



REFUGEE RIGHTS
EUROPE

LIMITS TO ACCESS TO ASYLUM ALONG THE BALKAN ROUTE



ACKNOWLEDGEMENTS

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Photo credit: Nidžara Ahmetašević

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ABBREVIATIONS

APC	Asylum Protection Centre
BRMC	Balkan Refugee and Migration Council
BIH	Bosnia and Herzegovina
EU	European Union
DRC	Danish Refugee Council
FRONTEX	European Border and Coast Guard Agency
IOM	International Organization for Migration
KIRS	Commissariat for Refugees and Migration
MARRI	Migration, Asylum, Refugees Regional Initiative
MYLA	Macedonian Young Lawyers Association
UNHCR	The United Nations High Commissioner for Refugees

EXECUTIVE SUMMARY

THE FORMAL CLOSURE OF THE 'BALKAN ROUTE' IN 2016 WAS PART OF A STRATEGY TO HINDER THE MOVEMENT OF REFUGEES AND DISPLACED PEOPLE THROUGH THE BALKANS AND INTO WESTERN EUROPE.

Despite this, since 2018, more than 65,000 people entered the region, using alternative and often more dangerous routes, only to frequently be met with negligence, violations of their rights, pushbacks and beatings. The route had soon evolved into two streams: one leading from Greece over North Macedonia to Kosovo, Serbia and Bosnia and Herzegovina (BiH); the other one going through Albania, Kosovo, Montenegro and further on to BiH. The borders are often located in forests, fields and mountainous areas, making them hard to guard but also challenging to cross irregularly. Yet since 2018, many of these countries have seen a major uptick in the number of people crossing the borders of these states. The region remains

primarily a transit zone though some people have chosen to settle in these countries over the past few years despite numerous obstacles, access to asylum being a major one.

LITTLE TO NO ATTENTION IS GIVEN TO THE FUNCTIONALITY OF THE ASYLUM SYSTEMS, INTEGRATION, OR EVEN TO THE LIVING CONDITIONS FOR POTENTIAL ASYLUM SEEKERS.

The aim of this report is to provide an overview of the situation pertaining to access to asylum in BiH, Kosovo, Montenegro, North Macedonia, and Serbia. In doing so, it places particularly strong emphasis on BiH and Serbia, the two countries in the area with the highest number of displaced people present in-country. Though the asylum situations differ between the countries, the report has identified striking similarities and common trends. The research shows that little to no attention is given to the functionality of the asylum systems, integration, or even to the living conditions for potential asylum seekers.

Overwhelmingly there is a pervasive lack of political will, institutional coordination and efficiency, coupled with procedural roadblocks to seeking asylum. In many Bosnian cities alongside the Croatian border there are extremely limited avenues to seek asylum. Across the region there is a lack of information in the languages of asylum seekers, coupled with a lack of government assistance and legal aid, as well as unrealistic requirements and time frames in the lodging of asylum claims. In Serbia, police

attestation is issued when people enter the county, upon which they must register at a centre and apply for asylum within 15 days. However, because all information is given in the Serbian language, people often miss deadlines. NGOs in North Macedonia have specifically expressed concern about barriers for people in detention, and people being detained without detention decisions being made (or only in the Macedonian language).

LEGAL GAPS AND INSUFFICIENT ENFORCEMENT OF LEGAL OBLIGATIONS AND RIGHTS REMAINS A PERVERSIVE PROBLEM.

All the countries have introduced asylum laws, Kosovo's Law on Asylum standing as a positive example by granting full rights on par with nationals. Nonetheless, legal gaps and insufficient enforcement of legal obligations and rights remains a pervasive problem. Serbia does not consider the 'safe third country' and 'safe country of origin' concepts, while in Montenegro, little differentiation is made between cases on basis of prioritisation and accelerated procedures.

The rates of people applying for asylum are consequently extremely low, and few asylum seekers gain international protection. In BiH only 7% of arriving individuals end up applying for asylum, while in Montenegro as few as 14 people were granted international protection (despite 3,104 lodged applications) in 2019. For those that do get asylum there is nearly non-existent integration



Photo credit: Nidžara Ahmetašević

and long-term support. Many people live outside established accommodation centres, left without any recognised rights and depending singlehandedly on NGOs and solidarity networks. The conditions in centres are commonly subpar and in Kosovo, for instance, facilities lack the standard operating procedures for the treatment of unaccompanied children seeking asylum and for determination of their eligibility for asylum.

The region furthermore displays a major focus on securitisation in its migration management strategy. Instead of large scale reforms of the institutional asylum system, by framing migration as a security issue the focus instead shifts to bolstering border police and border guards, alongside ad hoc solutions. Significantly, the major influence held by the international organisations distinguishes the region from the rest of Europe, especially in the case of BiH and Kosovo.

All these countries strive to become EU members. An important pre-requisite for membership is

border management, and for over a decade, the region has been receiving donations directed toward securitisation of external borders. Each country is obliged to have national strategies for migration management in place, including the combating of 'irregular migration'. As a trade-off for their cooperation, some of the countries have been granted visa liberalisations with the EU and various financial incentives.

THE ULTIMATE AND MOST BLATANT OBSTACLE TO THE ACCESS TO ASYLUM REMAINS THE PRACTICE OF 'PUSHBACKS'.

The report highlights that the ultimate and most blatant obstacle to the access to asylum remains the practice of 'pushbacks'. Though an overwhelming number of pushbacks are conducted by Croatia towards BiH and Serbia, pushbacks are extensively used across the whole region as part of their border management strategy. In BiH border police pushes people back without giving them a chance

to ask for asylum. During the first nine months of 2019, the border police prevented entry for 10,200 people. NGOs in Serbia also flag pushbacks as a major hurdle to asylum access. Moreover, they happen not only at borders but also from centres, most often those close to the border with North Macedonia. In 2019, North Macedonia in turn pushed back 1,000 people to Greece. Therefore, any legal and institutional adjustments for improved access to asylum will remain insufficient so long as pushbacks remain a key tool of security motivated migration management 'systems'.



Photo credit: Nidžara Ahmetasević

INTRODUCTION

FOUR YEARS AFTER THE FORMAL CLOSURE OF THE SO CALLED BALKAN ROUTE, THOUSANDS OF REFUGEES AND DISPLACED PEOPLE ARE STILL CROSSING OR STAYING IN ONE OF THE COUNTRIES ALONG THE ROUTE: KOSOVO, SERBIA, NORTH MACEDONIA, MONTENEGRO AND BOSNIA AND HERZEGOVINA.

Some people hope to continue to the wealthier European countries, while some – tired of traveling – stopped and tried to build a new life, despite facing numerous challenges. In general, the region is primarily a transit zone, and little to no attention is given to the functionality of the asylum systems, integration, or even to the living conditions for potential asylum seekers.

In 2015, when the so called humanitarian corridor existed, transportation was allowed by buses and trains from North Macedonia towards Croatia, and further on, and 1.5 million people crossed the Balkans this way. In 2016, this route was officially closed, but people continued traveling using more dangerous roads, mostly through Serbia towards Croatia. At the end of 2017, movements through the Balkans started taking place across the region. The route now had two main streams: one leading from Greece over North Macedonia to Kosovo, Serbia and BiH; the other one going through Albania, Kosovo, Montenegro and further on to BiH. The borders are long and often located in forests,

fields and mountainous areas – making them hard to guard, but also hard to cross irregularly. Additionally, back in the 1990s, several wars were fought in the region, and land mines from that period still present a serious threat for people moving in this territory.¹

The closure of the borders started at the beginning of 2016 with the fence erected in Hungary and later on Slovenia, and Austria – sending a strong message that no more people can be allowed to enter.² Following this decision, the Croatian prime minister Andrej Plenković announced that his country would do "all it could" to help protect the EU external borders.³

IN 2018, MORE THAN 1,000 PUSHBACKS CONCERNING ABOUT 10,000 PEOPLE WERE REGISTERED IN CROATIA, BIH, HUNGARY AND ROMANIA.

The EU-Turkey deal from March 2016⁴ was set up with the intent to hinder movement from Turkey to

Greece, and as a result, the movement of people further into the Balkans. It however only led people to attempt even more dangerous roads, and helped criminal networks to flourish, including the existing human trafficking networks across the Balkans.⁵ It effectively slowed down the flow of people in 2016 and partially in 2017, however in 2018, when the route turned towards BiH, there was an uptick in the number of people crossing through. Over the next two years, more than 65,000 people entered the region,⁶ only to be met with negligence, violation of their rights, pushbacks and beatings.⁷ The violence became the new face of Europe.⁸ According to the UNHCR, in 2018, more than 1,000 pushbacks concerning about 10,000 people were registered in Croatia, BiH, Hungary and Romania. Each pushback means that somebody was deprived of their right to seek asylum. "The vast majority of pushbacks have been done by the Croatian border police (62%), then BiH (18%), Hungary (9%) and Romania (7%)."⁹ Despite numerous reports about the violence, the EU has remained largely silent on the matter for years.



Photo credit: Tessa Kraan

¹ <https://www.nytimes.com/2018/04/04/lens/the-endless-war-of-land-mines-in-the-balkans.html>

² <https://www.wsns.org/en/articles/2016/02/26/refu-f26.html>

³ <https://euobserver.com/migration/147611?fbclid=IwAR3DsZnd9R5QsORZvOBGdp25nZDOd6z5C83BEKubLsOmQw8GdRoyfO6S08Y>

⁴ Under the agreement's terms, 'all new irregular migrants' arriving by sea to Greece's islands since March 2016, would be returned to Turkey.

⁵ See Human Rights Watch report <https://www.hrw.org/reports/2002/bosnia/>; or, <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1462&context=jil>

⁶ <https://data2.unhcr.org/en/documents/download/73832>

⁷ Pushbacks are a set of state measures by which refugees and migrants are forced back over a border – generally immediately after they crossed it – without any possibility to apply for asylum. Pushbacks violate, among other laws, the prohibition of collective expulsions stipulated in the European Convention on Human Rights. See the definition used by the ECCHR at <https://www.ecchr.eu/en/glossary/push-back>.

⁸ <https://www.borderviolence.eu>

⁹ <http://www.asylumineurope.org/reports/country/serbia/access-territory-and-push-backs>



Photo credit: Tessa Kraan

IN THE WINTER OF 2018, A, FROM IRAQ AND HER THREE DAUGHTERS, ALL MINORS, WERE PUSHED BACK AT LEAST TWO TIMES FROM ALBANIA TO GREECE, THREE TIMES FROM BIH TO MONTENEGRO, AND OVER 15 TIMES FROM CROATIA TO BIH. IT TOOK THEM MORE THAN A YEAR TO CROSS THE BALKANS.¹⁰

The countries along the route strive to become EU members, and as such are obliged to adjust their legislation according to the directions given from Brussels.¹¹ An important pre-requisite for membership is border management, and for over a decade, the region has been receiving donations directed toward securitisation of the external borders, including for cooperation with FRONTEX. As a trade-off for their willingness to abide by these requirements, some of the countries were granted liberalisations of their visa regimes with the EU and further goods exporting opportunities. In exchange for donations and the prospect of membership, the governments "willingly submit to carrying out extreme violence (most notably massive and violent

pushbacks) to protect the external EU border, or to comply with the newly assigned role of being an EU dumping ground for deterred migrants".¹²

IN ACCORDANCE WITH THE EU REQUIREMENTS, ALL THE STATES EXCEPT FOR BIH CHANGED THEIR LAWS ON FOREIGNERS AND ASYLUM IN 2018, TO MIRROR THOSE IN MEMBER COUNTRIES.

In accordance with the EU requirements, all the states except for BiH changed their laws on foreigners and asylum in 2018, to mirror those in member countries. The laws prescribe to the non-refoulement principle, and regulate principles, conditions and procedures for granting refugee status and subsidiary protection, along with their cessation and revocation. They moreover instruct rules for identification of documents, rights and obligations of asylum seekers, refugees and individuals under subsidiary protection, the role of the UNHCR, as well as other issues related to asylum. In Montenegro, but also in Serbia, the laws stipulate an accelerated asylum procedure at borders and have special provisions that allow 'tolerated stay' in Serbia for people who are "illegally staying and who cannot be returned to the country of origin due to the implementation of the principle of non-refoulement, or who cannot leave Serbia due to the circumstances that do not depend on them."¹³ In Serbia, besides the definition of unaccompanied minors, the law introduces 'separated minors', while

in Montenegro, the law on asylum stipulates age assessment of minors, and prescribes medical assessments conducted through medical examination and X-ray of a hand and/or teeth.¹⁴

Significant input to regional legislators was given by the UNHCR and IOM. As a result of these consultations some of the laws contain highly specific provisions, like in Montenegro where the Law on Foreigners allows for cooperation with EU member states during forced return flights.¹⁵ In addition, each country is obliged to have national strategies for migration management in place, including the combating of 'irregular migration', as well as strategies for integrated border management and anti-trafficking. These strategies are regularly made in cooperation with other EU countries, and the IOM.

Under the given instructions, the region placed the issue of foreigners and asylum seekers under the jurisdiction of the ministries of interior, or in the case of BiH the state Ministry of Security, indicating that migration is primarily viewed as a security issue.¹⁶ Additionally, the major influence held by the different international organisations distinguishes the region from the rest of Europe. International organisations hold immense power especially in BiH and Kosovo, which de facto still operate as international protectorates, with little to no accountability towards the local population.¹⁷ In BiH the IOM receives all the donations from the EU and other countries, instead of the state, and is

¹⁰ Interview with A, conducted over Whatsapp in September 2019.

¹¹ <https://eur-lex.europa.eu/summary/glossary/enlargement.html>

¹² Research Paper Series of Rosa Luxembourg Stiftung for Southeast Europe No 8

¹³ <https://vasaprava.org/?wpdmpro=english-common-western-balkan-migration-policy-borders-and-returns>

¹⁴ Ibid

¹⁵ Common Western Balkan Migration Policy: Borders and Returns, November 2019, <https://vasaprava.org/?wpdmpro=english-common-western-balkan-migration-policy-borders-and-returns&lang=en>. See Zakon o strancima, Articles 120, 121, 122 and 123.

¹⁶ BiH has the state Ministry for Refugees and Human Rights, but their responsibility is only for the people with the recognised status.

¹⁷ See <https://www.usip.org/publications/2005/05/kosovo-current-and-future-status>, or <https://today.rtl.lu/news/business-and-tech/a/1473959.html>; <https://europeanwesternbalkans.com/2017/02/24/bosnia-and-kosovo-europes-forgotten-protectorate>

¹⁸ <https://europa.ba>

¹⁹ BiH was part of Yugoslavia which collapsed at the beginning of the 90s due to a war which ended in genocide. This came to an end with the international intervention at the end of 1995, and the Dayton Peace Agreement. Based on war-time divisions, it left the country with an extremely complicated structure. It is made up of the entities Republika Srpska, Federation of BiH, and District Brčko. Federation is composed of 10 cantons. Each of these units has its own government, parliaments, and laws. Additionally, the state government has 9 ministries, a parliament, and the Presidency with 3 members who rotate every 8 months for the mandate of 4 years. The question of asylum seekers is dealt with at the state level, as a part of the Ministry of Security. The overarching entity is a body called the Office of the High Representative, an incredibly powerful international institution re-sponsible for overseeing implementation of civilian aspects of the Peace Agreement. It is represented by the internationally appointed High Representative. The Office of the EU Delegation in BiH, is highly influential and one of the biggest EU offices in the world.

²⁰ <https://www.tandfonline.com/doi/full/10.1080/14683857.2019.1706257>

accountable to the EU Special Representative office¹⁸ in Sarajevo rather than the domestic public. Furthermore, BiH's complicated state structure, with three levels of government, has caused deep fragmentation of law enforcement agencies across the country,¹⁹ which has further strengthened the mandate of various international bodies, allowing them not only to shape but also to direct policies.²⁰

In 2004, the Migration, Asylum, Refugees Regional Initiative²¹ was launched as a "regional mechanism with the core mandate to support the Western Balkans region in migration management". Over a decade later, in 2017, five civil society organisations formed the Balkan Refugee and Migration Council,²² an informal coalition supported by the Netherlands.²³ The coalition issued its first analysis in 2019 on the common regional migration policy, giving an insight into the relevant laws and practices and concluding that access to asylum remains an issue in the region, alongside very low recognition rates.²⁴

THE CONCEPT OF 'CONTROLLED CENTRES' SHOULD BE DROPPED... AND BE REPLACED BY OPEN RECEPTION AND ASYLUM PROCESSING CENTRES.

Since 2018, the European Council and the Commission started exploring the concepts of 'regional disembarkation agreements' and 'controlled centres', which was met with criticism by numerous civil society organisations. Refugee Rights Europe called for the prohibition of the disembarkation platforms in "states without a functioning asylum system, that are not parties to the 1951 Geneva Convention and the 1967 New York Protocol, and/or that do not comply with international human rights law". Furthermore it recommends that the concept of 'controlled centres' should be dropped "as they reinforce the failed hotspot approach", and be replaced by open reception and asylum processing centres "that allow for full access to EU asylum procedures and do not facilitate unlawful 'returns' beyond EU territory".

"ANY WORK ON DISEMBARKATION CANNOT HAPPEN BETWEEN MEMBER STATES BEHIND CLOSED DOORS. IT NEEDS TO BE TRANSPARENT AND INVOLVE A RANGE OF STAKEHOLDERS, INCLUDING THIRD-COUNTRY PARTNERS, CIVIL SOCIETY, ACADEMIC RESEARCHERS AND EXPERTS, UN AGENCIES AND PRIVATE ACTORS."²⁵

IN 2020 THE REGION STARTED TO RESEMBLE ONE VAST HOT SPOT WITH THOUSANDS OF PEOPLE STRANDED.

While there is no proof that the plan was put in place, in 2020 the region started to resemble one vast hot spot with thousands of people stranded, not being able to continue or get protection in the states where they reside. Many are living in temporary accommodation centres which are usually funded by the EU. It is noteworthy that in 2020 there are more of these centres in the region than in 2018. New centres, which soon became overcrowded, are operating in BiH, Montenegro, Kosovo, and Serbia. At the same time, a significant number of people live outside them, left without any recognised rights and assistance by the governments and depending singlehandedly on local and international solidarity networks.²⁶

The following chapters provide an on-the-ground update of the ongoing situation for asylum seekers in five countries along the Balkan route: BiH, Kosovo, Montenegro, North Macedonia, and Serbia. The focus is on Serbia and BiH, the exit points of the Balkan Route where most of the people on the move congregate.



Photo credit: Nidžara Ahmetašević

²¹ <http://www.marri-rc.org>

²² These are Belgrade Centre for Human Rights, Civil Rights Program Kosovo, Group 484, Macedonian Young Lawyers Association, Vaša prava BiH. <https://vasaprava.org/?wpdmpo=english-common-western-balkan-migration-policy-borders-and-returns>

²³ <https://www.vluchtelingenwerk.nl/wat-wij-doen/onze-projecten/internationale-projecten/international-projects>

²⁴ Common Western Balkan Migration Policy: Borders and Returns, November 2019, <https://vasaprava.org/?wpdmpo=english-common-western-balkan-migration-policy-borders-and-returns&lang=en>

²⁵ https://refugee-rights.eu/2020/03/04/the-new-asylum-and-migration-pact-risks-of-externalisation-of-eu-asylum/?fbclid=IwAR1mV3YUdU6Twyfw7xHwNB4431aT269h_6V6cVXEktD5JH9sbNCONv78R70

²⁶ See Care International report at <https://reliefweb.int/report/bosnia-and-herzegovina/stranded-and-forgotten-bosnia-s-migrants-and-refugees-left-themselves>; Balkan Insight <https://balkaninsight.com/2020/04/09/movement-ban-worsens-migrants-plight-in-serbia-bosnia/>; EU https://ec.europa.eu/echo/where/europe/bosnia-and-herzegovina_en

BOSNIA AND HERZEGOVINA

THE COUNTRY, WHICH SHARES ABOUT 1000 KM OF ITS BORDER WITH THE EU, BECAME A KEY PART OF THE BALKAN ROUTE AT THE END OF 2017.

By April 2020, over 59,000²⁷ people had entered the country, but only about 8,000 remained present in BiH. The vast majority had earlier crossed through, or stayed in, Greece. A significant number arrived from Bulgaria and Serbia and aimed at continuing their journey to Croatia and onwards.

ONLY ABOUT 7% OF ARRIVING INDIVIDUALS FILED ASYLUM CLAIMS, WHILE REFUGEE STATUS WAS AWARDED ONLY IN NINE CASES SINCE 2010.

Out of this number, only about 7% of arriving individuals filed asylum claims, while refugee status was awarded only in nine cases since 2010, along with 136 subsidiary protection statuses.²⁸ In mid-March 2020 about 700 cases remained open.²⁹ The state Ombudspersons office,³⁰ as well as UNHCR,³¹ expressed their concern about such a low number of claims, warning that the existing legislation and the procedures are not effective or enforced in order to grant rights to the potential asylum seekers. The NGO Vaša prava, which provides free legal aid, claims that access to asylum is difficult and that the state institutions are disinterested in dealing with people on the move in any way.³²

IN APRIL 2020, Z. MARKED 2 YEARS SINCE HE CAME FROM SERBIA TO BOSNIA. PREVIOUSLY HE HAS BEEN STRANDED IN ŠID FOR ALMOST A YEAR. SINCE HE ARRIVED IN BOSNIA, HE TRIED TO CROSS INTO CROATIA OVER 30 TIMES WITH NO SUCCESS. IN THE MEANTIME, HE SETTLED INTO A TOWN IN BOSNIA, FOUND FRIENDS, THE OCCASIONAL JOB AND HE LEARNED TO SPEAK THE LOCAL LANGUAGE. BUT, AFTER TWO YEARS HE HAD LITTLE TO NO INFORMATION ABOUT THE ASYLUM PROCEDURE. "I DO NOT KNOW EVEN WHO TO ASK OR WHAT TO DO. I NEVER MET ANYBODY WHO OFFERED ME ANY INFORMATION ABOUT WHAT THE POSSIBILITIES FOR ME IN THIS COUNTRY ARE." ³³

– Z.

Photo credit: Nidžara Ahmetasević

27. https://ec.europa.eu/echo/where/europe/bosnia-and-herzegovina_en

28. <http://sps.gov.ba/strateski-dokumenti>

29. Interview with Vasa prava, free legal aid organization funded by UNHCR. April 2020.

30. https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019010713545979eng.pdf

31. <https://www.refworld.org/country/BIH.html>

32. Interview, Sarajevo, April 2020

33. Interview with Z. February 2020.



Photo credit: Nidžara Ahmetašević

Instead of improving the asylum system at large, the authorities and donors focused on security related issues and temporary humanitarian responses. EU, the biggest donor when it comes to managing migration in the region, funnelled over 50 million euros to the IOM and other partner organisations in BiH.³⁴ Two years ago, BiH had only one clerk working at the Sector for Asylum (part of the Ministry of Security) on asylum determination. In 2020 the number increased to three. Meanwhile, the government and donors are insisting on strengthening the border police, as well as local police, donating equipment and cars, or paying for the accommodation of the border guards.³⁵

For people on the move the biggest issue remains the accommodation. The government runs two centres: Delijaš for asylum seekers with the capacity of up to 150 people, and the immigration centre in Lukavica, which serves as a pre-removal detention centre. Additionally,

the Ministry of Human Rights and Refugees runs the accommodation centre Salakovac, near Mostar, which has about 200 places. Despite this highly limited capacity, the government showed no willingness to allocate more spaces. The Council of Europe Commissioner for Human Rights Dunja Mijatović, after her visit to BiH, called on the government to respect the laws and provide accommodation, access to food, health care, and sanitation. The Commissioner also noted obstacles faced by the potential asylum seekers, saying that all the claims need to be considered "on their own merits, in fair and efficient asylum procedures".³⁶

THE EU DECIDED IN 2018 TO COOPERATE DIRECTLY WITH IOM AND UN AGENCIES AS THEIR PARTNERS INSTEAD OF THE STATE INSTITUTIONS, PUTTING THEM IN CHARGE OF MANAGING MIGRATION.

Based on the previous assessment of the situation in BiH, especially reports indicating high levels of corruption,³⁷ the EU decided in 2018 to cooperate directly with IOM and UN agencies as their partners instead of the state institutions, putting them in charge of managing migration.³⁸ They singlehandedly provided and ran temporary accommodation centres, by renting private property, former hotels and factories.³⁹ However, despite donations they failed to create dignified and humane living conditions per government law and ended up

overseeing places where people feel insecure and where psychological support or health care are limited.⁴⁰

A HUGE NUMBER OF PEOPLE (INCLUDING THOSE IN CENTRES) ARE BECOMING PEOPLE WITHOUT PAPERS AND REGULATED STAY, AND AS SUCH ARE OFTEN CRIMINALISED AS 'ILLEGAL MIGRANTS'.

The lack of accommodation, and emphasis on temporary solutions, are the main obstacles for people to fulfil the legal obligation to find and register an official address within 14 days⁴¹ as required by the Law on Asylum,⁴² in order to request asylum in one of the offices within the Service for Foreigners' Affairs. The UN Special Rapporteur on the Human Rights of Migrants warned that 14 days is "a very short period for asylum seekers to submit formally a claim considering that the Ministry of Security has not allocated sufficient resources to process registration during mass influx". Many people fail to find an address, leading to their paper issued at the initial registration to expire. Getting it re-issued is highly challenging due to the reluctance of the Service for Foreigners' Affairs to do so, moreover the law is not clear on their obligations. As a result, a huge number of people (including those in centres) are becoming people without papers and regulated stay, and as such are often criminalised as 'illegal migrants'.⁴³

³⁴ https://reliefweb.int/report/bosnia-and-herzegovina/bosnia-and-herzegovina-update-situation-refugees-and-migrants-dg-echo?fbclid=IwAR1mGVipV6Hs9em7gBuWHS-o1Pfqzwx28MNqgNZZxxdkxBqtN_bfEC7d56A

³⁵ <https://balkaninsight.com/2020/01/30/bosnia-lacks-border-guards-to-handle-migrant-crisis>

³⁶ <https://rm.coe.int/commhdh-2018-12-letter-to-the-authorities-regarding-the-migration-situa/1680870e4d>

³⁷ <https://www.transparency.org/cpi2019>

³⁸ Civil society remains critical about the role of the international organisations and the EU when it comes to managing migrations in BiH. In their yearly submission to the UN, they noted that, the result of the EU decision to place the IOM and their partner organisation in charge, "the responsibility to provide access to guaranteed human rights to asylum-seekers and migrants de facto shifted from the State to international organisations, all to the detriment of the asylum-seekers and migrants. Lacking a mechanism for so doing, activists have been unable to hold the IOM or other international organisations accountable for poor management of the camps. De jure the State remains accountable and should be ensuring that the international organisations do not breach international human rights law and international refugee law and this must be insisted upon by the international community to all" https://www.wilpf.org/wp-content/uploads/2019/08/UPR-BiH-Herzegovina_2019.pdf

³⁹ <https://ba.boell.org/en/2019/02/21/people-move-bosnia-and-herzegovina-2018-stuck-corridors-eu>

⁴⁰ Ibid

⁴¹ <https://help.unhcr.org/bosniaandherzegovina/applying-for-asylum>

⁴² <https://www.refworld.org/topic.html>

⁴³ <https://www.sarajevotimes.com/bosnian-minister-of-security-fahrudin-radoncic-said-his-proposal-to-tackle-migrants-crisis-will-not-be-supported>

"I TRIED TO APPLY FOR ASYLUM. I WENT TO THE OFFICE FOR FOREIGNERS AND THEY TOLD ME I CANNOT DO THAT. THEY TOLD ME I PASSED THE DEADLINE. WHAT SHOULD I DO NOW? NOTHING. I AM JUST WAITING."

– K. from Iraq. Stays in BiH for over 14 months

The same goes for the people residing in IOM run centres which are not officially recognised by the state. A small step forward was made in 2019, when IOM and the government made an agreement about the centre Ušivak in Sarajevo, which became a place where asylum can be claimed. But, in Bihać and Velika Kladuša, cities with the highest concentration of people, this remains an issue. In 2019, the Service for Foreigners' Affairs made two appointments for registrations in the Bihać area, when over 100 people registered their asylum claims.⁴⁴

"I LIVE IN BIRA FOR 14 MONTHS NOW. I APPLIED FOR ASYLUM 8 MONTHS AGO, BUT NOTHING SINCE THEN. I SPOKE WITH VAŠA PRAVA AND THEY TOLD ME, WE HAVE TO WAIT FOR THE MINISTRY. AND NOTHING MORE. WHAT AM I SUPPOSED TO DO." ⁴⁵

– S.

For people in the detention centre the access to asylum is even more complicated since the procedure requires them to take initiative to seek out free legal aid, after which they are allowed to ask for an appointment with Vaša prava – but only via the fax machine available in the centre. If successful in expressing their intention to seek asylum, they are released from the detention after a few days. With the aim to help with the registration, UNHCR

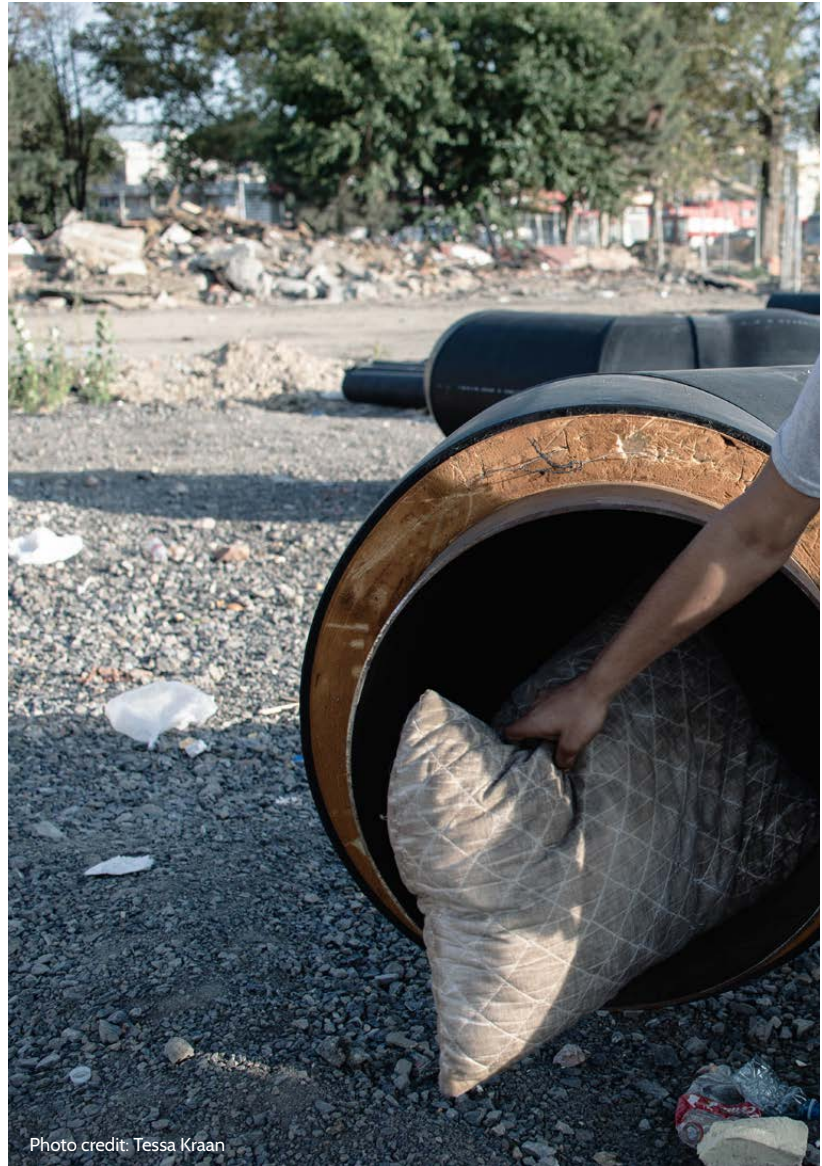


Photo credit: Tessa Kraan

established the Info Centre in Sarajevo, but not in other cities.

A LEAFLET ON THE RIGHTS OF ASYLUM SEEKERS IS AVAILABLE IN SEVERAL FOREIGN LANGUAGES, "BUT IT IS QUESTIONABLE IN WHICH PHASE OF THEIR STAY IN BIH FOREIGN NATIONALS GET THIS LEAFLET."

Another legal obligation the administration in BiH often fails to implement is to provide asylum information in a language the person can understand. In practice, after the initial registration, people leave the offices of the Service for Foreigners' Affairs with the document issued in the Bosnian language, with their fingerprints, picture, and

personal data, but with no information where to go or what to do. The state Ombudsperson office, in their yearly report for 2018, noticed that a leaflet on the rights of asylum seekers is available in several foreign languages, "but it is questionable in which phase of their stay in BiH foreign nationals get this leaflet, and whether getting acquainted with the information on this leaflet is an integral part of the procedure conducted upon the application for the asylum."⁴⁶

⁴⁴. Interview with Vaša prava

⁴⁵. Interview with S., Skype, April 2020

⁴⁶. https://www.ombudsmen.gov.ba/documents/obudsmen_doc2019010713545979eng.pdf

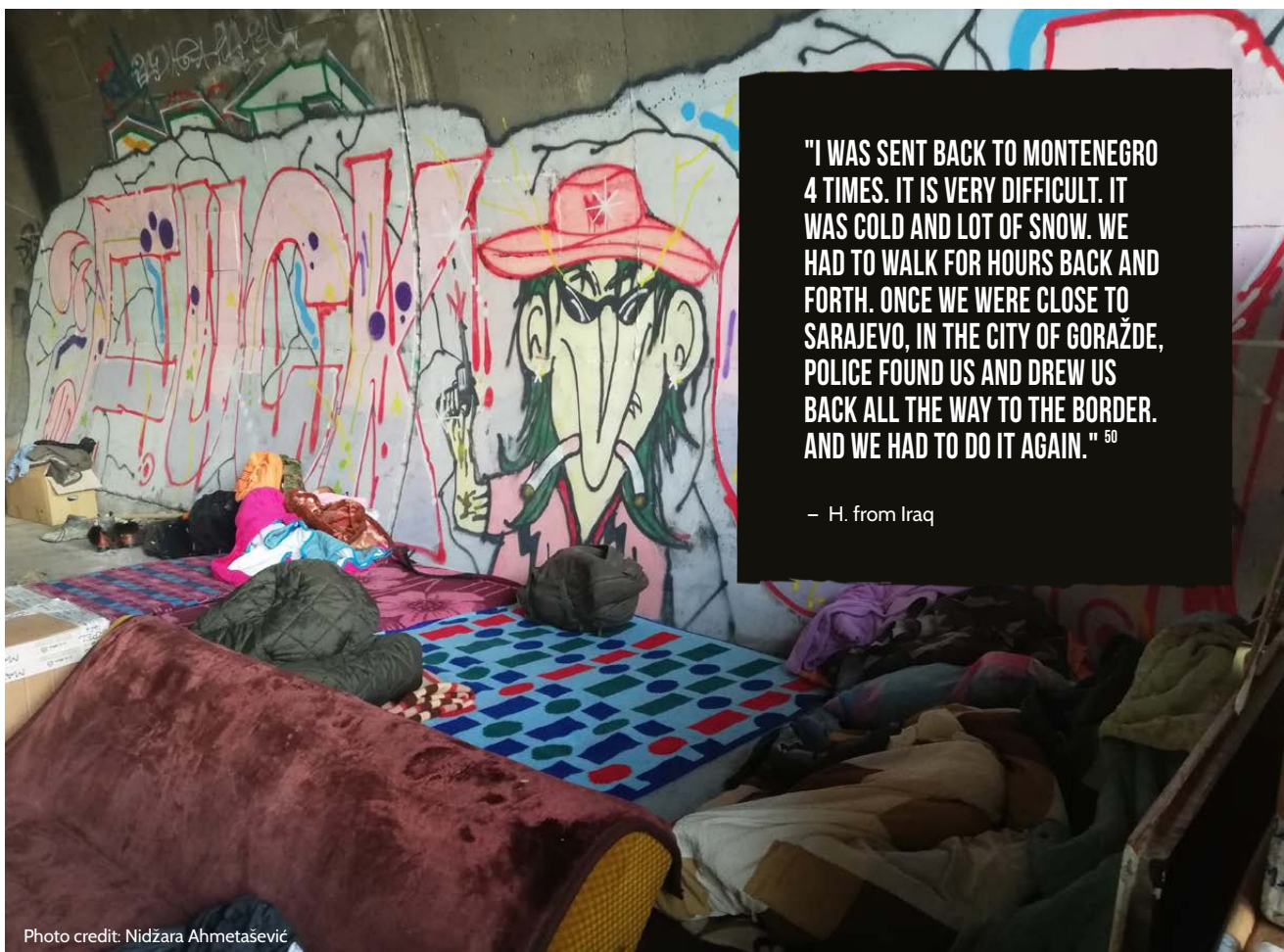
Asylum seekers are entitled with the permission to stay in the country, to receive information about their case, to be accommodated in a centre, along with access to: primary health care, primary and secondary education, the labour market (nine months after a filed claim) and psycho-social assistance. In practice enforcement of these laws is deficient, and the biggest challenge remains access to the health and education systems. Asylum seekers are furthermore obliged to get a new attestation of their status every three months. This process is often halted due to ineffective administrative procedures, but also a lack of institutional and political will.⁴⁷ The first registration of a claim should be followed by the asylum interview, which is scheduled sometimes in the course of a few weeks, but more often takes up to nine months or more. As per the law, the maximum waiting time should not be longer than 18 months.⁴⁸

However, the ultimate obstacle to access to asylum in BiH, as well as in the rest of the Western Balkans, are pushbacks. BiH border police pushes back people

without giving them a chance to ask for asylum. During the first nine months of 2019, the border police prevented entry for 10,200 people.⁴⁹

THE RIGHT TO GET A PASSPORT IS GUARANTEED BUT THEIR FREEDOM OF MOVEMENT AND POSSIBILITY OF TRAVELING REMAINS LIMITED.

For those who remain patient enough to go through all these procedures and difficulties, and who are finally granted international protection, the right to get a passport is guaranteed but their freedom of movement and possibility of traveling remains limited and regulated by the visa regime of the countries of destination.⁵¹ The long procedures, and the outlined obstacles, push people to give up their intentions to stay in BiH, often even once they have been granted international protection. One such case was a single mother from Burundi who give up and left after years spent in BiH waiting for the passport.⁵²



47. https://www.wilpf.org/wp-content/uploads/2019/08/UPR-BiH-Herzegovina_2019.pdf

48. Law on Asylum <https://www.refworld.org/docid/58b575084.html>

49. <https://www.dnevno.ba/vijesti/zoran-galic-sprijecen-ulazak-vise-od-10-000-migranata-u-bih-178416>

50. H. from Iraq, interview conducted in Sarajevo, September 2019.

51. Visa liberation system with the EU in the case of BiH means that its citizens are free to enter and stay in any Schengen country up to three months.

52. Interview with Vasa prava

SIMILARLY TO BIH, POTENTIAL ASYLUM SEEKERS IN SERBIA FACE NUMEROUS OBSTACLES TO ACCESSING ASYLUM.

With the help from Brussels, Serbia established 18 centres with the total capacity for about 6,000 people over the course of five years.⁵³ All the centres are run by the KIRS (Commissariat for Refugees and Migration), while the asylum procedure falls under the Ministry of Interior. Delays and complications to accessing asylum are at large caused by the lack of capacity, resources, and trained staff in the Asylum Office. The Belgrade Centre for Human Rights, an NGO backed by UNHCR, described the asylum

system as "far from functional", noticing the lack of systemic solutions and effective coordination of government bodies, as well as legal gaps and inconsistent enforcement of the existing legislation.⁵⁴

AN LGBT INDIVIDUAL FROM IRAN WAS GRANTED ASYLUM. THIS, HOWEVER, REQUIRED 700 DAYS OF WAITING AND AGONISING BEFORE THE DECISION WAS MADE.

Since the establishment of the national asylum system in 2008, until the end of March 2020, 647,512 individuals expressed their intention to seek asylum, reaching peak numbers in 2015 (577,995). The number of registrations dropped significantly after 2016 but started rising again in 2018 (8,436 registered claims) and 2019 (12,937).⁵⁵ Nevertheless, the number of individuals granted international protection status (173) remains low. NGOs working with asylum seekers are encouraged by the fact that

an LGBT individual from Iran was granted asylum. This, however, required 700 days of waiting and agonising before the decision was made.⁵⁶

THE REGISTRATION CERTIFICATE IS WRITTEN ONLY IN THE CYRILLIC ALPHABET AND THE SERBIAN LANGUAGE.

In accordance with a law from 2018, any potential asylum seekers can register intention to seek asylum at any police station in the country, or at the border. Police should issue an attestation and direct him/her to the accommodation centres, where they have to report within 72 hours and to apply for asylum within 15 days. However, the registration certificate is written only in the Cyrillic alphabet and the Serbian language, and most of the people cannot understand the instructions, and consequently often fail to meet deadlines. If that happens, they have eight days to submit their written application, a step for which they need to seek assistance from NGOs.⁵⁸



Photo credit: Nidžara Ahmetasević

⁵³ <https://www.asylumineurope.org/reports/country/serbia/types-accommodation>

⁵⁴ *ibid*

⁵⁵ <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Periodični-izvestaj-januar-mart-2020.pdf>

⁵⁶ <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Periodični-izvestaj-januar-mart-2020.pdf>

⁵⁷ Interview with Abdullah, email, April 2020.

⁵⁸ Interview with APC. See also <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Periodični-izvestaj-januar-mart-2020.pdf>



"MANY PEOPLE BECOME DEPRESSED ONLY AFTER THEY GOT THE STATUS, AND AFTER THEY REALISE THAT THE ONLY THING THEY GOT IS A RIGHT TO STAY AND WORK IN SERBIA. BUT THE REFUGEE PASSPORT DOES NOT EXIST. THEY CAN TRAVEL WITH THEIR OLD PASSPORT, IF THEY HAVE IT, AS LONG AS IT DOES NOT EXPIRE." ⁶²

Photo credit: Tessa Kraan

Another obstacle is that police officers across the country often reject the application and rather refer people to the KIRS office in Belgrade, which is responsible for accommodation but not registration. KIRS in turn sends them to temporary reception centres and sets appointments with the nearest police station to register their intention. Again, NGOs are those who accompany people and assist. According to APC (Asylum Protection Center), the police will usually refer people to centres away from Belgrade, and close to the border with North Macedonia, BiH or Montenegro. When deciding on the centre, the police is supposed to do a screening and differentiate between persons with a genuine interest in applying for asylum and those who simply want to be accommodated before continuing their journey. In practice, this step is often overlooked as the police lacks capacity to do this profiling. Asylum seekers in this way sometimes end up in the most

remote centres, like in the Sandžak area, where registrations happen only once or twice a year.⁵⁹

THE LAW DOES NOT MEET INTERNATIONAL STANDARDS BY PROVIDING A JUDICIAL REVIEW EARLY IN THE ASYLUM PROCEEDINGS.

Another issue for potential asylum seekers in Serbia is that the law does not meet international standards by providing a judicial review early in the asylum proceedings or taking into account 'safe third country' and 'safe country of origin' provisions that align with international standards.⁶⁰ Additionally, pushbacks are flagged as a major hurdle registered by number of NGOs in Serbia. They happen not only at the borders, but also from centres, most frequently those close to the border with North

Macedonia. From January to April 2019, APC registered 75 pushbacks from Serbia.⁶¹

People who manage to overcome all these obstacles and get international protection, have the right to access health and education services, financial assistance for accommodation for a period of one year and obligatory Serbian language courses. They are given 230 euros for the housing over the course of one year, and a monthly allowance, but no pathway to citizenship is provided.

⁵⁹ APC interview, April 2020
⁶⁰ <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/serbia>
⁶¹ <http://www.apc-cza.org/en/8-vesti/1628-forced-refugee-push-backs-to-macedonia-from-january-to-april-2019.html>
⁶² APC interview, April 2020

IN 2015, WHEN 4,000 PEOPLE WERE REGISTERED UPON ENTRY INTO THE COUNTRY⁶³, MONTENEGRO ESTABLISHED THE OPERATIONAL TEAM WITH THE TASK TO COORDINATE ALL INSTITUTIONS INVOLVED IN PROVIDING CARE FOR PEOPLE ON THE MOVE.

The Team continued to be operational in 2018, during which 4,722 intentions to seek asylum were registered along with 3,104 asylum claims. Nevertheless, only 14 people were granted international protection. The trend continued in 2019, with 1,921 asylum claims resulting in only six protection statuses being issued. Similarly, by mid-March 2020, 1,200 persons expressed intention to seek asylum, 382 applied for asylum, and one person was granted international protection.⁶⁴

IN 2019, 1,921 ASYLUM CLAIMS RESULTED IN ONLY SIX PROTECTION STATUSES BEING ISSUED.

In 2017, the state adopted the three year Strategy for the Integration and Management of Migrations, followed in 2018 by the new Law on Asylum⁶⁵ which guided the establishment of the Directorate for Asylum inside the Ministry of Interior. The new law, according to the UNHCR, improved the normative asylum framework while introducing changes at the institutional level, such as shifting the overall responsibility for the reception of persons seeking international protection and their integration from the Ministry of Labour and Social Welfare to the Ministry of Interior.



Photo credit: Tessa Kraan

⁶³ <http://www.cin-cg.me/azilanti-crna-gora-tranzitna-zona-za-izbjeglice-hiljade-traze-azil-pa-se-svercuju-ka-eu>

⁶⁴ UNHCR email communication, May 2020.

⁶⁵ <https://asocijacija-spektra.files.wordpress.com/2018/04/zakon-o-azilu.pdf>



Photo credit: Tessa Kraan

The Police Directorate, an independent body since December 2018, conducts border management and registers intentions to seek asylum at the border crossings, police stations, or the asylum centres. With the proof of intention, every person has 15 days to formally submit an application to the Directorate. If rejected, an appeal can be submitted before the Administrative Court of Montenegro. In case the appeal is rejected, the stay of the person is considered illegal and they are ordered to leave the country. Decision on the application must be made within six months from the date of the application, apart from exceptional circumstances for which the deadline can be extended for up to 21 months.

In Montenegro people can stay in two centres near capital Podgorica, Spuž and Vrela Ribnička, both

built with the help from the EU. Researchers have stressed the bad conditions in the centres, as well as a lack of opportunities for integration, which affects people's decision to apply for the asylum.⁶⁶

BY LAW, THOSE WHO OBTAIN STATUS ARE ENTITLED TO ACCESS EDUCATION, LANGUAGE CLASSES, EMPLOYMENT, AND THE PROVISION OF ACCOMMODATION FOR UP TO TWO YEARS.

The US State Department in their annual report on the state of human rights noticed that the authorities do not employ methods for managing mixed migration movements effectively, e.g. prioritisation or accelerated procedures, instead the focus remains

on security and border control.⁶⁷ By law, those who obtain status are entitled to access education, language classes, employment, and the provision of accommodation for up to two years. Once the asylum is obtained, a path to citizenship is available, but it requires evidence that the applicant had renounced citizenship in his or her country of origin.

⁵⁹ APC interview, April 2020

⁶⁰ <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/serbia>

⁶¹ <http://www.apc-cza.org/en/8-vesti/1628-forced-refugee-push-backs-to-macedonia-from-january-to-april-2019.html>

⁶² APC interview, April 2020

AUTHORITIES IN NORTH MACEDONIA, THE ENTRY POINT OF THE BALKAN ROUTE, HAS NOT RECOGNISED REFUGEE STATUS FOR ANYBODY SINCE 2015, BUT EIGHT PEOPLE WERE GRANTED SUBSIDIARY PROTECTION.

People who applied and were rejected, most often received the explanation that they are a potential security threat, activists claim. At the same time, since the closure of the borders in 2016, thousands were pushed back to Greece or Bulgaria.⁶⁸ Pushbacks are a major obstacle to access to asylum. In 2019, about 1.000 people were pushed back to Greece,⁶⁹ some respondents claiming that Frontex are also taking part in these pushbacks. "After being fingerprinted and detained for 24 hours; four were explicitly told by Frontex that they could not claim asylum", the AI records.⁷⁰

Over the period of two years, (Jan 2018-April 2020), about 32,500 people were registered as having entered the country. Out of this number, 299 claimed asylum in 2018, 490 in 2019, and over the first four months of 2020, 162 claims were logged. According to the UNHCR⁷¹ before the COVID-19 emergency, on average, the asylum seekers waited a little under three months to have a refugee status determination interview, whereas after the interview, they waited approximately 25 days to receive notification about the first instance decision.

BEFORE THE COVID-19 EMERGENCY, ON AVERAGE, THE ASYLUM SEEKERS WAITED A LITTLE UNDER THREE MONTHS TO HAVE A REFUGEE STATUS DETERMINATION INTERVIEW.

In accordance with a 2018 law, the body responsible for asylum claims is the Sector for Asylum, within

the Ministry of Interior.⁷² Asylum can be claimed before any police officer who should then refer people to centres within 72 hours. The centres are run by the Crisis Management Centre since 2015,⁷³ while the institutions responsible for its functioning are the Ministries of Interior, Labour and Social policy, and Health. Local NGOs⁷⁴ provide legal aid, as well as other types of support, and they continue to express their concerns that people in detention face difficulties to access asylum. They are also requested to denounce their smugglers before the court in criminal proceedings if they want to apply.⁷⁵



Photo credit: Tessa Kraan

⁶⁸ https://www-cdn.oxfam.org/s3fs-public/file_attachments/bp-dangerous-game-pushback-migrants-refugees-060417-en_0.pdf

⁶⁹ <https://www.amnesty.org/en/countries/europe-and-central-asia/north-macedonia/report-macedonia>

⁷⁰ <https://www.amnesty.org/download/Documents/EURO120982020ENGLISH.PDF>

⁷¹ UNHCR data obtained in email communication, May 2020.

⁷² <https://reliefweb.int/sites/reliefweb.int/files/resources/73672.pdf>

⁷³ Most people are accommodated in the Reception Center for Asylum Seekers in Vizbegovo (Skopje), few are in individually arranged accommodation, few are at the Reception Centre for Foreigners in Gazi Baba (Skopje), and some in the Reception and Transit Centre Vinojug.

⁷⁴ <https://mhc.org.mk/wp-content/uploads/2019/05/Help-On-Route-ANG-2018-final.pdf>

⁷⁵ <https://myla.org.mk/wp-content/uploads/2019/12/Полугодишен-извештај-имиграциски-притвор.pdf>



Photo credit: Tessa Kraan

Macedonian Young Lawyers Association (MYLA) recorded several statements from the people who were detained saying they were not issued detention decisions, or if they did it was in the Macedonian language, which they could not understand.⁷⁶ The average detention period during 2018 was 15 days, with the longest period being 45 days.

During 2019, the Administrative and the Higher Administrative Courts continued to avoid ruling on the merit of asylum applications, despite having the requisite authority, MYLA claims in their report.⁷⁷

THE RIGHT TO EDUCATION IS ALSO GUARANTEED, BUT THERE ARE NO CASES OF CHILDREN ENROLLED IN STATE-RUN EDUCATIONAL FACILITIES.

In analysing the 2018 law they noted that people with subsidiary protection, as well as asylum seekers whose asylum request is not completed within nine months, were given the right to work. The law however further outlines that a foreigner needs to be assigned a unique identification number in order to be issued a work permit, which they cannot have before they are granted the status. Furthermore, asylum seekers have the right to basic health services, in accordance with the regulations on health insurance. The right to education is also guaranteed, but there are no cases of children enrolled in state-run educational facilities.

⁵⁹. APC interview, April 2020

⁶⁰. <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/serbia>

⁶¹. <http://www.apc-cza.org/en/8-vesti/1628-forced-refugee-push-backs-to-macedonia-from-january-to-april-2019.html>

⁶². APC interview, April 2020

KOSOVO IS THE LAST COUNTRY IN THE REGION TO GAIN INDEPENDENCE, AND THE ONLY STATE NOT RECOGNISED BY SOME EU OR UN MEMBERS, INCLUDING SOME OF THE STATES IN THE REGION.⁷⁸

Kosovo aims to become a EU member state, and has potential candidate status.⁷⁹ Yet, as in the case of BiH where a war was also stopped following international intervention, the influence of external actors (US and EU by large) is key in policy making. Citizens of Kosovo are subject to a visa regime with Schengen countries.⁸⁰

BETWEEN 2015 AND 2020 REFUGEE STATUS WAS GRANTED TO 94 AND SUBSIDIARY PROTECTION TO 12 PEOPLE.

In 2018, Kosovo became an active part of the Balkan route, with increased number of entries from Albania and North Macedonia. In April 2020, there were 210 asylum seekers present in the country, and since 2015, a total number of 3,854 asylum claims were filed. Between 2015 and 2020 refugee status was granted to 94 and subsidiary protection to 12 people. Two persons were granted subsidiary protection in 2020.⁸¹

The Law on Asylum was adopted in 2011⁸² and is adjusted to EU legislation. People who wish to claim asylum can state their intention to do so during the first contact with the border police, in a police station or at centres. After the registration of the intentions to seek asylum, a person has 72



Photo credit: Nidžara Ahmetašević

hours to claim asylum. According to the UNHCR, the biggest obstacle in access to asylum in Kosovo remains the lack of interpretation services for some of the languages.

THE FACILITIES IN KOSOVO LACK THE STANDARD OPERATING PROCEDURES FOR THE TREATMENT OF UNACCOMPANIED CHILDREN.

Asylum seekers are accommodated in two centres, and have access to public services, health facilities

and education, as well as a monthly social assistance and cash support equivalent to that of nationals. The State Department⁸³ noticed that the facilities in Kosovo lack the standard operating procedures for the treatment of unaccompanied children seeking asylum and for determination of their eligibility for asylum. UNHCR provides free legal assistance and psychosocial support.

Those granted refugee status, except for participating in elections, enjoy full set of rights on par with nationals.

⁷⁸ <https://balkaninsight.com/2019/09/04/intensifying-battle-over-kosovos-recognition-is-futile>

⁷⁹ https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/kosovo_en

⁸⁰ <https://www.schengenvisainfo.com/news/eu-parliament-confirms-its-support-for-kosovo-visa-liberalization-for-the-third-time-in-a-year>

⁸¹ UNHCR data, email, May 2020.

⁸² http://marri-rc.org.mk/download/KOSOVO/laws/asylum/Law-on-Asylum_No.-06-L-026.pdf

⁸³ <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/kosovo>





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