the age of the minor have not been applied, but in disputed cases it was resorted to the benefit of the doubt in favour of the minor.

Conclusion

The Law on Asylum has explicitly excluded the possibility of conducting an administrative dispute, i.e. judicial review of legality against final decisions, contrary to constitutional provisions. The Law does not clearly define the moment from which a person is deemed to be an asylum seeker which, in practice, may deprive them of direct access to their rights. Clearly defining the crime of persecution, reasons for exclusion, unacceptable applications and procedures at the border, is not contained in the existing legal provisions. Techniques for conducting interviews with asylum seekers, analysis of reasons for seeking asylum, determination of identity and origin of asylum seekers, inadequate explanation of the decision to refuse the applications and granting some form of protection, do not comply with international standards and affect the fairness and regularity of the procedure of the refugee status determination. There is no adequate mechanism to monitor departures of asylum seekers who intend to leave Montenegro voluntarily. The Action Plan within negotiating Chapter 24 plans to strengthen administrative capacities, to organise additional training for officers of the Directorate for Asylum and the State Asylum Appeals Commission, as well as to adopt the new Law on Asylum in order to eliminate observed deficiencies in the procedure of refugee status determination.

Reception conditions

The care of people from the asylum system is performed by the Bureau for the Care of Refugees (now the Directorate for the Care of Refugees), as a separate unit of the Ministry of Labour and Social Welfare.²⁹⁵ Care includes the provision of accommodation and appropriate living standards, as well as assistance in

293 Article 6 of the Law on Asylum.

294 Article 28 of the Law on Asylum.

295 Article 21 of the Law on Asylum.

exercising rights to: education, health protection, social protection, employment, and legal aid, freedom of religion, access to humanitarian and non-governmental organisations, humanitarian aid, family unity, inclusion in society, and other rights prescribed by the Law.

After the submission of an asylum application, asylum seekers are provided with accommodation in a newly built Centre for Asylum Seekers in Spuz, the municipality of Danilovgrad.²⁹⁶ Before they are accommodated at the Centre, compulsory medical examination is introduced. The Centre was designed for 65 persons. A person with special needs is provided with special accommodation and care. A person who possesses financial means or is able to provide livelihood in other way can be accommodated outside the Centre or other building for collective accommodation, but they are not entitled to social protection. A person who has their refugee status recognised or is approved of subsidiary protection is entitled to accommodation at the Centre no longer than six months from the day of the finality of a decision on status is granted.²⁹⁷ An asylum seeker does not have access to labour market. The right to social protection, including allocation of one-time financial assistance, is practically unavailable. The procedure for exercising the right to financial assistance is initiated on a party's request, the procedure of financial assistance approval is complicated and time-consuming, and there is no separate budget resources intended to this category of persons. In 2003, out of 3554 asylum seekers, only four persons received one-time financial assistance.²⁹⁸ In 2014, the Centre for Social Welfare, in charge of the allocation of the assistance, did not pay any financial assistance to any person with an explanation that the applicants did not meet conditions for the allocation of financial assistance because the state provided them with accommodation, food, clothing, footwear and hygiene. Refugees and persons with approved subsidiary protection are entitled to a monthly financial assistance that they could receive no longer than one year from the finality of the decision on the status allocation, with the same restrictions as those that asylum seekers have.²⁹⁹ So far, two refugees have received financial assistance of 55€ per month, with an epilogue to the court. The right to social protection ceases if a refugee does not accept the offered employment during the period of social protection.

Detention of asylum seekers

An asylum seeker may, on an exceptional basis and through a decision of the competent body, be restricted in movements outside of the Centre or other facility for collective accommodation, or outside of a designated area, for up to 15 days if: 1) their identity needs to be established; 2) they have destroyed their travel or personal documents or possess false documents with the intention of misleading the competent authorities and; 3) it is necessary to do so in order to protect the safety of the community. For the duration of this measure, the asylum seeker has the right to communicate with UNHCR. The movement of persons under 16 years of age, who are unaccompanied, shall not be restricted unless that is the only possibility. An appeal against the decision may be lodged within eight days from the day of the receipt of the decision. The appeal shall not have suspensive effect.³⁰⁰ Since the beginning of the application of the Law, 21 January 2007, to date, this legal possibility has not been used, so its scope, positive and negative aspects, could not be seen in practice. Movement on the account of this basis was not restricted to asylum seekers, particularly to unaccompanied minors, because of their own status, either at the border, police stations, Institute for Execution of Criminal Sanctions Spuz, or Centre for Children and Youth – Ljubovic. The person at whose request for asylum the procedure was suspended is obliged to leave Montenegro within 15 days from the day the decision becomes final, and the person whose asylum application was rejected is obliged to leave Montenegro within a period specified through the decision rejecting the application. If a person acts in contravention to this obligation, their return or expulsion shall be conducted in accordance with the Law governing the residence of aliens.³⁰¹ Exceptionally, an alien may be kept in the premises of the Police, but no longer than 12 hours if it is required by security reasons of the forced removal.³⁰² An alien who cannot forcibly be removed immediately or whose identity has not been determined, shall be restricted the freedom of movement and

296 The Centre for Accommodation of Asylum Seekers began its work on 20 February 2014. The Centre employs 27 persons.

297 Articles 44 and 55 of the Law on Asylum.

298 In 2011, a total number of paid financial assistance to asylum seekers was 2,300.00 €, Notice of the Center for Social Welfare, no. 04–52, as of 27 June 2012.

299 Article 45 of the Law on Asylum.

300 Article 31 of the Law on Asylum.

301 Article 43 of the Law on Asylum.

302 Article 66(1) of the Law on Foreigners (*Official Gazette of Montenegro* no. 82/08, 72/09, 32/11, 53/11, 27/13, 61/13).

placed in a shelter for foreigners. The police decision specifies the location of the shelter for the period of 90 days. An appeal against the decision may be lodged to the Ministry within eight days of the reception of the decision. The Ministry decides on the appeal, within eight days of the reception of the decision.³⁰³ A minor alien is placed in the shelter with their parents or other legal representative, unless it is deemed that other type of accommodation is more suitable for them.

Xenophobia and racism as a danger for asylum seekers

With an increasing number of asylum seekers, neither xenophobic and racist cases nor discriminatory and negative attitudes towards asylum seekers by the community were recorded. The media occasionally publish articles about the asylum system and the position of asylum seekers. The articles often contain personal data of asylum seekers, their photos, and information on their countries of origin, which indicates a lack of information by journalists about the asylum system. Detailed research and analysis on this subject have not been conducted.

Overall conclusion

The Law on Asylum is largely in line with the European standards.³⁰⁴ However, the adoption and the application of the Law were not followed by the adoption of by-laws necessary for the implementation of the Law and access to rights. The application of the Law was hindered by insufficient administrative capacities and the lack of appropriate accommodation for asylum seekers. The imprecise differentiation of competence of the state bodies involved in the asylum system and different interpretations of their roles and responsibilities, as well as certain statutory provisions, made the application of the Law further complicated. The result is an inefficient asylum system. The Action Plan within the 24 negotiating chapters calls for adoption of the new Law on Asylum, which should come into force in 2016, so it is expected that deficiencies will be removed by new legal solutions.³⁰⁵

303 Article 68 of the Law on Foreigners.

304 Report on the screening of legislative alignment for Montenegro, Chapter 24 – Justice, Freedom and Security.

305 Harmonisation of asylum regulations with EU *acquis* has been planned for the end of 2015, particularly when it comes to the part pertaining to the crime of persecution; reasons for exclusion; definition of subjects of persecution; health protection; provision of rights to social and children's protection; definition of "safe country of origin", "first country of asylum", "safe third country", "inadmissible complaints", and "border procedures"; transfer of residence of persons who enjoy temporary protection from one member state to another; rights to financial assistance; rights to work; reduction or elimination of conditions for acceptance; accommodation of persons with special needs; the right to appeal regarding residence and freedom to movement, as well as against decisions pertaining to benefits.

Serbia



Author: Belgrade Centre for Human Rights

Abbreviations:

BCHR – Belgrade Centre for Human Rights
GAPA – General Administrative Procedure Act
MOI – Ministry of Interior
UNHCR – United Nations High Commissioner for Refugees

*Statistics*³⁰⁶

Asylum seekers: 9323 (2013 – 5066, 1 January – 30 June 2014 – 4257)

Ethnic breakdown: Afghanistan 912, Albania 1, Algeria 253, Angola 2, Benin 2, Egypt 23, Bangladesh 119, Burkina Faso 22, Bosnia and Herzegovina 1, Central African Republic 9, Chad 3, Cameroon 67, Republic of the Congo 88, Democratic Republic of the Congo 35, Comoros 71, Cuba 25, Eritrea 1030, Ethiopia 6, France 2, Gabon 3, Gambia 70, Occupied Palestinian Territory 124, Ghana 183, Guinea 55, Croatia 1, Cote d'Ivoire 148, India 15, Iran 49, Iraq 87, Liberia 4, Libya 31, Sri Lanka 5, Madagascar 15, Mauritania 37, Macedonia 3, Mali 353, Montenegro 1, Morocco 99, Nepal 1, Netherlands 1, Niger 1, Philippines 1, Russian Federation 1, Saudi Arabia 1, Nigeria 236, Pakistan 370, Rwanda 26, Senegal 64, Sierra Leone 54, Somalia 857, Sudan 305, Syria 3301, Tanzania 4, Togo 18, Tunisia 85, Turkey 2, Uganda 12, Ukraine 4, Uzbekistan 1, Western Sahara 3, Yemen 17

Male asylum seekers: 8147

Female asylum seekers: 1176

Unaccompanied minors: 923

Submitted asylum applications: 228

Conducted interviews: 28

First instance decisions: 25³⁰⁷

Refugee status: 3

Subsidiary protection: 4

Other protection: N/A

Rejections in merit: 5

Refusal: 7

Otherwise closed cases/discontinued: 204

Second instance decisions: 29³⁰⁸

Positive second instance decisions: 15³⁰⁹

Positive second instance decisions in merit: N/A

Negative second instance decisions (refusal, rejection): 14

Third instance decisions: 10³¹⁰

Positive third instance decisions: 2

Negative third instance decisions: 8

306 Statistics related to the first instance procedure are stemming from UNHCR Belgrade and the Asylum Office.

307 This does not include suspended cases 139 (2013) and 65 (2014).

308 Statistics for 2013: Reply to a request for access to information of public importance, Border Police Administration 03/10 Ref. No. 26–176/14 of 28 January 2014; Statistics for 2014: Data obtained from the MOI, Border Police Administration on 19 September 2014.

309 Including positive decisions on the unlawfulness of the “silence of administration”.

310 Data obtained from the Administrative Court pursuant to the Law on the Access to Information of Public Importance, 17 January 2014 and 1 October 2014.

Overview of the legal framework

The list of laws and regulations related to the asylum system:

- Constitution of the Republic of Serbia³¹¹
- Law on Asylum³¹²
- General Administrative Procedure Act (GAPA)³¹³
- Law on Aliens³¹⁴
- Law on Administrative Disputes³¹⁵
- Law on Migration Management³¹⁶
- Republic of Serbia Government Decision on Lists of Safe Countries of Origin and Safe Third Countries³¹⁷
- Law on Misdemeanour³¹⁸
- Republic of Serbia Government Decision on the Establishment of the Bogovađa Asylum Centre 05 Ref. No. 02–3732/2011³¹⁹
- Republic of Serbia Government Ruling Appointing the Asylum Commission Chairperson and Members Ref. No. 119–6141/2012 of 20 September 2012
- Rulebook on Accommodation and Basic Living Conditions in Asylum Centres³²⁰
- Rulebook on Asylum Centre House Rules³²¹
- Rulebook on Health Examinations of Asylum Seekers on Admission in the Asylum Centres³²²
- Rulebook on Records of People Accommodated in the Asylum Centres³²³
- Rulebook on Social Assistance to Asylum Seekers and People Granted Asylum³²⁴
- Rulebook on the Content and Design of the Asylum Application Form and Documents Issued to Asylum Seekers or People Granted Asylum or Temporary Protection³²⁵
- Law on State Border Protection³²⁶

Asylum procedure

Short overview of the general asylum procedure including all phases of the procedure and the authorities responsible in all instances (number of staff and nature of the institutions)

The right to asylum is enshrined in Article 57(1) of the Constitution of the Republic of Serbia. The asylum procedure and the rights and obligations of asylum seekers, refugees and persons granted subsidiary protection are governed in greater detail by the 2008 Law on Asylum. The Commissariat for Refugees and Migrations is charged with the accommodation and integration of people granted asylum or subsidiary protection under the Law on Asylum and the 2012 Law on Migration Management (Articles 15 and 16).

The entire first-instance procedure, including the rendering of decisions on asylum applications and the termination of the right, is within the purview of the Asylum Office, which operates as part of the Serbian Ministry of Interior (MOI), Border Police Directorate. There are four refugee status determination officers

311 *Official Gazette of the Republic of Serbia* no. 83/06.

312 *Official Gazette of the Republic of Serbia* no. 109/07.

313 *Official Gazette of the Federal Republic of Yugoslavia* no. 33/97, 31/01 and *Official Gazette of the Republic of Serbia* no.30/10.

314 *Official Gazette of the Republic of Serbia* no. 97/2008.

315 *Official Gazette of the Republic of Serbia* no. 111/2009.

316 *Official Gazette of the Republic of Serbia* no. 107/12.

317 *Official Gazette of the Republic of Serbia* no. 67/2009.

318 *Official Gazette of the Republic of Serbia* no. 101/2005, 116/2008 and 111/2009.

319 *Official Gazette of the Republic of Serbia* no. 34/2011.

320 *Official Gazette of the Republic of Serbia* no. 31/08.

321 *Official Gazette of the Republic of Serbia* no. 31/08.

322 *Official Gazette of the Republic of Serbia* no. 93/08.

323 *Official Gazette of the Republic of Serbia* no. 31/08.

324 *Official Gazette of the Republic of Serbia* no. 44/08.

325 *Official Gazette of the Republic of Serbia* no.53/2008.

326 *Official Gazette of the Republic of Serbia* no. 97/2008.

working effectively within the Asylum Office. BCHR is of the view that the first instance authority should be an independent body or a unit organisationally independent from the MOI hierarchy.

Appeals of the first-instance decisions are reviewed by the Asylum Commission. The Commission comprises nine members appointed to four-year terms of office by the Government. The Commission decisions may be challenged by initiating an administrative dispute before the Administrative Court of Serbia, which sits in three-member judicial panels.

Access to the procedure

For asylum seekers to have access to the asylum procedure, their intention to seek asylum must be recognised and registered by the competent authorities (the Ministry of Interior of the Republic of Serbia). Aliens may express the intention to seek asylum orally or in writing to competent MOI officials at a border checkpoint of the Republic of Serbia or within its territory.³²⁷ Therefore, under the Law on Asylum, the intention to seek asylum may be expressed at the border or at any of the police administration offices in Serbia, to Aliens Department officials. The competent MOI Border Police or Administration Aliens Department officials register the intention and issue the aliens certificates thereof. The aliens are then under the obligation to report to the Asylum Office or authorised staff at one of the asylum centres within 72 hours.

In 2013 and 2014, asylum seekers complained to BCHR of the failure of the police administration offices to issue them certificates of their intention to seek asylum. This is a permanent practice of the Police Administration Office in Loznica, near the Asylum Centre in Banja Koviljaca in western Serbia. This practice is fraught with risks, given that migrants travelling to other municipalities to obtain the certificates may be stopped and asked for the identity documents by the police. In the event that they lack an identity document or proof that they are legally present in Serbia, they risk being deprived of liberty both under the Law on Misdemeanours and the Law on Aliens³²⁸ as well as being charged with illegal presence in Serbia (a misdemeanour).

First instance procedure, initiation of the procedure, submission of asylum application, personal interview, decision, access to information related to the possibility to seek asylum and to free legal aid, access to NGOs and UNHCR

Once an alien is admitted to an Asylum Centre or receives approval by the Asylum Office to reside at a private address, the Asylum Office initiates the first official action – registration. The registration entails establishing the alien’s identity and obtaining their photographs and fingerprints. During the registration procedure, the Asylum Office temporarily seizes all the alien’s documents that may be relevant to a decision in the asylum procedure and issues the alien a receipt on the seized documents.³²⁹ The Law on Asylum does not set a deadline by which the Asylum Office must register asylum seekers, and sometimes more than 30 days pass between the day the aliens are admitted to an Asylum Centre and the day they are registered.³³⁰ After registering the aliens, the Asylum Office issues them IDs.³³¹ Neither the Law on Asylum nor the subsidiary legislation specify the deadline within which the competent authorities are under the duty to issue IDs to asylum seekers, wherefore the Asylum Office has the discretion to issue them at a time it sees fit. Asylum seekers whom the BCHR team met during its regular visits to the Asylum Centres often complained that they had been waiting for their IDs for a long time. Seeing that asylum seekers mostly do not have any documents with them, they are left without any documents proving their identity and their legal status in Serbia.

The asylum procedure is initiated by the submission of an asylum application to an authorised Asylum Office staff member on the prescribed form within 15 days from the day of registration.³³² Namely, the submission of an asylum application does not depend on the will of the aliens, but on the performance of the Asylum Office staff members. Asylum applications can only be submitted orally to the authorised Office staff members. Therefore, asylum seekers cannot themselves submit asylum applications, but have to wait for the interviews scheduled by the authorised Asylum Office staff members, who must be present. Asylum seekers are interviewed by the Asylum Office staff members after they submit their applications.

327 Article 22 of the Law on Asylum.

328 Law on Misdemeanour, Article 41 and Law on Aliens, Article 85.

329 Law on Asylum, Article 24.

330 According to the experience of the BCHR lawyers providing legal aid to asylum seekers.

331 Law on Asylum, Article 24(4).

332 Law on Asylum, Article 25.

Under the Law on Asylum, the asylum seekers shall be interviewed “as soon as possible”, which is not complied with in practice and does not satisfy the principle of procedural economy, as more than one month passes on average between the submission of the application and the interview. Apart from the Asylum Office staff member and the interpreter, the interview is also attended by the asylum seeker’s legal representative and may also be attended by a UNHCR representative, with the consent of the asylum seeker.³³³ The interviews are conducted in the following manner: with the help of the interpreter, the Asylum Office staff member asks the asylum seeker questions about their identity, the reason they are seeking asylum, their movements after leaving their country of origin and whether they had already applied for asylum in another country. While the staff member is questioning the asylum seeker, the asylum seeker’s legal representative has the opportunity to ask them additional questions. The staff member draws up a record of the interview, which is co-signed by the asylum seeker, their legal representative and the interpreter. The Law on Asylum does not lay down rules on the burden of proof or that the authority should render a decision in favour of the asylum seeker in case of any doubt, provided that their account is coherent and plausible.

After interviewing an asylum seeker, the Asylum Office may rule on the merits and render a first-instance decision either upholding the application and granting the asylum seeker asylum or subsidiary protection, or rejecting the application and ordering the asylum seeker to leave the territory of the Republic of Serbia within a specific period unless they are entitled to stay on other grounds.³³⁴ The Asylum Office may also render a procedural decision discontinuing the asylum procedure³³⁵ or dismissing the asylum application without ruling on the merits upon the fulfilment of the legal requirements.³³⁶

Once accommodated at the asylum centre, an asylum seeker can get the leaflet on their rights and obligations in Serbia and on the right to free legal aid. Sometimes, asylum seekers go directly to the UNHCR’s headquarters in Belgrade, where they are instructed to address BCHR for free legal aid. An asylum seeker is entitled to free legal aid and the representation by UNHCR and non-governmental organisations the goals and activities of which are aimed at providing legal aid to refugees.³³⁷ In the event of the submission of the asylum application, asylum seekers are taught about their rights and obligations in Serbia and especially about the right to free legal aid, free interpreter and the right to contact UNHCR.

Second instance procedure

Appeals of the first-instance decisions are submitted to the Commission within fifteen days from the day of service of the first-instance decision to the parties or their legal representatives.³³⁸ The Asylum Commission that reviews appeals of Asylum Office decisions is comprised of nine members appointed by the Government to four-year terms of office.³³⁹ The Commission renders its decisions by a majority of votes. The Asylum Commission is chaired by the assistant of the Border Police Administration within which the Asylum Office operates, which raises *prima facie* doubts about the independence of the second-instance authority.³⁴⁰ The appeals procedure is regulated by the GAPA. Under Article 221(1) of the GAPA, appeals shall stay enforcement. Under the Law on Administrative Disputes, a claim may be filed with the Administrative Court in the event the Asylum Commission fails to render a decision on the appeal within 60 days from the day of its receipt, upon the expiry of eight days from the day the reminder was served on the second-instance authority.³⁴¹ The “silence of the administration” may also be appealed against; in the event the first-instance authority fails to issue a ruling within 60 days from the day the procedure was initiated.³⁴² Under Article 236 of the GAPA, the resolution of an administrative matter by a second-instance authority on appeal is a rule, while the annulment of the first-instance ruling and the order to the first-instance authority to rule on it again is an exception serving to achieve the principle of procedural economy. According to the BCHR the Asylum Commission has not once ruled on the merits of an asylum application since BCHR began extending legal aid to the asylum seekers.

333 Law on Asylum, Article 26.

334 Law on Asylum, Article 27.

335 Law on Asylum, Article 27 (3).

336 Law on Asylum, Article 33.

337 Law on Asylum, Article 10.

338 Law on Asylum, Article 35.

339 Law on Asylum, Article 20.

340 The RS Government Ruling on the Appointment of the Commission Chairperson and Members No. 119–6141/2012 of 20 September 2012, available at: <http://www.apc-cza.org/ar/komisija-za-azil.html> (in Serbian).

341 Law on Administrative Disputes, Article 19.

342 GAPA, Article 236 (2).

Third instance procedure

A final decision by the Asylum Commission or its failure to rule on an appeal may be challenged in an administrative dispute before the Administrative Court.³⁴³ This appeal does not have an automatic suspensive effect prescribed by law. The Administrative Court rules on the lawfulness of final administrative enactments in three-member judicial panels. The Administrative Court has to date mostly limited itself to reviewing whether the procedural aspects of the asylum procedure had been observed. Like in 2011 and 2012,³⁴⁴ the Administrative Court did not uphold any claims by asylum seekers in 2013 either. However, in 2014 the Administrative Court upheld two claims by asylum seekers on procedural grounds,³⁴⁵ since the Asylum Commission did not examine all allegations in the claim, nor any evidence submitted with the claim.

When it comes to extraordinary legal remedies, an applicant or a public persecutor can lodge a motion to review a legally binding Administrative Court decision to the Supreme Court of Cassation. There were no such procedures in 2013 and 2014.³⁴⁶ Apart from this legal remedy an asylum seeker can file a constitution appeal to the Constitutional Court of Serbia. BCHR has filed two constitutional complaints in 2014 which are still pending.

Special procedures (e.g. at the border/airport, admissibility procedure)

There are no special procedures prescribed by Serbian law. However, according to the Law on Asylum, an asylum seeker can express the intention to seek asylum at the border including the airport. Belgrade *Nikola Tesla* airport is one of the rare European airports at which the border officers have recognised only several intentions to seek asylum since the Law on Asylum came into force in 2008. The border police at the Belgrade Airport recognised the intention of migrants to seek asylum only in two cases in 2013.³⁴⁷ In one of the two cases, the asylum seeker repeatedly expressed the intention to seek asylum, but the certificate thereof was issued to them only after two unsuccessful attempts to return them to the country they had come from and after BCHR had intervened.

Guarantees for vulnerable groups

The Law on Asylum guarantees a principle of particular care for vulnerable asylum seekers.³⁴⁸ During the asylum procedure, special attention has to be paid to the specific vulnerabilities of people with special needs, such as minors, people fully or partially deprived of legal capacity, unaccompanied minors, people with disabilities, the elderly, pregnant women, single parents with underage children or victims of torture, rape or other grave forms of psychological, physical or sexual violence. However it is not defined what this *special attention* means in practice. The Law on Asylum does not explicitly define human trafficking victims as persons with special needs in terms of this principle. This principle should also entail priority examinations of the asylum applications of vulnerable groups.

Safe third country concept

Under the Law on Asylum, a safe third country shall be understood to mean a country from a list established by the Government,³⁴⁹ which observes international principles pertaining to the protection of refugees in the 1951 Convention on the Status of Refugees and the 1967 Protocol on the Status of Refugees, where an asylum seeker had resided, or through which he had passed, immediately before they arrived in the territory of the Republic of Serbia and where they had an opportunity to submit an asylum application, where they would not be subjected to persecution, torture, inhuman or degrading treatment, or sent back to a country where their life, safety or freedom would be threatened. Basing the safe third country concept on a unilateral Government decision, which was adopted in 2009 and has not been amended since, is problematic. The Government of Serbia had failed to obtain guarantees that the countries it was declaring safe

343 Law on Administrative Disputes, Article 15.

344 More in the Belgrade Centre for Human Rights, *Asylum in the Republic of Serbia: January-June 2013 Report*, p. 7, available at http://www.azil.rs/doc/Report_eng_final_final.pdf.

345 The Administrative Court's Decision 7 U 3834/12 of 7 February 2014 and 8 U 18705/13 of 21 February 2014.

346 Data obtained from the Administrative Court pursuant to the Law on Access to Information of Public Importance, 17 January 2014 and 12 September 2014.

347 Data obtained from the MOI Bureau for Information of Public Importance on 28 January 2014.

348 Law on Asylum, Article 15.

349 *Official Gazette* no. 67/2009.

reviewed asylum applications in efficient and fair proceedings before it adopted the list. The Government list of safe third countries includes all of Serbia's neighbouring states, and some countries with very problematic and inaccessible asylum systems, such as Greece.³⁵⁰ In the 2008–2012 period, the Asylum Office had been dismissing asylum applications solely because the applicants had passed through or lived in a state on the Government list, without examining whether that state fulfilled the other requirements to be qualified as safe. According to the experience of BCHR, the Asylum Office has simply been declaring itself without jurisdiction, regardless of whether or not the safe third country accepted to review the asylum applications and in general, without establishing which safe third country would have the jurisdiction to review a specific application. In the event that a safe third country does not accept jurisdiction to rule on an asylum application regarding which the competent Serbian authorities declared themselves incompetent for and does not allow an asylum seeker to enter its territory, the latter practically ends up in a legal vacuum, without the possibility of obtaining international protection. According to the knowledge of BCHR, this practice remains to exist in 2013 and 2014.

Is there a breach of non-refoulement in practice?

According to BCHR's knowledge, there are no cases of the breach of *non-refoulement*. Asylum seekers whose application is rejected or refused are not removed to their countries of origin. However, there are some situations that could result in the breach of *non-refoulement*. Firstly, when an asylum seeker does not have access to the asylum procedure in Serbia at the *Nikola Tesla* airport, they can be deported without any formal decision and procedural guarantees to the country where they had come from.³⁵¹ Secondly, the application of the safe third country concept can also lead to *chain – refoulement*, seeing that the Asylum Office does not establish whether the country designated as a safe one will accept to decide upon the asylum application dismissed by the Asylum Office.

Treatment of specific nationalities

There is no specific treatment of any nationality prescribed by law. UNHCR issued a document, *International Protection Consideration with Regard to People Fleeing Syrian Arab Republic, Update II* on 22 October 2013³⁵² calling upon states to introduce a generous approach to protection of people fleeing Syria, reflected in non-penalisation of those arriving without identity documents (or otherwise in an irregular manner) and high refugee recognition rates coupled with the granting of associated rights. According to BCHR's experience, Syrians do not have any special treatment in the asylum system and this document is of no importance in the asylum procedure.

Treatment of unaccompanied minors

The Law on Asylum lays down the principle of particular care of asylum seekers with special needs, including minors and children separated from their parents or guardians.³⁵³ However, the Law does not lay down the duty of the asylum authorities to give priority to and efficiently review asylum applications filed by unaccompanied minors. When the police first establish contact with an irregular migrant claiming to be underage, they contact the competent Social Work Centre, which appoints them a temporary guardian. There is no legal regulation or specific protocol for age assessment in immigration proceedings in Serbia. The underage migrant is then referred to the Nis or Belgrade Home for Children and Youths,³⁵⁴ both of which are under the jurisdiction of the Ministry of Labour and Social Policy. These Homes are primarily established for children with behavioural problems. The minors staying in the Belgrade and Nis Homes are *de facto* deprived of liberty, which is in contravention of the recommendations of the UN Committee for the Rights of the Child.³⁵⁵ Both Homes are able to accommodate only boys, which is justified by the fact that there are

350 UNHCR, *Observations on Greece as a Country of Asylum*, December 2009, available at: <http://www.refworld.org/docid/4b4b3fc82.html>.

351 Due to this practice at the airport ECtHR issued two interim measures against Serbia, one in December 2013 and the other in July 2014, ordering Serbia not to deport asylum seekers.

352 Available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5265184f4&skip=0&query=International%20Protection%20Consideration%20with%20regard%20to%20people%20fleeing%20Syrian%20Arab%20Republic,%20Update%20II>.

353 Law on Asylum, Article 15.

354 Serbian Government Decision on the Network of Social Protection Institutions, *Official Gazette of RS* no. 51/08.

355 CRC General Comment No. 6, paragraph 40. The minors may leave the Home only if they are escorted by the staff. The CPT, which visited the Nis Home in 2011, also qualified this as deprivation of liberty.

hardly any underage girls seeking asylum.³⁵⁶ Due to the limited capacities of the two Homes, which can take in 22 boys altogether, the Social Work Centres in the north and south of the country are forced to find temporary accommodation for the underage migrants. In Vojvodina (northern Serbia),³⁵⁷ unaccompanied underage asylum seekers are temporarily accommodated at the Safe House for Children in Novi Sad and the Home for Children and Youth *Kolevka* in Subotica.

Minors placed in one of the Homes who declare they want to seek asylum are referred to one of the Asylum Centres as soon as they can accommodate them.³⁵⁸ Unaccompanied children seeking asylum change three temporary guardians from the moment they first establish contact with the Serbian authorities until the completion of the asylum procedure, seeing that they reside in different municipalities during the asylum procedure. This is a situation in which one can hardly expect the minors and guardians to develop a meaningful and trusting relationship guaranteeing the protection of the best interests of the child. Furthermore, to the best of BCHR's knowledge, the guardians did not have the opportunity to avail themselves of the services of interpreters in the languages the minors understand in 2013 either.³⁵⁹

Conclusion

Serbian asylum procedure is not fair and efficient. Asylum Office has very modest capacities and it is not able to process so many cases in time. The application of the safe third country concept makes it almost impossible for asylum seekers to have their asylum application examined on the merits. Asylum seekers accommodated in asylum centres far away from Belgrade have restricted access to the procedure. The treatment of unaccompanied minors is not in accordance with the principle that authorities must take care of the best interest of the child.

Reception conditions

Asylum seekers are entitled to reside in the Republic of Serbia and to be accommodated at an Asylum Centre if necessary, pending decisions on their applications. Persons granted asylum or subsidiary protection shall be provided with accommodation proportionate to the capacities of the Republic of Serbia, but not for longer than one year from the day the final decision recognising their status has been rendered. Accommodation shall imply the provision of specific habitable space for use, or of financial assistance necessary for housing.³⁶⁰ In 2013 and 2014, asylum seekers were accommodated in Asylum Centres in Banja Koviljaca, Bogovadja, Vraceutić, Sjenica, Tutin and Obrenovac pending final decisions on their asylum applications. These facilities are within the jurisdiction of the Commissariat for Refugees and Migrations and funded from the state budget. However, only the Asylum Centre in Banja Koviljaca is a permanent one with appointed Asylum Office officer. During the floods in May 2014, the Asylum Centre in Obrenovac was closed and asylum seekers were transferred to other Asylum Centres. To the best of BCHR's knowledge, the MOI does not perform official asylum procedure actions in Sjenica and Tutin on regular basis. Visits to these Centres require significant outlays (travel costs, interpretation). This gives rise to doubts about the expedience of these Centres as they are not within easy reach of any of the competent institutions or organisations.

Asylum seekers need to report to one of the Asylum Centres to be provided with accommodation. Aliens reporting to the Asylum Centres have to submit the certificates that they expressed the intention to seek asylum, which are kept by the Centre managements.³⁶¹ However, the Commissariat for Refugees and Migrations of the Republic of Serbia had failed to provide accommodation for all asylum seekers during 2013 until November 2013, wherefore many of them were living in open air or private accommodation near

356 The Commissioner for Protection of Equality shares this view. See her Opinion No. 379/2012 of 3 December 2012, available in Serbian at <http://www.azil.rs/doc/poverenica.pdf>.

357 All the information on underage aliens and underage asylum seekers in the territory of Vojvodina that is quoted in this Report was collected by the Novi Sad NGO Humanitarian Centre for Integration and Tolerance, HCIT (<http://hcit.rs>) in the January-December 2012 period.

358 More on the Belgrade and Nis Homes for Children and Youths in Belgrade Centre for Human Rights, *Right to Asylum 2012* (pp. 36–42).

359 Information obtained from representatives of the Social Work Centres in Vojvodina during the *Migrations and Right to Asylum* training that the BCHR and Group 484 organised in Subotica in December 2013 within the Networking and Capacity Building for a More Effective Migration Policy project.

360 Law on Asylum, Article 44.

361 Article 2, Rulebook on Accommodation and Basic Living Conditions in Asylum Centres (*Official Gazette of the Republic of Serbia* no. 31/08).

the Asylum Centres. Having in mind that the Asylum Office registers only asylum seekers living in one of the Asylum Centres, aliens not admitted to the Centres are deprived of access to the asylum procedure. Furthermore, asylum seekers who fail to report to the authorised Asylum Centre on time forfeit the right to accommodation in the Centre and thus of both access to the asylum procedure and the right to stay in Serbia.

Asylum seekers may request consent from the Asylum Office to live in private accommodation.³⁶² In 2013 and 2014, the BCHR team extended legal aid to a number of clients, who had been living in rented premises with the consent of the Asylum Office. Since rental of private accommodation by asylum seekers is not governed in detail by the Law, BCHR noted that they may encounter problems in practice, because they cannot conclude lease agreements until the Asylum Office issues them the IDs they need to enter into such agreements.

Although only fifteen people have been granted international protection since the Law entered into force in 2008, the Commissariat for Refugees, as the competent institution, has not taken all the requisite measures to prepare and organise accommodation for people under international protection, which is one of the important elements of their integration. To the best of BCHR's knowledge, the Commissariat provided two people granted subsidiary protection with accommodation in an Asylum Centre, which definitely will not facilitate their integration in society.

Detention 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 Law on Asylum.³⁶³ 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.

Xenophobia and racism as a danger for asylum seekers

According to BCHR, xenophobic outbursts happen occasionally in Serbia, especially when the new asylum centre is to be opened. In November and December 2013, residents of Bogovadja staged protests appealing to the state authorities to address the problem of the asylum seekers' accommodation.³⁶⁴ The protesters claimed they feared for their safety. In the same period Vraccvic villagers tried to block the road and not let food and water deliveries to the facility in which the asylum seekers were staying.³⁶⁵ The villagers demanded that they be moved out of the private facility the authorities leased, underlining that it did not satisfy the basic living conditions, that there was a great risk of communicable diseases due to the unhygienic conditions and that the safety of the village children was in danger.³⁶⁶ On 25 November 2013, the Serbian Government rendered a decision designating facilities (barracks) in the Obrenovac settlement of Usce to serve as a temporary asylum centre.³⁶⁷ Two days later, on 27 November 2013, the residents of the Usce and Skela settlements blocked the road and stopped two buses with the asylum seekers, who had been living in the woods around the Bogovadja Centre. The protesters claimed they feared for their safety. The facility *Mala Vrbica* in Mladenovac should also have been converted in the asylum centre in accordance with the Government decision. However, the local government was not willing to allow the implementation of this decision and residents of Mladenovac staged protests against asylum seekers several times.

362 Law on Asylum, Article 39(4).

363 Law on Asylum stipulates that the restriction of movement can be imposed for three reasons: 1. to establish identity of asylum seeker, 2. to ensure the presence of asylum seeker 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, 3. to protect national security and public order.

364 "Bogovadja: Resolve the Asylum Seeker Problem", *B92*, 9 November 2013, available at: http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=11&dd=09&nav_category=12&nav_id=775570 (in Serbian).

365 "Asylum Seekers Got Food and Water Last Night", *B92*, 29 November 2013, available at: http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=11&dd=29&nav_id=782903 (in Serbian).

366 "Vraccvic Residents Blocked Road Because of Asylum Seekers", *Blic*, 28 November 2013, available at: <http://www.blic.rs/Vesti/Drustvo/423382/Mestani-Vraccvica-blokirali-put-zbog-azilanata> (in Serbian).

367 *RS Government Press Release*, 25 November 2013, available at: <http://www.srbija.gov.rs/vesti/vest.php?id=200273>.

Overall conclusion

Serbian asylum system needs to be improved. The asylum procedure must be conducted in a timely and a fair and efficient manner. Serbia must render its politics from being a transit country to becoming a destination country and should take full responsibility when it comes to the protection of persons seeking asylum. This can be done by introducing amendments to the Law on Asylum in accordance with EU *acquis* and by ensuring that these amendments are applicable in practice.

So far, asylum seekers have not had guarantees that their application will be examined on the merits by Serbian authorities. Accommodation facilities should be functional, facilitating rather the asylum procedure than mere transit through Serbia.

Slovenia

P&C

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Abbreviations:

PIC – Legal Informational Centre for Non Governmental Organisations

MOI – Ministry of Interior

Statistics

Asylum seekers: 451³⁶⁸ (2013 – 272, 1 January – 30 June 2014 – 179)

Ethnic Breakdown: Afghanistan 49, Albania 4, Algeria 25, Bangladesh 4, Belarus 2, Bosnia and Herzegovina 9, Cameroon 2, China 1, Republic of the Congo 1, Cuba 13, Democratic Republic of the Congo 3, Egypt 2, Eritrea 2, Gambia 2, Ghana 2, Iran 17, Iraq 2, Ivory Coast 1, Kazakhstan 1, Kosovo 46, Lebanon 2, Libya 1, Macedonia 1, Mongolia 1, Montenegro 1, Morocco 12, Myanmar 2, Nigeria 10, Pakistan 41, Palestine 6, Russia 18, Senegal 1, Serbia 7, Somalia 13, Sri Lanka 2, Sudan 1, Syria 109, Tunisia 8, Turkey 13, Ukraine 9, Yemen 2, Zimbabwe 1, other countries 2

Male asylum seekers: 361

Female asylum seekers: 90

Unaccompanied minors: 58

Submitted asylum applications: 451

Conducted interviews: 451 (first interviews)³⁶⁹

First instance decisions: 538

Refugee status: 29

Subsidiary protection: 21

Other protection: N/A

Rejections on the merits: 109

Refusal: 102 (Dublin and safe third country decisions)

Otherwise closed cases/discontinued: 270 (procedure stopped due to absconding or withdrawal of the application)

Second instance decisions: N/A³⁷⁰

Positive second instance decisions: N/A

Positive second instance decisions on the merits: N/A

Negative second instance decisions (refusal, rejection): N/A

Third instance decisions: N/A

Positive third instance decisions: N/A

Negative third instance decisions: N/A

368 Data presented in this section is based on the official statistics of the Slovenian Ministry of the Interior.

369 Number of second interviews is not available.

370 Data pertaining to the second and third instance procedures (court procedures) is not available.

Overview of the legal framework

The main law governing international protection in the Republic of Slovenia is the Law on International Protection.³⁷¹ Next amendments to the law, which are to harmonise it with the recast Asylum Procedures Directive³⁷² and recast Reception Conditions Directive,³⁷³ are expected in 2015.

Several by-laws are enacted on the basis of the Law on International Protection, most importantly the Decree on Methods and Conditions for Ensuring the Rights of Persons with International Protection,³⁷⁴ Rules on the Procedure for Aliens Who Want to Apply for the International in the Republic of Slovenia and on the Procedure for the Acceptation of Application for International Protection³⁷⁵ and the Rules on the Rights of Applicants for International Protection.³⁷⁶

For points of procedure not covered in international protection legislation, the more universal General Administrative Procedure Act³⁷⁷ and Law on Administrative Dispute³⁷⁸ are used in the first and second instance (court) procedures respectively.

Other issues related to migration (e.g. illegal entry and stay, return procedures, detention of aliens in return procedures, family reunification including family reunification of beneficiaries of international protection) are covered in the Law on Aliens.³⁷⁹

Asylum procedure

Short overview of the general asylum procedure including all phases of the procedure and the authorities responsible in all instances (number of staff and nature of the institutions)

At the first instance level, the international protection procedure is carried out by the MOI. The MOI's internal organisational unit responsible for international protection is the Migration Office, which is a part of the Internal Administrative Affairs, Migration and Naturalization Directorate. The Migration Office is further subdivided into the Accommodation, Care and Integration Division which is responsible for accommodating applicants for international protection and integrating individuals to whom international protection has been granted, and the Status Affairs Division which is responsible for deciding on the substance of the applications for international protection. Status Affairs Division has 11 RSD (Refugee Status Determination) officers. Status Affairs Division forms a part of the civilian MOI.

The Administrative Court of the Republic of Slovenia with its headquarters in Ljubljana decides on the legal remedy (administrative dispute) against MOI's decision on asylum application. The parties (the applicant and the MOI) have 15 days to appeal against the decision of the Administrative Court to the Supreme Court of the Republic of Slovenia. The appeal suspends implementation of the Administrative Court decision until a decision is reached by the Supreme Court.

Access to the procedure

The procedure for international protection is initiated through two phases – in the first phase the individuals express their intention to apply for international protection while in the second phase, on the basis of expressing their intent, they apply for international protection.

Upon their arrival in the Republic of Slovenia, individuals can state their intention to apply for international protection to any state or local authority.³⁸⁰ The authorities need to notify the competent body for

371 Zakon o mednarodni zaščiti (*Uradni list RS*, št. 111/07, 111/08 – odl.US, 58/09, 99/10, 98/11 – odl.US, 83/12, 111/13, 114/13 – odl.US).

372 Directive no. 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

373 Directive no. 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

374 Uredba o načinih in pogojih za zagotavljanje pravic osebam z mednarodno zaščito (*Uradni list RS*, št. 55/11, 36/14).

375 Pravilnik o postopku s tujcem, ki izrazi namen podati prošnjo za mednarodno zaščito v Republiki Sloveniji ter postopku sprejema prošnje za mednarodno zaščito (*Uradni list RS*, št. 64/11, 29/13).

376 Pravilnik o pravicah prosilcev za mednarodno zaščito (*Uradni list RS*, št. 68/11, 42/12).

377 Zakon o splošnem upravnem postopku (*Uradni list RS*, št. 80/99, 70/00, 52/02, 73/04, 119/05, 105/06 – ZUS-1, 126/07, 65/08, 8/10, 82/13).

378 Zakon o upravnem sporu (*Uradni list RS*, št. 105/06, 107/09 – odl.US, 62/10, 98/11 – odl.US, 109/12).

379 Zakon o tujcih (*Uradni list RS*, št. 50/11, 57/11 – popr., 26/14).

380 Law on International Protection, Article 36 (4).

international protection in the Republic of Slovenia – The Ministry of the Interior.³⁸¹ In practice, individuals most commonly report their intention to the police once they are apprehended for illegal entry into Slovenia at the land border with Croatia or at Ljubljana Airport. From the moment someone has expressed an intention to apply for international protection, the person cannot be deported from the country.³⁸² Persons are expected to express their intention for international protection in the shortest possible time.³⁸³ If the intention is not expressed in due time this may affect the outcome of the RSD procedure or lead to detention during asylum procedure (see below) due to suspected abuse of procedure.

In respect of Article 31 of the 1951 Convention Relating to the Status of Refugees, in case the person has entered Slovenia illegally, the misdemeanour procedure for illegal crossing of the border is suspended³⁸⁴ until the end of the international protection procedure (if international protection is granted the person is not penalised). However, currently a refugee may be subject to criminal procedure and may be penalised if they entered Slovenia with falsified travelling documents. In view of PIC this oftentimes represents a violation of Article 31 of the 1951 Geneva Convention and PIC is currently advocating with the responsible authorities for a change in policy.

After expressing an intention and before submitting an application for international protection, a police procedure with the person is carried out.³⁸⁵ The police try to establish their identity and travel route from their country of origin to Slovenia. The individual also provides a short statement on the reasons for international protection and other basic personal information. During this procedure, the Police must provide an interpreter.

Once the Police procedure is completed, the individual is transported to the Asylum Home in Ljubljana, where the first instance procedure for international protection begins.

Access to procedure is monitored through border monitoring activities of PIC as an implementation partner of the UNHCR.

First instance procedure, initiation of the procedure, submission of asylum application, personal interview, decision, access to information related to the possibility to seek asylum and to free legal aid, access to NGOs and UNHCR

Prior to the submission of the application, the personnel at the Asylum Home conduct a medical examination,³⁸⁶ take a photograph and fingerprints which are later run through the EURODAC database.³⁸⁷

An unaccompanied minor is appointed a guardian before the procedure begins³⁸⁸ (see below).

The Law on International Protection does not stipulate free legal representation for applicants in the first instance procedure; however, this is provided by a non-governmental organization (PIC) financed by the European Refugee Fund (and partially by the Republic of Slovenia). Apart from legal representation, the NGO also provides the applicant with an information session, which is conducted prior to the application, with the purpose of explaining the procedure for international protection and the rights and obligations of the applicant.

Access to the UNCHR is also guaranteed either directly or through PIC.

Once the medical examination, photographing and fingerprinting have taken place, the application for international protection (first interview) is carried out.³⁸⁹ The law provides that the application has to be carried out in the shortest possible time.³⁹⁰ This procedure is conducted by an MOI official, who first obtains personal data from the applicant and questions them regarding the travel from their country of origin to Slovenia. This is followed by the main application phase during which the applicant independently states their reasons for applying. In the end, additional questions can be posed by the MOI official, the guardian (if present) and the legal representative. The interview is carried out with the assistance of an interpreter who, at the end of the interview, orally translates the contents of the minutes to the applicant, who can then add

381 Ibid.

382 *Non-refoulement* principle, enacted in Law on Aliens, Article 72.

383 Law on International Protection, Article 35.

384 Law on International Protection, Article 35.

385 Law on International Protection, Article 36.

386 Law on International Protection, Article 38.

387 Law on International Protection, Article 39.

388 Law on International Protection, Article 16.a.

389 Law on International Protection, Article 43.

390 Law on International Protection, Article 38.

comments to them. By signing the minutes, the applicant officially obtains the status of an applicant for international protection in the Republic of Slovenia.

Once the application is signed, the applicant's fingerprints are entered into the EURODAC database. In the event that another EU member state is recognised as responsible in accordance with the Dublin Regulation, the MOI issues a Dublin decision, with which the procedure in Slovenia is brought to an end and (once it becomes final) the person is transferred to the state responsible.

If, once the application is submitted, the MOI establishes that it will make a decision on the merits in relation to this case (i.e. does not issue a Dublin decision), the case is handed over to the decision maker at the Status Affairs Division, who examines the case and invites the applicant for their second interview.³⁹¹ The second interview is conducted in a similar fashion as the first interview and usually focuses in greater detail on the grounds for international protection stated by the applicant in their application. Alternatively, the decision maker can reject the application in an accelerated procedure without conducting the second interview if the application is found to be as manifestly unfounded (grounds analogous to Article 23 (4) of the Procedural Directive³⁹²).³⁹³

Once the second interview has taken place and before the decision is issued, the decision maker sends the applicant a Slovenian translation of the information on the country of origin that will be used as the basis for the decision. The applicant can submit comments to this information within the given deadline.³⁹⁴

Asylum applicants can obtain two different international protection statuses in the Republic of Slovenia – refugee status or subsidiary protection status. The conditions for recognising one or the other are analogous to the conditions found in the Qualification Directive³⁹⁵ (Articles 13 and 18).

Refugee status is recognised with no time limitation on the status, while subsidiary protection status is recognised for a limited period (depending on the case, in practice usually for a period ranging from one to three years) with the possibility of extension. Apart from this, the rights of individuals with subsidiary protection status are nearly identical to those with refugee status.

Second instance procedure

There is no appeal against decisions in the international protection procedure; however, an applicant can start an administrative dispute.³⁹⁶ This is a judicial review of an administrative decision, which is initiated by filing a lawsuit against the MOI. In the court proceedings that follow, the applicant for international protection acts as the plaintiff and the MOI as the defendant. The Administrative Court of the Republic of Slovenia with its headquarters in Ljubljana decides on the lawsuit.

In accordance with the Law on International Protection, applicants have access to refugee counselors who can initiate the lawsuit on their behalf and represent them throughout the court procedures free of charge. Typical examples of decisions that can lead the applicant to litigation are:

- negative decision issued in a regular procedure (deadline for appeal is 15 days);
- negative decision in an accelerated procedure (deadline for appeal is 8 days);
- detention decision (deadline for appeal is 3 days);
- Dublin decision (deadline for appeal is 8 days).

An appeal against a negative decision has a suspensive effect, while in all other cases the appeal does not suspend enforcement.³⁹⁷ In these cases the applicant can prevent enforcement (especially of deportation) by adding a request to this effect to their appeal.

In case of a positive judgment, until recently the Administrative Court refrained from making concluding decisions on the matter and instead returned the matter to the first instance with instruction for a repeat procedure. However, this practice has changed and lately there have been several cases where the Administrative Court awarded international protection statuses.

391 Law on International Protection, Article 45.

392 Council directive no. 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

393 Law on International Protection, Article 55.

394 Law on International Protection, Article 22 (2).

395 Directive no. 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

396 Law on International Protection, Article 74.

397 Law on International Protection, Article 74 (4).

Third instance procedure

The parties (the applicant and the MOI) have 15 days to appeal against the decision of the Administrative Court to the Supreme Court of the Republic of Slovenia.³⁹⁸ The appeal suspends the implementation of the Administrative Court decision until a decision is reached by the Supreme Court.

An appeal to the Supreme Court is the highest regular legal remedy available to applicants and if the matter is concluded in front of the Supreme Court the decision becomes final. In some cases the applicant can appeal against the Supreme Court decision to the Constitutional Court, after which all legal remedies in the Republic of Slovenia have been exhausted.

Special procedures (e.g. at the border/airport, admissibility procedure)

If a person applies for international protection after their previous application in Slovenia had been finally rejected or procedure stopped due to withdrawal of application, they must first go through a special admissibility procedure.³⁹⁹ A person is admitted into international protection procedure only if they can present new relevant evidence or facts that did not exist or were not available to them during the first procedure.

Guarantees for vulnerable groups

The Law on International Protection stipulates the obligation for special care and treatment of vulnerable groups.⁴⁰⁰

Unlike adult asylum applicants, minors are entitled to free access to full medical treatment under the same conditions as Slovenian citizens⁴⁰¹ (see also section 4 below). All asylum applicants have access to primary school, while minors also have obligatory access to high school education.

Assistance for vulnerable persons is also provided by non-governmental organisations active in the Asylum Home, including an information session regarding dangers of human trafficking, which is carried out for potential victims after the asylum application (the first interview).

Safe third country concept

Slovenian government declared Croatia to be a safe third country with an Ordinance issued in 2008.⁴⁰² The practice of safe third country returns to Croatia began in 2010; until Croatia's entry into the EU (1 July 2013) altogether 158 asylum applicants in Slovenia had their applications refused on this ground.

Since 1 July 2013 Slovenia no longer considers any state to be a safe third country and therefore no longer refuses asylum applications on this ground. In December 2013 the Constitutional Court of the Republic of Slovenia decided⁴⁰³ that the provisions of the Law on International Protection regarding safe third country procedures are unconstitutional, mostly due to the wording being too ambiguous and not providing sufficient guarantees to asylum applicants and due to legal remedy against the safe third country decision not having a suspensive effect.

Is there a breach of non-refoulement in practice?

The breach of *non-refoulement* does not occur on a systemic level. Detected cases of *refoulement* are rare.

Treatment of specific nationalities

Syrian nationals are currently issued at least subsidiary protection statuses and may be issued refugee statuses if additional criteria are met.

Treatment of unaccompanied minors

Apart from the special treatment guaranteed to all minors, asylum applicants that are unaccompanied minors are appointed a guardian (as described above). The guardian accompanies the minor during the application (the first interview) and other official stages of the procedure and provides other assistance, such as accompanying the minor during doctor's appointments, helping with access to school, etc. Additionally, unaccompanied minors may not be detained in the Centre for Foreigners; only the restriction of movement

398 Law on International Protection, Article 74 (5) and Law on Administrative Dispute, Article 73.

399 Law on International Protection, Articles 56 and 57.

400 Law on International Protection, Articles 15 and 16.

401 Law on International Protection, Articles 84 (3).

402 Odlok o razglasitvi Republike Hrvaške za varno tretjo državo (*Uradni list RS*, št. 50/08).

403 Constitutional Court of the Republic of Slovenia, Decision no. U-I-155/11 of 18 December 2013.

to the area of the Asylum Home may be imposed on them.⁴⁰⁴ This only refers to asylum detention as unaccompanied minors in return procedures may be detained in the Centre for Foreigners regularly.

Unaccompanied minors from Afghanistan who do not meet the criteria for a refugee status are normally issued subsidiary protection statuses for the duration until reaching 18 years of age. After subsidiary protection granted to Afghan unaccompanied minors expires, they can start a procedure for extension of subsidiary protection, claiming that reasons for subsidiary protection still exist.⁴⁰⁵ Considering that the sole ground for them initially being granted subsidiary protection was the fact that they were minors, and this ground no longer exists, the claim for extension of subsidiary protection has so far been rejected in most cases (however, the procedure at the very least extends their stay in Slovenia). In case of new, previously non-existent grounds for international protection, they can then try to re-apply for international protection. In most cases, the Afghan applicants whose subsidiary protection status expired and extension was rejected, try to extend their stay in Slovenia by applying for “permission to stay” based on the grounds that they are attending school. Unfortunately, their situation under such status is quite precarious; however, for the time being, they have mostly been able to remain in Slovenia.

Conclusion

The Slovenian asylum system is closely based on the EU asylum directives. It is organised through three consecutive stages – Police, MOI and court stage of the procedure. The asylum applicants have access to free legal representation and, in case of unaccompanied minors, appointed guardians.

Reception conditions

During the procedure, applicants for international protection are provided accommodation in the Asylum Home in Ljubljana. Before submitting the application, the person is accommodated in the reception area of the Asylum Home,⁴⁰⁶ where they are kept separated from persons who have already submitted their application (in practice, usually not longer than until the next working day, when the application can be submitted). Once the application is submitted, they are moved to the main area of the Asylum Home, which is divided into separate areas for adult males, unaccompanied minors, women and families. Apart from accommodation, applicants for international protection are entitled to free food, clothes and shoes, basic hygienic supplies and a monthly allowance (currently amounting to 18€).⁴⁰⁷ In certain legally defined cases, the applicant can be accommodated in other institutions or in private accommodation.⁴⁰⁸ Applicants are entitled to emergency medical treatment, and if decided so by a special multidisciplinary committee to other medical care; asylum applicants who are minors have a wider access to medical care – equal to Slovenian citizens.⁴⁰⁹ Asylum applicants also have access to education⁴¹⁰ and, in case that more than nine months have passed since their application and other legally defined conditions are fulfilled, to employment and work.⁴¹¹

Applicants are issued identity cards with which they can prove their status as applicants for international protection.⁴¹² During the procedure they can move freely on the territory of the Republic of Slovenia; however, if they want to stay outside of the Asylum Home overnight, they must first obtain a permit. If an applicant leaves the Asylum Home and does not return within three days, their application is considered to be withdrawn and the procedure for international protection is stopped⁴¹³ (this occurs in around 50% of the cases).

Detention of asylum seekers

In certain legally defined cases, the MOI can detain the applicant. In most cases this occurs immediately after the application for international protection. Detention can be imposed on the following grounds:⁴¹⁴

404 Law on International Protection, Article 51 (3).

405 Law on International Protection, Article 106.

406 Law on International Protection, Article 37.

407 Law on International Protection, Article 78.

408 Law on International Protection, Article 83.

409 Law on International Protection, Article 84.

410 Law on International Protection, Article 86.

411 Law on International Protection, Article 85.

412 Law on International Protection, Article 112.

413 Law on International Protection, Article 50(2).

414 Law on International Protection, Articles 51 And 59.

- the identity of the applicant needs to be established;⁴¹⁵
- suspected abuse of the procedure;
- risk to lives of others or assets;
- pending Dublin procedure;
- pending safe third country decision.

An applicant can be detained for three months with the possibility of one extension of one month (maximum duration of four months).⁴¹⁶ Detention is carried out in the Centre for Foreigners in Postojna, which is a closed-type police institution, primarily intended for accommodating aliens in return procedures. As an alternative measure, the MOI can restrict the applicant's movement to the area of the Asylum Home (accommodation in the Asylum Home with the prohibition of leaving it).⁴¹⁷ Unaccompanied minors cannot be detained; their movement can only be restricted to the area of the Asylum Home.⁴¹⁸ Except for restrictions on the freedom of movement, applicants in detention or under the alternative measure are entitled to identical rights as other applicants.

When aliens in return procedures accommodated in the Centre for Foreigners expresses an intention to apply for international protection they are usually not transferred to the Asylum Home. The MOI carries out their application for international protection (the first interview) on the premises of the Centre for Foreigners and immediately orders detention (due to the suspected abuse of the procedure), so that the applicant remains in the Centre for Foreigners even as an applicant for international protection, for as long as the restriction of movement is in force.

Xenophobia and racism as a danger for asylum seekers

Xenophobia and racism is sometimes detected in the media or through experiences of asylum seekers and beneficiaries of international protection; however, violent incidents are very rare. The Police are generally not perceived to have racist attitudes towards asylum seekers.

Overall conclusion

The Slovenian asylum system has sufficient capacities and organisation for processing the current number of cases (451 applications in the period from 1 January 2013 to 30 June 2014, with around 50% rate of absconding). The length of procedures from application to the first decision also significantly shortened in the last year, with cases now typically taking from one to four months. Another good practice in Slovenia is the relatively short time from expressing an intention for international protection to submitting an application (the first interview) – usually the first interview is organised on the next working day after the arrival to the Asylum Home.

Perhaps the biggest shortcoming of the Slovenian international protection system remains to be the oftentimes poor quality of decisions, both in the first instance procedures as well as the court procedures. Other enduring problems are criminalisation of refugees (disregarding Article 31 of the 1951 Convention Relating to the Status of Refugees), insufficient quality of interpretation and lack of interpreters for some languages (Pashto, Burmese, Mongolian).

The legislation and policies are constantly changing to harmonise them with new EU *acquis*, with the next major overhaul of the Law on International Protection expected for the year 2015.

415 In accordance with established case law this ground is usually only used in connection with other grounds.

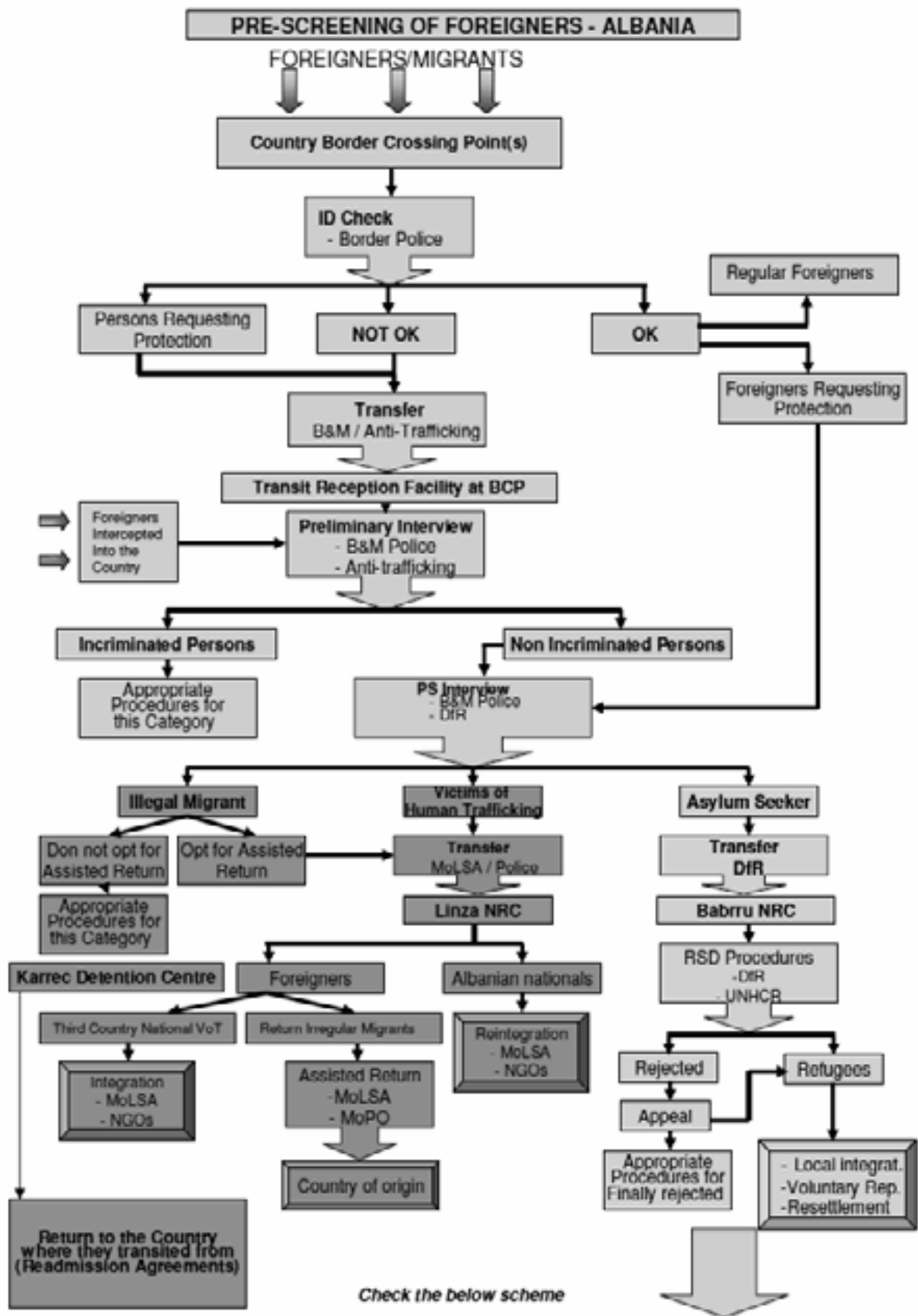
416 Law on International Protection, Article 51(4).

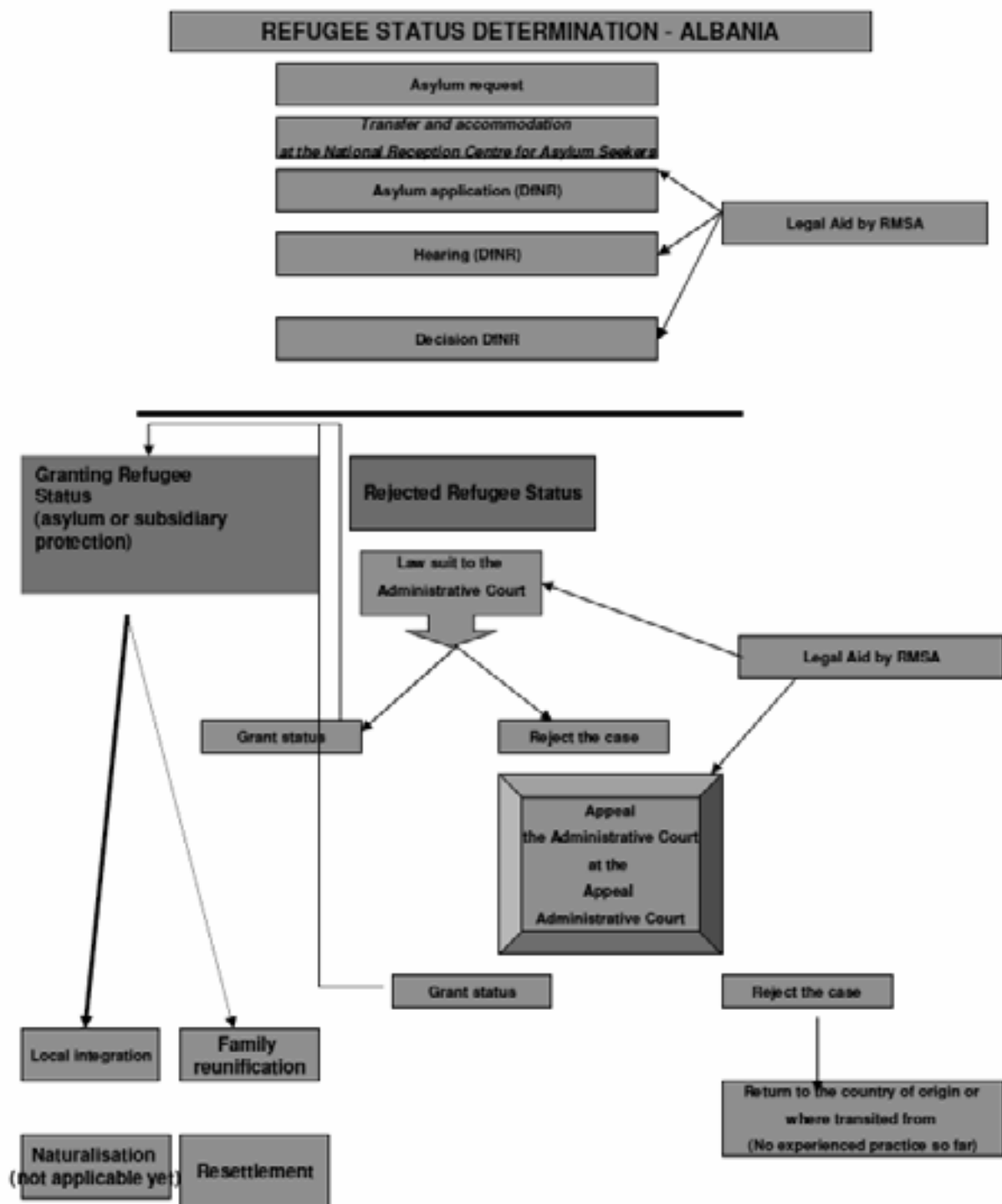
417 Law on International Protection, Article 51 (2).

418 Law on International Protection, Article 51 (3).

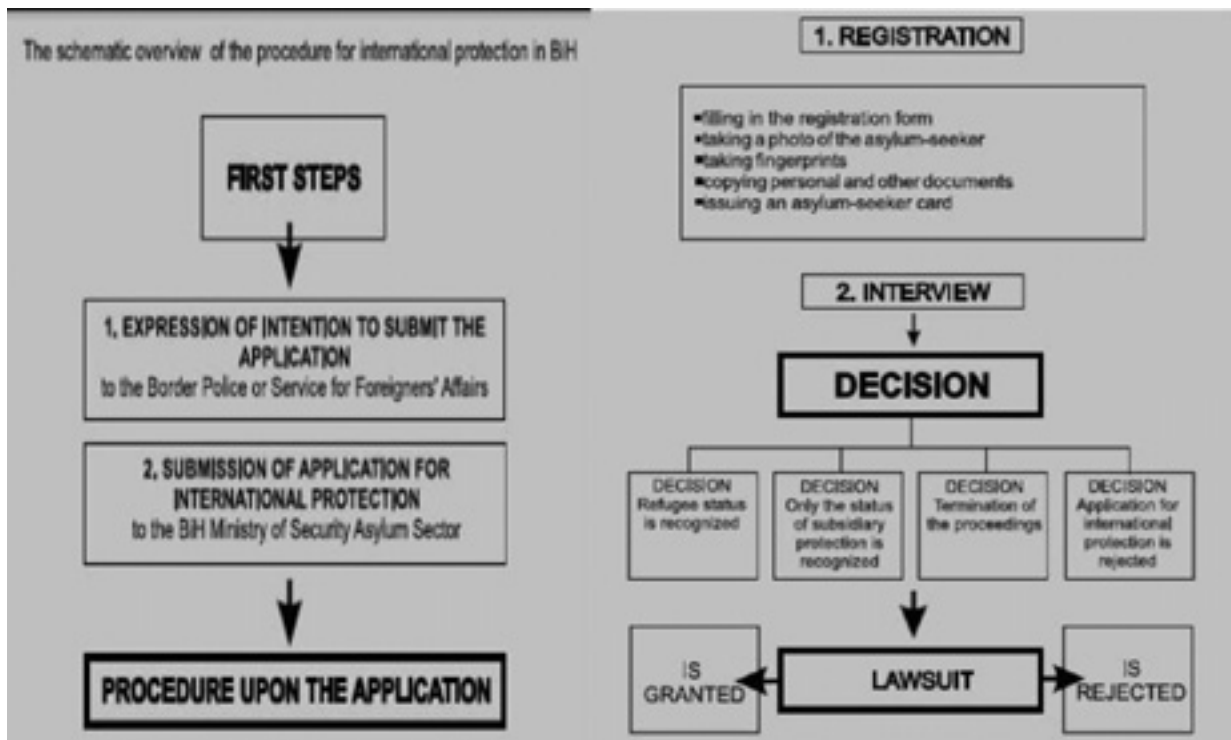
APPENDIX – SCHEME OF ASYLUM PROCEDURES

ALBANIA

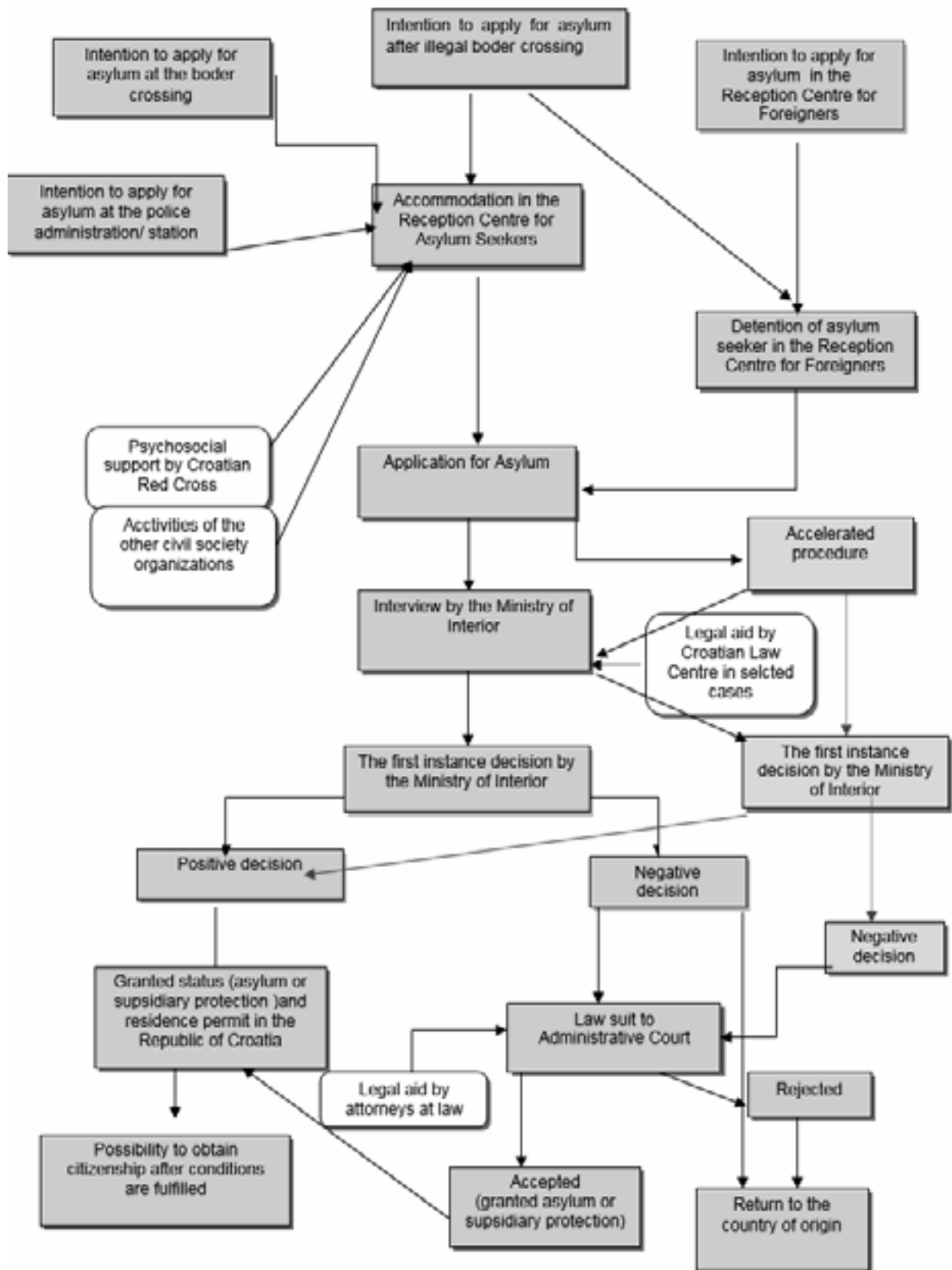




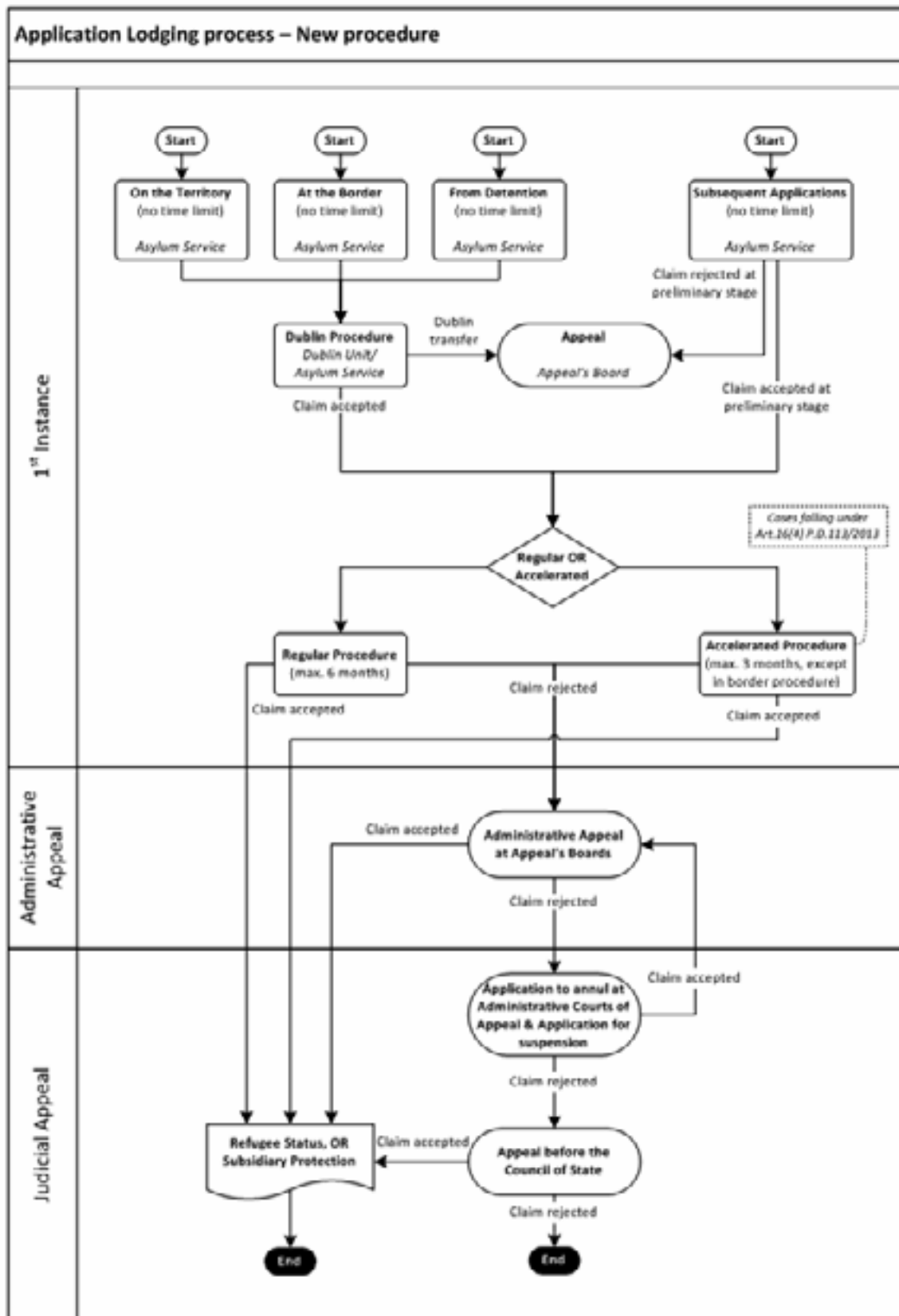
BOSNIA AND HERZEGOVINA



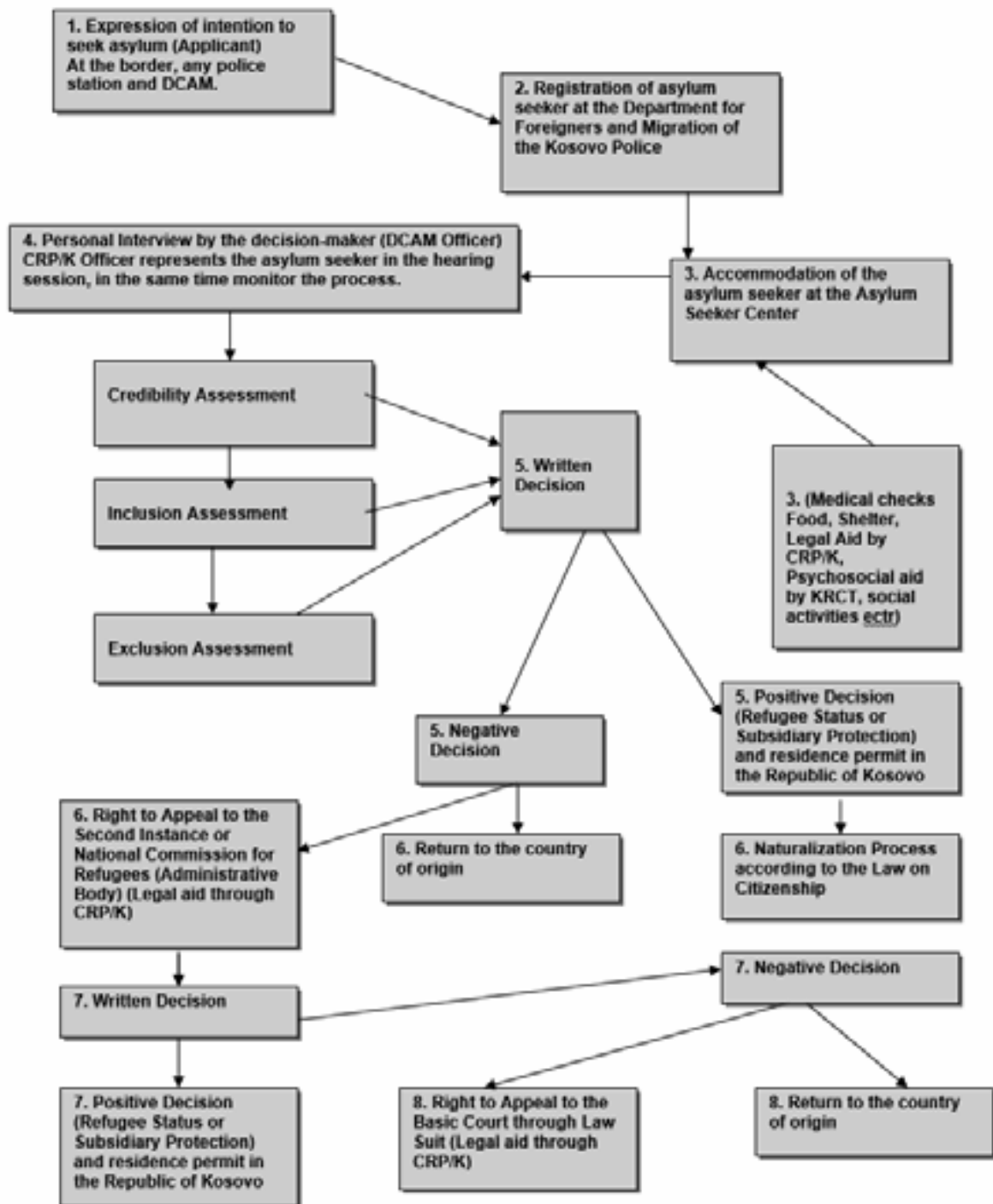
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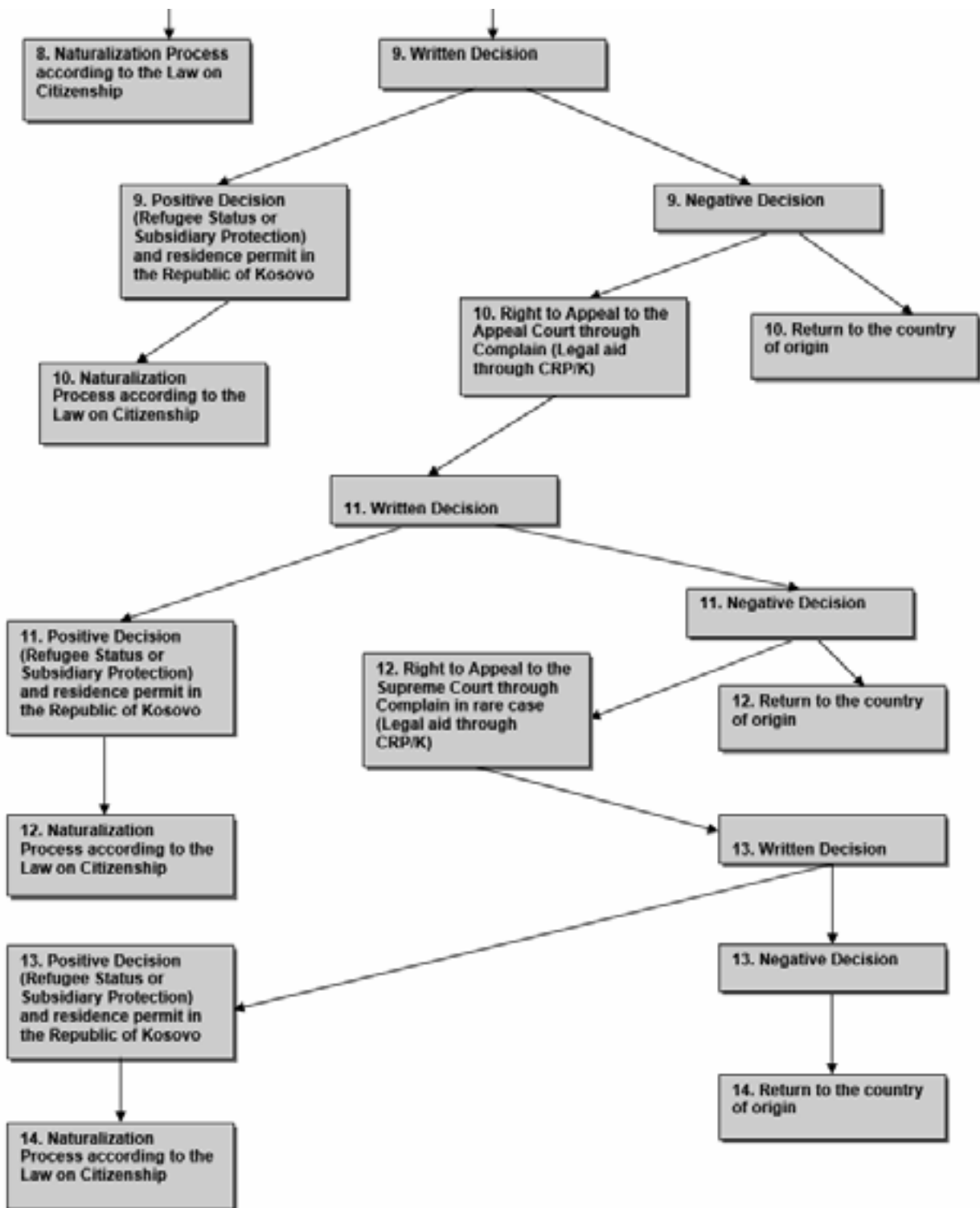


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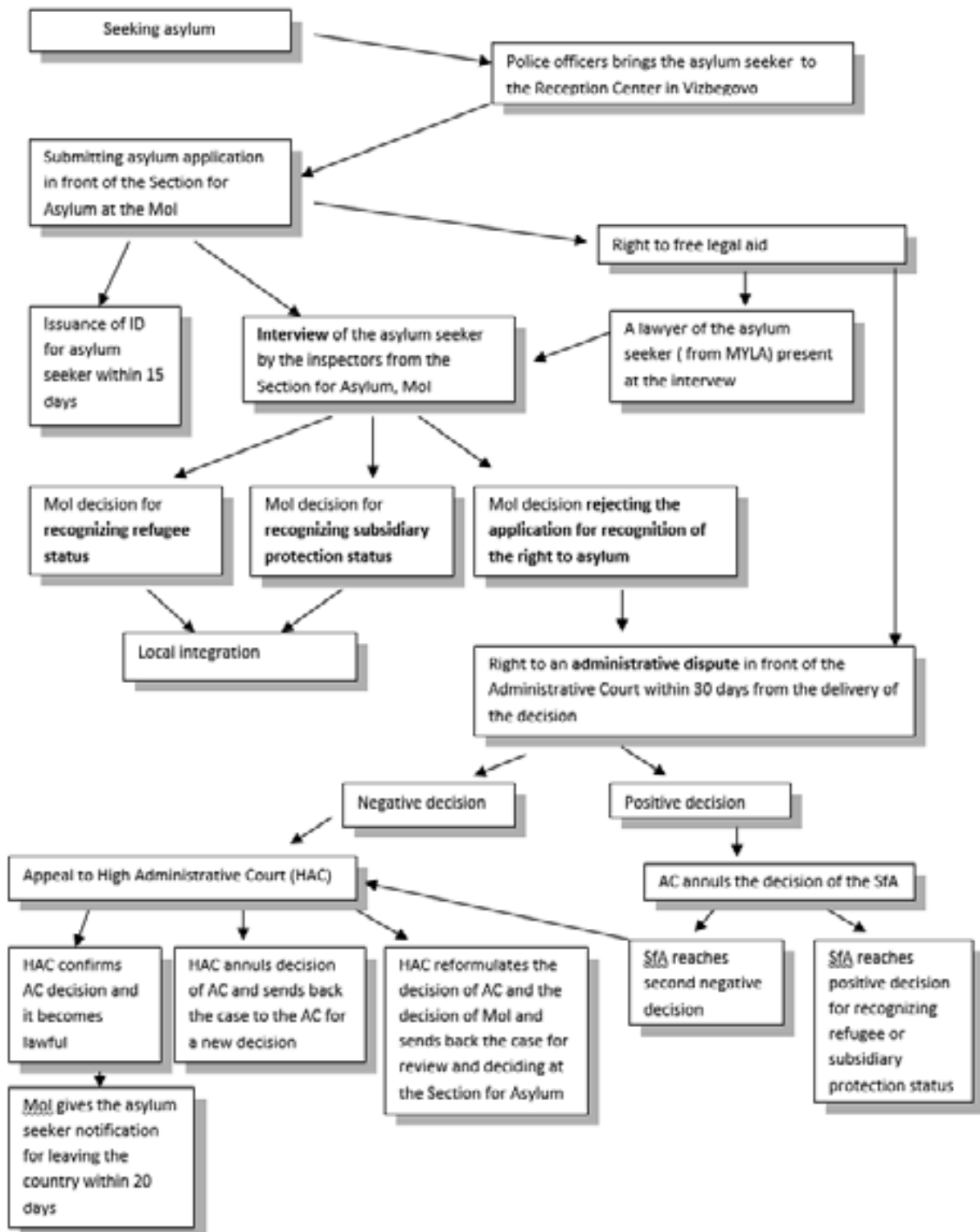


KOSOVO





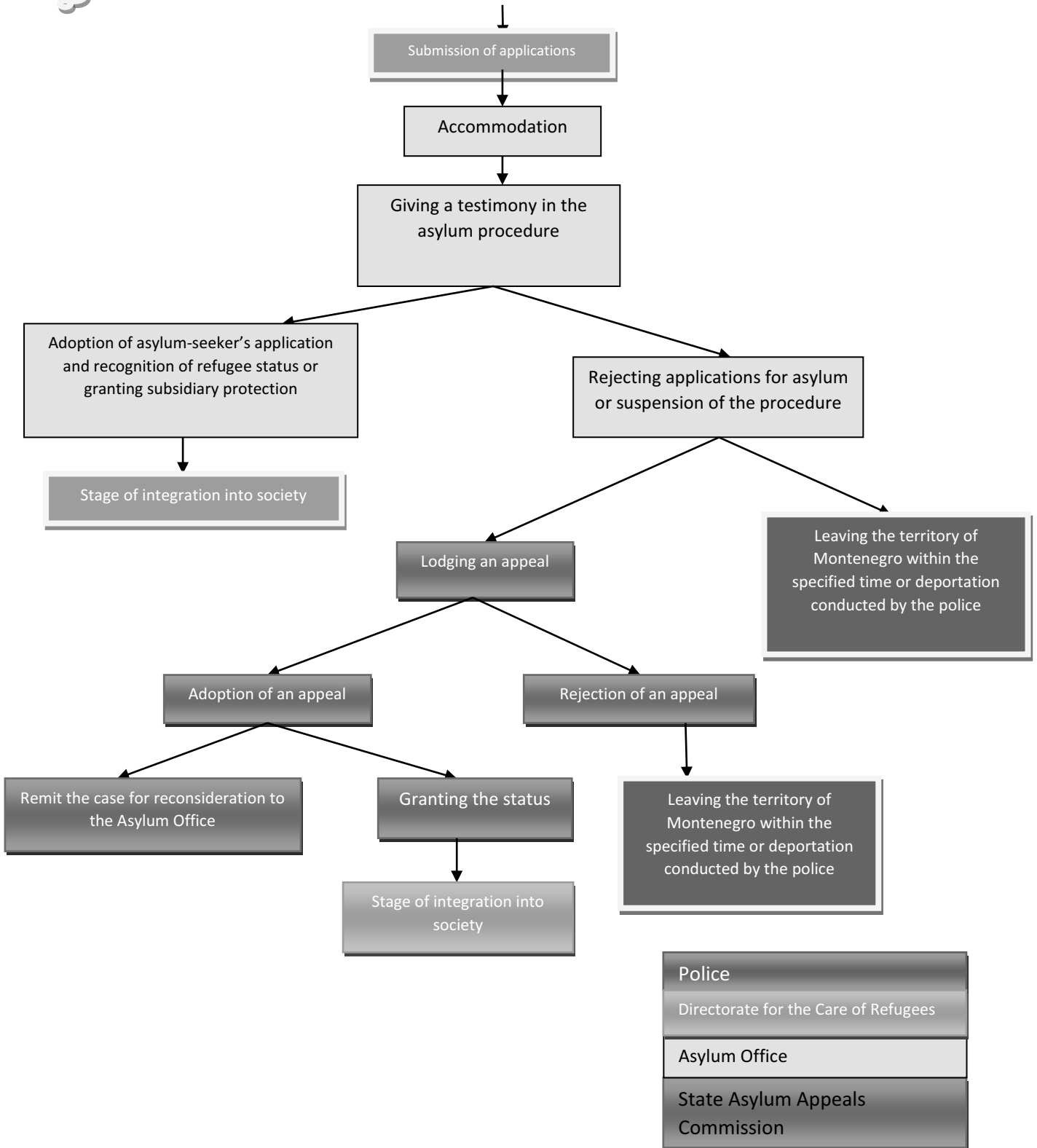
MACEDONIA



MONTENEGRO

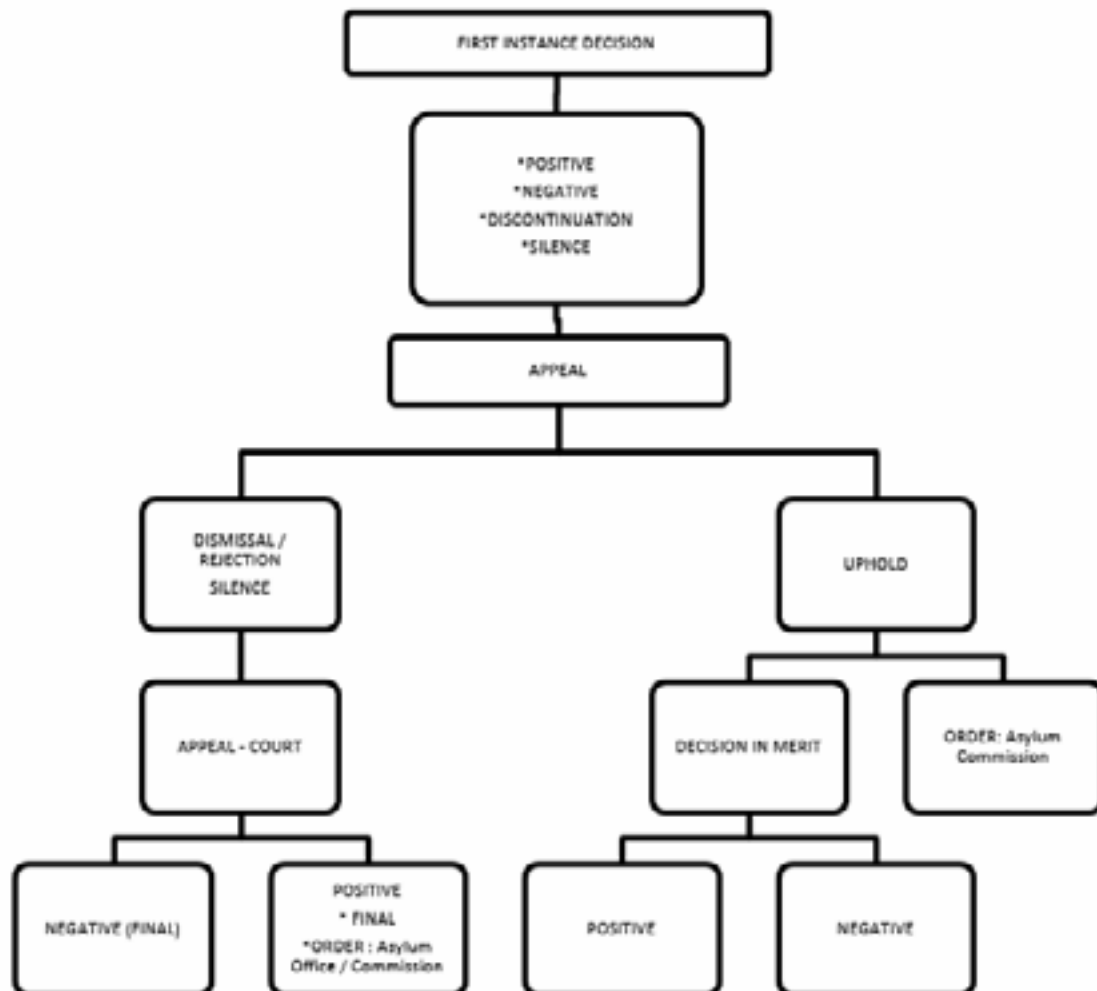
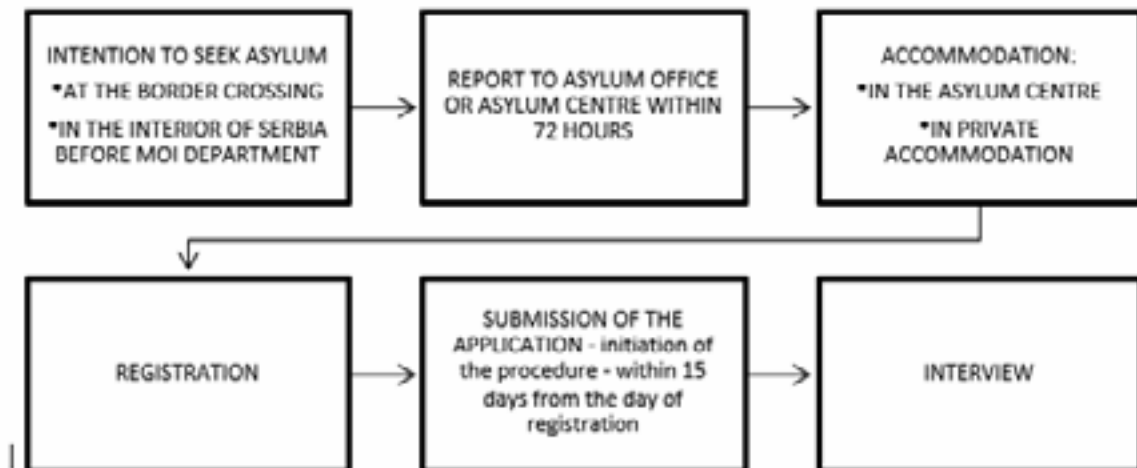


Expression of the intention to seek asylum



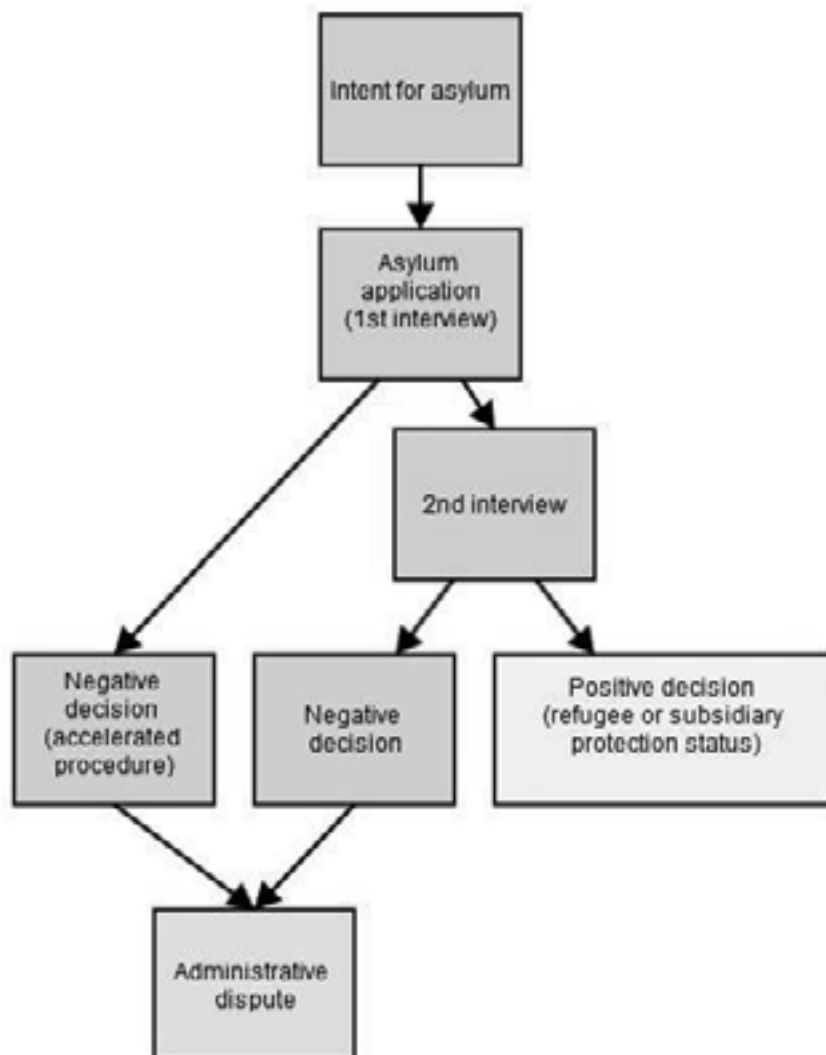
- Police
- Directorate for the Care of Refugees
- Asylum Office
- State Asylum Appeals Commission

SERBIA



Extraordinary legal remedies
 *Constitutional appeal before the Serbian Constitutional Court
 *Motion to review legally binding administrative court decision to the Supreme Court of Cassation

SLOVENIA



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