

# Serbia as a Safe Third Country: **Revisited**

An update of the Hungarian Helsinki Committee's 2011 report based on a field mission to Serbia (2-4 April 2012)

June 2012

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Hungarian Helsinki Committee

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## EXECUTIVE SUMMARY

The present report is a **follow-up** to the Hungarian Helsinki Committee's ("HHC") report *Serbia as a Safe Third Country: A Wrong Presumption*<sup>1</sup> ("2011 Serbia Report") and is based on the results of a three-day field mission by the HHC to Serbia in April 2012, as well as extensive desk research. Given that only few substantial changes have occurred in both the Serbian asylum practice and in the policy of Hungarian authorities with regards to return to Serbia, unfortunately, **our concerns expressed in the 2011 report remain valid.**

### 1. Findings

#### a) *Limited access to protection and lack of procedural safeguards*

Asylum seekers in Serbia have to go through a **multiple-stage process** before they are officially registered as asylum seekers. This registration is not only **complicated**, but the start of the asylum procedure also **depends on whether free places are available** in the reception facilities, since the asylum application is only considered to be officially submitted and registered if the asylum seeker is at the same time accommodated in one of the two reception facilities.<sup>2</sup>

**Recognition rates regarding refugee status still remain at zero.** The overwhelming majority of rejection decisions are based on the administrative authorities' continuing indiscriminate recognition of **all neighbouring countries as safe third countries** for purposes of return. The existence of a **real and effective legal remedy** is also questionable since neither the Asylum Commission, as the second-instance administrative authority, nor the Administrative Court resolves the cases brought before them on the merits; they only examine procedural aspects of the cases. Moreover, the Serbian government failed to renew the mandate of the Asylum Commission in April 2012, thus asylum seekers in Serbia have essentially been **left without any recourse to appeal.**

#### b) *Risk of chain refoulement*

**Hungary's practice of consistently applying the safe third country concept in relation to Serbia breaches the European Convention on Human Rights;** specifically, it violates Article 3 by exposing asylum seekers to the risk of torture, inhuman or degrading treatment or punishment through the risk of *chain refoulement*. The practice of the Hungarian Office of Immigration and Nationality (OIN) has been consistent in regarding Serbia as a safe third country where refugees may have access to protection in accordance with international standards. The HHC is concerned that OIN **does not carry out an individualised assessment** of all the facts and circumstances of a particular case. Furthermore, in the judicial review stage of the procedure, **Hungarian jurisprudence is largely inconsistent.** The Court of Szeged, which deals with most judicial review requests, frequently based its decisions on generalized, outdated information, while the Court of Debrecen complied with evidentiary requirements prescribing an individualized assessment of the risk of return in each case.

Since Serbia regards all of its neighbouring countries as safe third countries, asylum seekers entering Serbia via her land borders can be automatically returned there. In light of the grave deficiencies of some of the neighbouring countries' asylum systems, this practice gives rise to a **serious risk of chain refoulement.**

#### c) *Danger of destitution*

While conditions at the two Serbian reception centres, Banja Koviljača and Bogovađa, are generally pleasant, the facilities run beyond full capacity. The two centres cannot accommodate the large numbers of migrants seeking asylum in Serbia and many are left to their own devices for finding food and shelter. It is further troubling that under Serbian law, **the asylum process cannot begin until a place becomes available in the official reception facility.** Several unaccompanied minors are thus detained at the Vaša Stajić juvenile correctional facility and waiting for a place in one of the reception centres. Migrants and potential asylum seekers can also be found in the so-called "Jungle" near a garbage dump in Subotica with no assistance and no prospect for a solution.

### 2. Conclusions

- **Serbian asylum authorities still lack sufficient resources and capacities** since the Asylum Office is still understaffed.
- **Access to the asylum procedure and to reception conditions is limited** - 85% of the people who express their intention to seek asylum in Serbia fail to have their request registered. Although reception conditions have improved, state-funded legal assistance is still unavailable. When reception centres are full, asylum claims are not processed, because the start of the procedure is tied to the availability of places in one of the centres.

<sup>1</sup> Hungarian Helsinki Committee, *Serbia as a Safe Third Country: A Wrong Presumption*, September 2011, available at: [http://helsinki.hu/wp-content/uploads/Serbia\\_as\\_a\\_safe\\_third\\_country\\_A\\_wrong\\_presumption\\_HHC.pdf](http://helsinki.hu/wp-content/uploads/Serbia_as_a_safe_third_country_A_wrong_presumption_HHC.pdf)

<sup>2</sup> Interview with Mr. Vučković, 3 April 2012.

- **Zero recognition rate and "safe" third countries** - The recognition rates for refugee status remain at zero. No asylum seeker has ever been granted refugee status by Serbian authorities and only five persons have been granted subsidiary protection. In 2011, only two decisions were taken on the merits. The vast majority of decisions issued were rejections based on a rather problematic application of the safe third country concept.
- **Risk of chain refoulement** - The current practice of the Hungarian authorities and the dysfunctional Serbian asylum system still pose the risk of chain *refoulement* of persons in need of international protection as their protection needs are not examined on the merits.
- **Minors in detention** - The prolonged stay of unaccompanied minors in the Vaša Stajić juvenile correctional facility is highly worrying, because their freedom of movement is limited and their access to the asylum procedure is seriously delayed.
- **Danger of destitution** – Many migrants temporarily staying in the Vojvodina region are potential asylum seekers in need of international protection. The lack of a reception infrastructure in the region limits their access to protection and often leads to destitution.
- **Buying time instead of a durable solution** - The Serbian asylum system is built on the concept of "buying time" and is not designed to provide for an effective protection mechanism and a durable solution.

In light of the information gathered, the current Serbian asylum system is **not sufficiently functional, and is neither able to ensure the proper determination of international protection needs for an increasing number of asylum seekers, nor does it provide effective protection for those who would qualify for refugee status.** The above being a pre-condition for considering a country as a safe third country, Serbia still cannot be regarded as such in the sense of Article 27 (1) of the Procedures Directive.<sup>3</sup>

**The Hungarian Office of Immigration and Nationality and Hungarian courts are urged to stop considering Serbia as a safe third country for asylum seekers and to stop removing asylum seekers to Serbia.**

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<sup>3</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

## I. INTRODUCTION

In September 2011, the Hungarian Helsinki Committee (“HHC”) published a report entitled “**Serbia as a Safe Third Country: A Wrong Presumption**”<sup>4</sup> (“2011 Serbia Report”) that summarised the desktop research and the experiences gathered on a field mission by the HHC to Serbia in June 2011. The 2011 Serbia Report found that:

- **access to protection is limited** in Serbia,
- asylum seekers returned to Serbia face a real **risk of chain *refoulement***,
- asylum seekers face **destitution** in Serbia.

The 2011 Serbia Report concluded that based on these findings, Hungarian asylum authorities should not **regard Serbia as a safe third country** for asylum seekers. Additionally, the report also concluded that Hungary’s practice of applying the safe third country concept to Serbia is in **breach of the European Convention on Human Rights**, namely of Article 3, as this practice exposes asylum seekers to the risk of torture, inhuman or degrading treatment or punishment – by exposing them to the risk of chain *refoulement* – and of Article 13, in failing to provide an effective remedy against removals.

Hungary’s practice of regarding Serbia as a safe third country has not changed since the publication of the HHC’s 2011 Serbia Report, nor has Hungary stopped sending asylum seekers back to Serbia. In 2011, more than 3,500<sup>5</sup> third-country nationals were expelled to Serbia from Hungary. Thus, the fate of asylum seekers and the development of the asylum system in Serbia continue to be of interest to the Hungarian Helsinki Committee.

## II. METHODOLOGY

The current report was drafted within the framework of the Hungarian Helsinki Committee’s Border Monitoring Project, supported by the UNHCR Regional Representation for Central Europe.<sup>6</sup>

The information included in the report was collected and compiled by the Hungarian Helsinki Committee. The research process consisted of the following steps:

- Desk research using publicly available reports and materials on the Serbian asylum system;
- A review of press articles dealing with the Serbian asylum system;
- A three-day field mission (2-4 April 2012) in the Republic of Serbia, by a team of five staff members of the Hungarian Helsinki Committee. The mission visited the towns of Subotica, Novi Sad, Belgrade and Bogovađa;
- Discussions with representatives of the UNHCR office in Belgrade, local NGOs (Asylum Protection Centre, Belgrade Centre for Human Rights, Group 484, Humanitarian Center for Integration and Tolerance, Eastern European Mission and the Red Cross), representatives of the local administration in Subotica, the head of the Serbian Asylum Office, and the counsellor of the Commissariat for Refugees in the Bogovađa centre;
- Review of the experience gathered by HHC staff members and lawyers assisting in individual cases of asylum seekers who transited through Serbia under the HHC’s free legal assistance programme.<sup>7</sup>

The Serbian Asylum Office and the Serbian Commissariat for Refugees Statistics provided information and data mentioned in the report in their letters of 31 May 2012.

## III. FINDINGS

### 1. Access to protection

The Serbian refugee status determination process is a two-instance administrative procedure. First-instance proceedings consist of five stages:

- 1) entering the asylum seeker’s intention to apply for asylum into the records (in the presence of a Serbian police/border police officer);
- 2) registration (fingerprinting, issuing an ID card for asylum seekers);
- 3) submitting the formal asylum application to the Asylum Office (within 15 days of registration);
- 4) interview;
- 5) decision-making.

<sup>4</sup> Hungarian Helsinki Committee, Serbia as a Safe Third Country: A Wrong Presumption, September 2011, available at: [http://helsinki.hu/wp-content/uploads/Serbia\\_as\\_a\\_safe\\_third\\_country\\_A\\_wrong\\_presumption\\_HHC.pdf](http://helsinki.hu/wp-content/uploads/Serbia_as_a_safe_third_country_A_wrong_presumption_HHC.pdf)

<sup>5</sup> Statistical data provided by the Hungarian National Police Headquarters.

<sup>6</sup> For more information on the project please see: <http://helsinki.hu/en/border-monitoring-2007>

<sup>7</sup> The HHC, as an implementing partner, has been providing free legal assistance to asylum seekers since 1998.

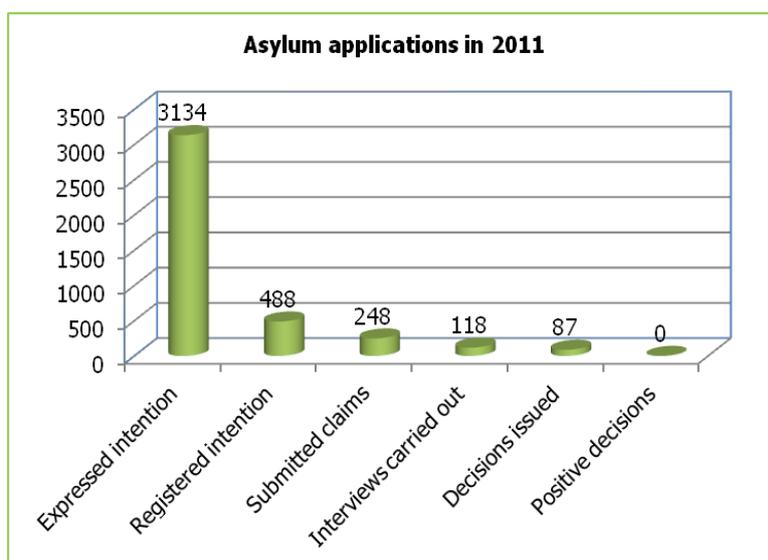


Although there has not been a change in the legal framework for asylum since the 2011 Serbia Report, the HHC monitoring team noticed some **inconsistency in the implementation of laws and regulations**. In general, the Law on Asylum provides the right to file an application for asylum to all foreigners present in the territory of the Republic of Serbia.<sup>8</sup> Asylum seekers are obliged to express their intention to seek asylum immediately after crossing the Serbian border to the first competent police officer of the Ministry of Interior they meet. However, the refugee status determination procedure officially only starts once asylum seekers submit their asylum application.

It is important to highlight that **the asylum application is only officially submitted and registered if the asylum seeker in question is at the same time accommodated in one of the two reception facilities**.<sup>9</sup> This means that the start of the asylum procedure depends on the availability of free places in these facilities, a process that may take several months. Until the official reception of the asylum seeker, the procedure is on hold, which causes significant delays and increases the asylum seekers' feelings of insecurity. According to Mr Miljan Vučković, Head of the Serbian Asylum Office, it would be much more convenient, both for asylum seekers and the competent authority, if the procedure started with the expression of the intention to seek asylum in Serbia, and not with the formal submission of asylum application.<sup>10</sup> Unfortunately, the Asylum Commission took an opposite stance and the Asylum Office is bound by their decision.

The head of the Asylum Office stated that the police assist migrants who express their intention to seek asylum to reach one of the reception facilities by providing them with train or bus tickets.<sup>11</sup> Both reception centres are located in remote villages, far away from larger cities. Asylum seekers normally travel months or sometimes even years to reach a safe country. By the time they reach Serbia, most have no financial means. The law requires them **to reach one of the centres within 72 hours after their intention is expressed**, but for many of them this obligation remains difficult to fulfil.

Detailed statistics for 2011:<sup>12</sup>



The decisions issued include 85 rejected<sup>13</sup> claims (14 Somalis and 59 Afghans, among others) and 2 refused<sup>14</sup> claims.

<sup>8</sup> Law on Asylum, 26 November 2007, Section 4, available at: <http://www.unhcr.org/refworld/docid/47b46e2f9.html>

<sup>9</sup> Interview with Mr. Vučković, 3 April 2012.

<sup>10</sup> Interview with Mr. Vučković, 3 April 2012.

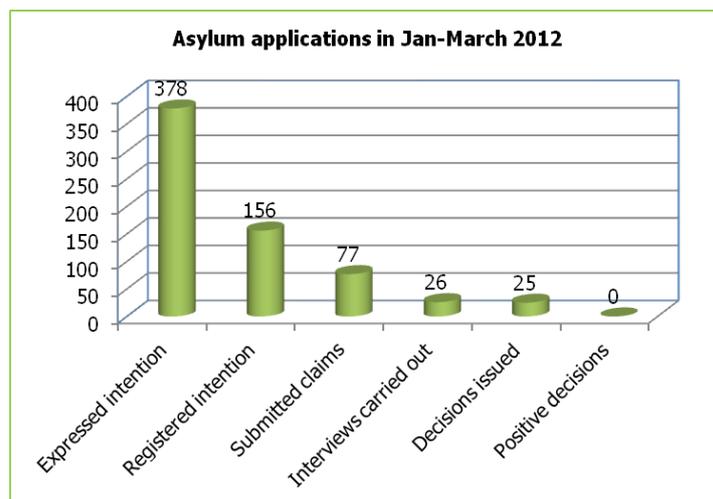
<sup>11</sup> Interview with Mr. Vučković, 3 April 2012.

<sup>12</sup> Statistical data provided by the Asylum Office on 15 May 2012.

<sup>13</sup> "Rejected" is used here to mean a negative decision without an examination on the merits.

<sup>14</sup> "Refused" is used here to mean a negative decision after an examination on the merits.

Table I. Asylum applications in January-March 2012.<sup>15</sup>



The decisions issued include 25 rejected claims (10 Somalis and 15 Afghans).

All applications were submitted in one of the reception centres, and similarly to previous years, **no asylum claims were submitted at the airport** in 2011 and the first months of 2012.

Due to current financial constraints, no trainings are foreseen for the border police or the Asylum Office.

Currently, there is **no authority to review first-instance decisions**, since the Government of Serbia did not prolong the mandate of the Asylum Commission, which held this responsibility. The Government appointed the nine-member Commission in 2008,<sup>16</sup> and its mandate expired on 17 April 2012.<sup>17</sup> As a result, 19 NGOs issued a joint statement calling on the government to adopt a model which has already been applied in Croatia with success.<sup>18</sup> At the time of writing, the Government has yet to answer their petition.<sup>19</sup>

## 2. Procedure and quality of decision-making

Despite the **growing number of asylum seekers**, as demonstrated by the data below, the Asylum Office continues to be **understaffed**. Presently, five refugee status determination officers and two officers responsible for country of origin information (COI) work at the Asylum Office, with the support of an administrative assistant. However, one asylum officer is on maternity leave, and another is on a temporary placement to the Banja Koviljača reception centre (tasked with duties of a liaison officer). Therefore one of the COI officers has also been assigned refugee status determination duties. This leaves the remaining **4 asylum officers** to deal with the significant workload of **600-700 cases per year**.

The average processing time for the first instance procedure is 3-6 months from the moment a person expresses his/her intention to seek asylum until the decision is taken by the Asylum Office. Once a person is accommodated in a reception centre, the decision is usually taken within two months.<sup>20</sup>

Since the 2011 Serbia Report, no asylum seeker has received any form of protection; therefore **the recognition rate regarding refugee status remains zero**. The official statistical data provided by the Ministry of the Interior show that the Asylum Office issued 87 decisions in 2011, of which 85 were rejections. According to Mr Vučković, the **rejections were based on safe third country grounds**, mainly with regard to Macedonia.<sup>21</sup> Only two decisions actually refused the asylum applications on the merits. In the first quarter of 2012, there were 25 rejected asylum applications, and **none of these applications were examined on the merits**. The UNHCR also confirmed that the

<sup>15</sup> Statistical data provided by the Asylum Office on 15 May 2012.

<http://www.grupa484.org.rs/CHALLENGES%20OF%20FORCED%20MIGRATION%20IN%20SERBIA.pdf>

<sup>16</sup> Decision of the Government of the Republic of Serbia on the Appointment of Commission Members Ref No 119-1643/2008 of 17 April 2008 (Sl. glasnik RS, 42/08).

<sup>17</sup> Expiration of the Terms of Office of the Asylum Commission Members, 12 April 2012, <http://azil.rs/news/view/expiry-of-the-terms-of-office-of-the-asylum-commission-member>

<sup>18</sup> Expiration of the Terms of Office of the Asylum Commission Members, 12 April 2012, <http://azil.rs/news/view/expiry-of-the-terms-of-office-of-the-asylum-commission-members>

<sup>19</sup> Srbija bez Komisije za azil, 19 April 2012, available at: <http://www.balkaninsight.com/rs/article/srbija-bez-komisije-za-azil>

<sup>20</sup> Interview with Mr. Vučković, 3 April 2012.

<sup>21</sup> Interview with Mr. Vučković, 3 April 2012.

majority of asylum applications are rejected based on safe third country grounds, mainly with regard to Macedonia. This can be explained by the fact that the most common migration route used by asylum seekers in Serbia goes through Turkey, Greece and Macedonia.<sup>22</sup>

The shortcomings of the Serbian asylum system described in the HHC's 2011 Serbia Report can only be reiterated. The overwhelming majority of the rejection decisions are based on a rather problematic application of the concept of safe third countries. Serbia has a list of safe third countries which encompasses all neighbouring states, as well as Greece and Turkey; consequently **all asylum applicants having transited through any of the neighbouring countries will be rejected without a substantive examination of their asylum claims.**<sup>23</sup> In light of the grave deficiencies presented by some of the neighbouring countries' asylum systems, this practice gives rise to a serious **risk of chain refoulement** (see Chapter II.3.).

Furthermore, there have been no changes in the asylum legislation in the past year. Thus, the **automatic rejection of claims submitted by an asylum seeker who has already requested asylum in any other state** party to the 1951 Refugee Convention can still be applied.<sup>24</sup>

The practice concerning legal remedies has not changed. **Neither the second-instance administrative authority (Asylum Commission), nor the administrative court resolves the cases brought before them on the merits;** they only examine procedural aspects of such cases. So far, the court has not overturned any of the Asylum Commission's decisions.<sup>25</sup> As a result of this practice, **it is – as a minimum – questionable whether a real and effective legal remedy exists in asylum cases in Serbia.** Moreover, the Administrative Court has adopted the view that the court is not competent to determine whether a certain third country is safe, but simply must accept the determination invoked by the Government if the country is on its list of safe third countries.<sup>26</sup> Furthermore, the court has found that situation reports written by international NGOs regarding the conditions in a particular country cannot alone serve as proof that the country can be considered unsafe for asylum seekers. Instead, the asylum seeker must invoke concrete, individualised reasons that return to the country in question would place the applicant in danger.

In determining whether a particular country is safe, **the Serbian government only takes into consideration the opinion of the Serbian Ministry of Foreign Affairs,** whether the country ratified the 1951 Refugee Convention, and whether it has a visa-free regime for Serbian citizens.<sup>27</sup> The authorities do not take into account reports by NGOs, UN bodies or the Council of Europe, or European Court of Human Rights (ECtHR) case-law on the actual situation in these countries. The authorities do not examine whether the third country would actually accept the person upon return and provide protection. That is why it is possible, for example, that Greece is still on the list of safe third countries, despite the judgment in the case of *M.S.S v. Belgium and Greece*,<sup>28</sup> where the ECtHR held that reception and detention conditions for asylum seekers are in violation of Article 3 of the European Convention on Human Rights.

### **3. Refoulement and the application of the safe third country concept**

As set out in the 2011 Serbia Report, the HHC still finds that **Hungary's practice of indiscriminately applying the safe third country concept to Serbia is in breach of the European Convention on Human Rights;** specifically, it violates Article 3 by exposing asylum seekers to the risk of torture, inhuman or degrading treatment or punishment through the **risk of chain refoulement** and Article 13 by **failing to provide an effective remedy.**

Similarly to the standards applied in the case of *M.S.S v. Belgium and Greece*, the ECtHR already confirmed that the indirect removal of an alien to an intermediary (third) country does "*not affect the responsibility of the expelling Contracting State to ensure that he or she is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention*".<sup>29</sup>

- *Hungarian jurisprudence on Serbia as a country of asylum*

In its practice, the Hungarian Office of Immigration and Nationality (OIN) has been consistent in its opinion regarding the expulsion procedures of the police, by finding that refugees have access to protection in Serbia according to the international standards and thus may indiscriminately be returned to Serbia without the risk of *refoulement*. In

<sup>22</sup> Meeting with the UNHCR Representation in Serbia and NGOs, 3 April 2012.

<sup>23</sup> Rules on "Safe countries of origin" and "Safe third countries" in the Serbian Asylum Procedure, 2011 Serbia Report, p. 13.

<sup>24</sup> Rules applicable to asylum seekers who asked for asylum in another country before, 2011 HHC report, p. 14., cf. Section 33 (5) of the Law on Asylum.

<sup>25</sup> Interview with Mr. Vučković, 3 April 2012.

<sup>26</sup> Administrative Court, 8 Y 3815/11, 7 July 2011, summary of the decision can be found in the HHC's 2011 report, p. 7.

<sup>27</sup> Responses provided by the Ministry of the Interior, 24 October 2011.

<sup>28</sup> *M.S.S. v. Belgium and Greece*, ECtHR, Application No. 30696/09, 21 January 2011.

<sup>29</sup> *Abdolkhani & Karimnia v. Turkey*, ECtHR, Application No. 30471/08, 22 September 2008, § 89.

contrast, the HHC and the UNHCR<sup>30</sup> are of the opinion that Serbia is not a safe third country for asylum seekers and refugees.

The HHC is concerned that **the OIN does not carry out an individualised assessment** of all the facts and circumstances of a particular asylum case when deciding whether to apply the safe third country concept to Serbia. The OIN decisions analysed by the HHC often referred to Serbia's ratification of the 1951 Refugee Convention as well as the adoption of its domestic asylum laws. The applicant's individual circumstances or vulnerabilities were rarely taken into account. The HHC remains of the opinion that **the position of the OIN in considering Serbia a safe country in all cases is fundamentally wrong, as has been pointed out several times also by the Court of Debrecen<sup>31</sup> and the Metropolitan Court in Budapest** when reviewing the OIN's decisions rejecting asylum applications as inadmissible under Section 51 (2) (e) of the Hungarian Asylum Act.<sup>32</sup> However, present judicial practice is far from uniform in this respect and only the Court of Szeged<sup>33</sup> is consistent in its practice of considering Serbia to be a safe third country.<sup>34</sup>

In 2011 and the first four months of 2012, the HHC's lawyers represented rejected asylum seekers in 22 cases where the OIN had considered Serbia a safe third country. Out of these cases, the Court of Szeged turned down the request for judicial review in 12 cases and overruled the OIN's decision in only 2 cases. The Court of Debrecen overruled the OIN's decisions in 4 cases and approved them in 2 cases. The Metropolitan Court in Budapest obliged the OIN to re-open one case and order a hearing on the merits. Beside these cases represented by the HHC's lawyers, the HHC is aware of 7 other cases in which the Court of Debrecen overruled the OIN's decision because it did not accept the assumption that Serbia is a safe country where effective protection for asylum seekers is available.<sup>35</sup>

It is important to highlight that the Court of Debrecen (which granted the requests for judicial review in those cases where the OIN had considered Serbia as a safe third country) based its decisions on reliable and up-to-date country information and the HHC's 2011 Serbia Report, which is not the case in the judicial review requests examined by the Court of Szeged. The latter forum mostly refers to generalized and outdated information from consular services, which raises the question of whether the assessment of these cases fulfilled the criteria of individualisation and the requirements related to dealing with country information (COI) in asylum matters, as set out in EU law and ECtHR case-law.<sup>36</sup>

In 2011, Hungarian courts took decisions regarding Serbia's status as a safe third country in 53 cases.<sup>37</sup> The safe third country concept as applied by the OIN was approved in 36 cases<sup>38</sup> (68%) and overturned in 17 cases (32%).<sup>39</sup> There were 47 decisions made in the first four months of 2012; the courts found Serbia to be a safe third country in 29 of the cases reviewed (61%), while the OIN was ordered to examine the asylum application on the merits in 18 cases (38%).<sup>40</sup>

- *Expulsion and deportation to Serbia*

According to both the HHC's practical experience and the UNHCR's 2012 report on Hungary as a country of asylum,<sup>41</sup> **asylum seekers are routinely expelled and deported to Serbia from Hungary.** These decisions on removal

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<sup>30</sup> UN High Commissioner for Refugees, *Hungary as a country of asylum. Observations on the situation of asylum-seekers and refugees in Hungary*, 24 April 2012, available at: <http://www.unhcr.org/refworld/docid/4f9167db2.html>, p. 4.

<sup>31</sup> Called the Court of Hajdú-Bihar County before 1 January 2012

<sup>32</sup> Including arrival through a safe third country as a ground for denial of admission to an in-merit asylum procedure.

<sup>33</sup> Called the Court of Csongrád County before 1 January 2012.

<sup>34</sup> In Hungary, five regional courts are in charge of the judicial review of asylum-related administrative decisions (with no further appeal possibility). The vast majority of cases are dealt with by the three courts mentioned in this paragraph.

<sup>35</sup> Source: Ms Orsolya Szántai, the legal counsellor of the HHC in the OIN reception centre in Debrecen.

<sup>36</sup> See for example Article 4 (3) of the Qualification Directive setting and Article 8 (2) (a) of the Procedures Directive; the following ECtHR judgments: *Chahal v. The United Kingdom*, 15 November 1996, para. 91, *Vilvarajah and others v. The United Kingdom*, 30 October 1990, para. 67, *Mamatkulov and Askarov v. Turkey*, 4 February 2005, para. 73.; as well as Gábor Gyulai, *Country Information in Asylum Procedures – Quality as a Legal Requirement in the EU*, Hungarian Helsinki Committee, 2011, pp. 31-39, available at: [http://helsinki.hu/wp-content/uploads/EN\\_COI-in-Asylum.pdf](http://helsinki.hu/wp-content/uploads/EN_COI-in-Asylum.pdf)

<sup>37</sup> Information from the UNHCR Regional Representation in Central Europe, 25 May 2012.

<sup>38</sup> In 2011 the OIN's decision was approved by the Metropolitan Court in Budapest in 9 cases, the Csongrád County Court in 25 cases, and the Hajdú-Bihar County Court in 2 cases.

<sup>39</sup> The court overturned the OIN's decision in 5 cases at the Metropolitan Court in Budapest, 1 case at the Csongrád County Court, 11 cases at the Hajdú-Bihar County Court.

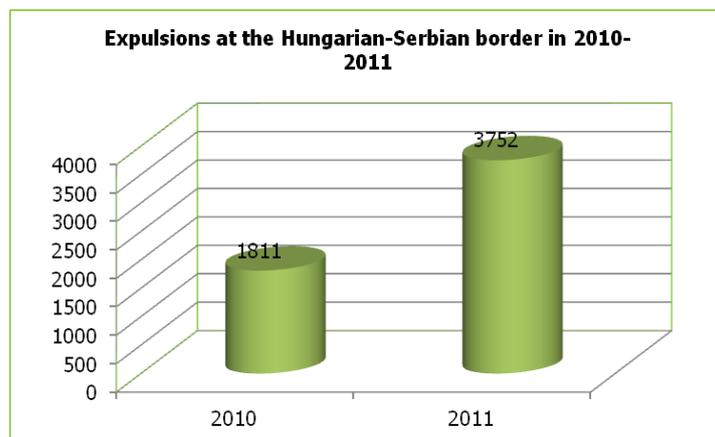
<sup>40</sup> Until 30 April 2012 the OIN's decision was approved in 1 case at the Metropolitan Court in Budapest, 26 cases at the Court of Szeged and 2 cases at the Court of Győr, whereas the decision of the OIN was overturned in 18 cases, all of them originating at the Court of Debrecen.

<sup>41</sup> UN High Commissioner for Refugees, *Hungary as a country of asylum. Observations on the situation of asylum-seekers and refugees in Hungary*, 24 April 2012, available at: <http://www.unhcr.org/refworld/docid/4f9167db2.html> [accessed 22 May 2012].

may be made at the border if the individual does not or cannot seek asylum in Hungary or later, once the asylum claim is rejected in the admissibility procedure.

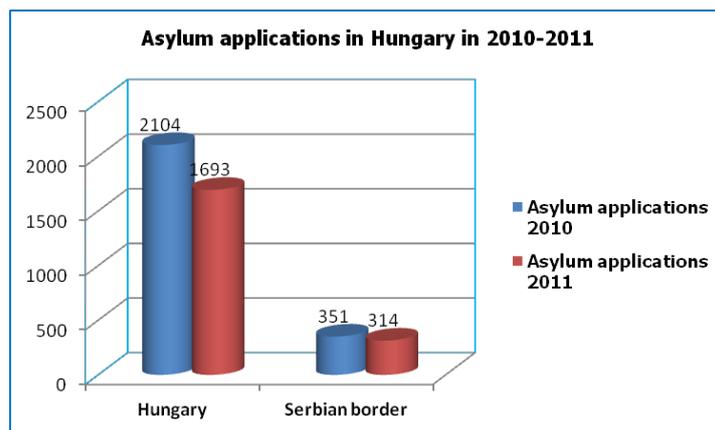
Within the framework of its Border Monitoring Project,<sup>42</sup> the HHC witnessed an **increasing number of expulsions taking place at the Hungarian-Serbian border**, from 1811 in 2010 to 3752 in 2011.<sup>43</sup>

Table II. Expulsions at the Hungarian-Serbian border in 2010-2011



On the other hand, **the number of asylum applications registered by the police along the Serbian-Hungarian border section decreased** from 351 in 2010 to 314 in 2011, while the total number of asylum applications in Hungary further decreased from 2104 in 2010 to 1693 in 2011.

Table III. Asylum applications in Hungary in 2010-2011



As part of its free legal assistance programme for asylum seekers, the HHC met with rejected asylum seekers who stated that after deportation from Hungary to Serbia, they had been subject to further removal to Macedonia. The pattern of deportations shows that there is **no "favourable" treatment for vulnerable persons**, such as single mothers with minor children.

Although the Hungarian police usually states that all expulsion decisions at the border are made in full compliance with legal regulations, the HHC found cases of **unaccompanied minors who were expelled without having their individual situation duly examined** by Hungarian officials.

<sup>42</sup> The Border Monitoring Project is carried out in cooperation with the UNHCR Central-European Regional Representation for Central Europe and the National Police Headquarters since 2007 under a tripartite memorandum of understanding.

<sup>43</sup> Statistical data provided by the Hungarian police.

The number of unaccompanied minors apprehended at the Hungarian-Serbian border increased in 2011. Exact statistical information is not available, however, based on press articles and a survey carried out by the Regional Office of Terre des Hommes in Hungary, at least 268 unaccompanied minors were estimated to have been intercepted in the two Hungarian counties (Bács-Kiskun and Csongrád) bordering Serbia.<sup>44</sup>

In the course of a mission on 13 December 2011 to monitor immigration detention facilities, the HHC met **four Afghan unaccompanied minors** in the detention facility for adults in Kiskunhalas whose case illustrates the main shortcomings of the alien policing and asylum system in Hungary.<sup>45</sup>

#### A. Expulsion

The above-mentioned four Afghan minors were expelled to Serbia by the police under the provisions of the TCN Act.<sup>46</sup> Under Section 45 (5) of the TCN Act, the expulsion of unaccompanied minors is restricted by specific conditions: "*An unaccompanied minor may be expelled only if adequate protection is ensured in his country of origin or in a third country by means of reuniting him with other members of his family or by state or other institutional care*". Based on an analysis of several dozens of expulsion orders taken at the Serbian border, the HHC believes that the police fail to carry out this assessment in a meaningful way and the protection prospects of the children are not taken into account before an expulsion order is taken.<sup>47</sup> This practice seriously breaches the principle of the best interest of the child (Article 3 of the UN Convention on the Rights of the Child) and it is in contradiction with Hungarian domestic law.

#### B. Age assessment and detention

Despite the professional consensus that there is no single reliable method to determine the exact age of a person, all minors whose age is disputed undergo a **brief and purely medical examination** by the police.<sup>48</sup> According to the account of the four Afghan minors, this examination was very short and mostly focused on their physical appearance (e.g. facial hair) and resulted in the conclusion that they were adults. In other cases, such examinations have included X-rays of the hand and wrist but disregarded all socio-cultural, behavioural and psychological aspects of age determination. As the UNHCR stated in its recent report on Hungary, "*the examinations do not fully comply with the requirements of a multi-disciplinary and least-invasive approach*".<sup>49</sup>

Hungarian law does not permit the immigration detention of unaccompanied persons under the age of 18.<sup>50</sup> As a result of the age assessment, the four boys were **arrested and detained together with adults** in the Kiskunhalas immigration detention facility. The HHC monitors had the opportunity to attend the court hearing, required under Hungarian law in order to prolong immigration detention after the first 72 hours, which was performed by the local district court on 13 December 2011. The boys were visibly young, as even their *ex officio* appointed case guardian remarked to the judge. The police referred to the results of an age assessment as evidence, which the court accepted, in spite of the fact that no actual document was presented to the court at all – the medical report stating that the boys were adults was never shown to the judge. Neither the case guardian, nor the judge took any action to prevent the unlawful detention of the boys, who were likely to be under age.

<sup>44</sup> Rita Sávai and Pierre Cazenave, *National background research on non-asylum seeking foreign unaccompanied minors in Hungary*, Project Mario, April 2012, p 11. According to lieutenant colonel Zsolt Gulyás from the Bács-Kiskun County Police the number of apprehended minors in that county was 129 in 2011. The full article in Hungarian is available at: <http://baon.hu/bacs-kiskun/kozelet/nem-zarhatjak-be-oket-427071>. Note that the OIN only recorded 61 cases of unaccompanied minor asylum seekers in 2011, a number which seems unreasonably low in comparison with the above estimate.

<sup>45</sup> See p. 2 of the report on the findings of the monitoring visit to the immigration jail in Kiskunhalas on 13 December 2011, only available in Hungarian at: [http://helsinki.hu/wp-content/uploads/Kiskunhalasi-latogatas-2011december13\\_FINAL.pdf](http://helsinki.hu/wp-content/uploads/Kiskunhalasi-latogatas-2011december13_FINAL.pdf)

<sup>46</sup> Act II of 2007 on the Admission and Right of Residence of Third Country Nationals ("TCN Act"), available at: <http://www.unhcr.org/refworld/docid/4979cae12.html>

<sup>47</sup> In the framework of the border monitoring programme carried out in cooperation with the National Police Headquarters and the UNHCR Central European Regional Representation, the HHC's monitor consulted 370 case files of expelled foreigners at the Serbian-Hungarian border section in 2011.

<sup>48</sup> See for example: "*All available sources of relevant information and evidence should be considered, since no single assessment technique, or combination of techniques, is likely to determine the applicant's age with precision.*" UK Home Office: Assessing Age, p. 4., available at:

<http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/assessing-age?view=Binary>

<sup>49</sup> UN High Commissioner for Refugees, *Hungary as a country of asylum. Observations on the situation of asylum-seekers and refugees in Hungary*, 24 April 2012, p. 19.

<sup>50</sup> Section 56 (2) of the TCN Act.

### C. Hearing and processing of asylum applications

The four boys expressed their desire to seek asylum and their fear of deportation to Serbia during the court hearing; therefore they should have been considered and treated as asylum seekers. Nonetheless, contrary to the provisions of the Asylum Act, their claims were not properly registered and forwarded to the asylum authority.<sup>51</sup>

After the court hearing, the HHC monitors helped the minors to put their asylum claims into writing and to hand the letters over to the guards. Several phone calls were exchanged between the jail commander and HHC staff members the following day to ensure that the hand-written asylum applications were properly received and processed. In its official letter of 8 February 2012, the National Police Headquarters confirmed that following a second age assessment examination, one of the four boys has been released from detention as a minor and had been taken to a nearby child care facility (under state custody). Still, these efforts proved to be unsuccessful, as the **three Afghan boys who remained in detention were deported to Serbia** on 15 December 2011, just two days after the monitoring visit.<sup>52</sup>

It should be noted that the police, as confirmed in the response to the HHC's report on the monitoring visit<sup>53</sup>, never regarded the Afghan minors as asylum seekers and continued to claim that they never submitted an asylum application. After the HHC discovered the deportation, it sent a request to both the UNHCR Regional Representation for Central Europe and the UNHCR Representation in Serbia, but the three boys could not be found in Serbia. The fourth boy, the only one who was treated as minor, absconded from the child care facility the day after he was accommodated there.

The HHC was recently informed that in February 2012 that the Commissioner for Fundamental Rights<sup>54</sup> (Ombudsperson) initiated an investigation into the circumstances of the expulsion of non-asylum seeking unaccompanied minors. The investigation is pending at the time of writing.

#### ↑↑↑ Case study ↑↑↑

- *Risk of chain refoulement*

During the HHC's visit in April 2012 to Serbia, the monitoring team met a Somali asylum seeker accommodated in the facility in Bogovađa who stated that he had been transferred to Greece after being returned from Hungary to Serbia and Macedonia.<sup>55</sup> The UNHCR also stressed that "***the risk of chain deportations to Macedonia and Greece is a reality with no adequate asylum systems in place, and where asylum-seekers face the risk of refoulement to countries where they may have fled danger or persecution***".<sup>56</sup>

The UNHCR Report on Hungary stressed that "[i]n some cases foreigners, including asylum-seekers, once returned to Serbia, are immediately upon admission transported by the Serbian police to the Macedonian border and handed over to the authorities of the former Yugoslav Republic of Macedonia without further formalities. As the former Yugoslav Republic of Macedonia considers Greece a safe country of asylum, asylum-seekers may end up, as a result of chain deportation, in Greece, and exposed to further removal, without ever having had their asylum claim considered on the merits."<sup>57</sup>

The case of the alleged deportation of a group of third-country nationals (amongst whom there might have been asylum seekers in need of international protection) from Serbia to Macedonia that had taken place in February 2012 was mentioned by various organisations whom the HHC had spoken to. Mr Mihály Pecze, the Secretary of the Serbian Red Cross in Subotica, told the HHC in detail how the emergency shelter was set up in Palić for migrants staying in the outskirts of Subotica in the extremely harsh winter of 2012.<sup>58</sup> Once the weather became milder and the

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<sup>51</sup> Section 64 (2) of the Government Decree no. 301/2007 (XI.9.) on the implementation of Act no. II of 2007 (TCN Act): "*If the foreign national expresses its intention to file an application for recognition during the alien policing procedure, his/her statement shall be recorded by the proceeding authority that shall inform without delay the refugee authority – forwarding at the same time the minute and the finger print recording sheet.*"

<sup>52</sup> The report on the findings of the monitoring visit to the immigration jail in Kiskunhalas on 13 December 2011 is available in Hungarian at: [http://helsinki.hu/wp-content/uploads/Kiskunhalasi-latogatas-2011december13\\_FINAL.pdf](http://helsinki.hu/wp-content/uploads/Kiskunhalasi-latogatas-2011december13_FINAL.pdf)

<sup>53</sup> Reply of the National Police Headquarters on 8 February 2012, p. 3, available only in Hungarian at: <http://helsinki.hu/wp-content/uploads/ORFK-valasz-Kiskunhalasi-jelentesre.pdf>

<sup>54</sup> [http://www.obh.hu/index\\_en.htm](http://www.obh.hu/index_en.htm)

<sup>55</sup> Interview conducted with an asylum seeker of Somali origin in the reception facility of Bogovađa on 4 April 2012.

<sup>56</sup> <http://www.unhcr-centraleurope.org/en/news/2012/asylum-seekers-treated-like-criminals-in-hungary.html>

<sup>57</sup> UN High Commissioner for Refugees, *Hungary as a country of asylum. Observations on the situation of asylum-seekers and refugees in Hungary*, 24 April 2012, available at: <http://www.unhcr.org/refworld/docid/4f9167db2.html>, p. 4.

<sup>58</sup> Interview with Mr Pecze on 2 April 2012 in Subotica, Serbia.

emergency conditions in Serbia ended, people started leaving the makeshift shelter. By 22 February, around 50% of them left Palić, said Mr Pecze, and from those who stayed "on 23 February 56 people were gathered by the police and taken to Padinska Skela", which is a place for administrative detention for people awaiting deportation.

Opinions differ as to what exactly happened in Palić. A priest interviewed in Subotica, Mr Tibor Varga, stated that these persons were "taken away" by the police in the course of a raid early in the morning.<sup>59</sup> The latter version scenario was also reported by Ms Ivana Vukašević, a legal advisor of the Humanitarian Center for Integration and Tolerance (HCIT), a Novi Sad based NGO operating in Vojvodina.<sup>60</sup> Mr Dušan Aralica, UNHCR Belgrade, confirmed that UNHCR visited the group in the temporary accommodation in Palić and that 40-50 persons stated that they had intended to apply for asylum in Serbia. The UNHCR made an urgent intervention with the Ministry of the Interior on their behalf.<sup>61</sup> However, when the police went there the following day to record these intents, none of the migrants confirmed that they intended to apply for asylum, as Mr Miljan Vučković explained, and thus no asylum applications were recorded, which could have prevented the arrest and subsequent deportation of these foreigners to Macedonia.<sup>62</sup> The raid was also reported on websites that are run by Afghan refugees in Europe, who added that the settlement near Subotica with makeshift tents, called the "jungle", had been burned down while approximately 50 Afghans and Pakistanis had been deported to Macedonia.<sup>63</sup>

*"On the 22nd of February, it was declared that the 'emergency conditions' are over – and things are as they were before. People live outdoors in the jungles – if they have not been among the fifty that have been deported to Macedonia, or if they have not had their tent burnt down.*

*(...) The day after the emergency was declared to be over, the police raided the hotel at around 6:30 in the morning and arrested everyone who was still there. It was clear that everyone was gathered in a hurry and did not have time to collect their personal belongings: a few hours after the raid the blankets laid in piles on the floor, the shoes, clothes and personal possessions were scattered everywhere.*



*(...)*

*Police did not want to give the exact number of how many people were arrested – but it is estimated to be over 50. This is the biggest arrest in Subotica in a long time. Looking back at the decision to accommodate migrants in Palić during the 'emergency conditions', and then arresting everyone who was still there the day after the official 'emergency conditions' were over, it seems like the noble humanitarian inclination to provide people with a warm(er) place during the extreme cold, was just a pretext to gather a great number of migrants in order to arrest them all more easily. Especially because, as it transpired later, everyone arrested was mass deported to Macedonia.*

*(...) Like in November, the purpose of these mass arrests was a deportation to Macedonia, one border back on the path across the more and more securitised borders of the*

*Balkans. After the whole day of trying to get information about what happened with the people who were arrested, the arrestees called in the evening, saying they were all in Macedonia. Many of them wanted to ask asylum – which,*

<sup>59</sup> Interview conducted with Mr. Tibor Varga on 2 April 2012 in Subotica.

<sup>60</sup> Interview conducted with Ms Ivana Vukašević on 2 April 2012 in Novi Sad.

<sup>61</sup> The exact number of persons being deported to Macedonia on 22 February 2012 remains unknown due to the fact that different sources referred to different numbers.

<sup>62</sup> Interview with Mr. Vučković, 3 April 2012.

<sup>63</sup> <http://afghanmuhajer.blogspot.com/2012/02/subotica-emergency-conditions-end-with.html>

*according to the Serbian asylum law, they can do at any point of the arrest – but they said the police did not listen to them. They were all put on a bus and driven to Macedonia and let free on the Macedonian side of the border.*<sup>64</sup>

The above report is taken from a blog produced and written by Afghan refugees. Given the number of additional blogs and other news sources which presented similar facts, it is difficult to deny the basic facts, that **a number of third country nationals were deported to Macedonia** on 23 February 2012. What is controversial, however, is whether all those persons who had an intention to seek asylum in Serbia actually had an opportunity to submit their claims. Furthermore, the precise legal procedure that led to the mass deportation remains unclear.

A **new readmission agreement was concluded between Serbia and Macedonia** on 3 October 2011, which has been partially implemented with respect to Serbian and Macedonian citizens, but not to third-country nationals.<sup>65</sup> In the light of a “semi-functioning” readmission agreement, it is questionable whether the persons affected by the mass deportations went through an individualised procedure, resulting in the issuing of individual expulsion decisions before they were taken to Macedonia by the police.

#### 4. Reception conditions



As of writing, there are **two reception centres** to accommodate asylum seekers in the Republic of Serbia. The centre in Banja Koviljača has been managed by the Commissariat for Refugees since 2008. With a maximum capacity of **82 places**, Banja Koviljača was the only facility that housed asylum seekers until the opening of the Bogovađa centre on 20 June 2011. This facility is rented from the Red Cross and is a converted summer camp with a capacity of **170 places**. The technical staff is employed by the Red Cross, while the Commissariat for Refugees employs a nurse who is on stand-by for assistance and refers severe cases to the ambulance stationed in the nearest village.

Bogovađa can be found an hour’s drive south-west of Belgrade. The scenery is welcoming and the place is calm. The accommodation facility does remind the visitor of a

summer camp, with **clean, nice rooms**. There is a large play room for the children, equipped with toys and a computer. While the UNHCR provides funding for some educational activities for children a few times a week, **children do not attend school, and there are no organized activities**, due to a lack of funding for programmes. Food is prepared on the premises by the Red Cross staff.

In mid-April, when the HHC monitoring team visited the centre, the atmosphere seemed friendly. Afghan women were sitting around in the garden chatting and laughing and children were running around. The idyllic situation is disturbed, however, by the hopelessness and the experiences shared by some of the inhabitants.

The Bogovađa centre **runs beyond full capacity**. At the time of the HHC’s visit, **188 persons** were accommodated there. Afghan and Somali nationals made up more than 90% of the population. Nearly one in ten people in Bogovađa were unaccompanied minors, and there were seven single mothers and 19 families.<sup>66</sup>

The location of the Bogovađa Centre can be characterised as



<sup>64</sup> <http://afghanmuhajer.blogspot.com/2012/02/subotica-emergency-conditions-end-with.html> but also other blog entries reported the same events in February 2012 from Palić: <http://exilesingreece.over-blog.com/article-serbia-deportation-at-the-end-of-the-cold-weather-plan-100460118.html>, or <http://emi-cfd.com/echanges-partenariats/spip.php?article75>. The incident was also reported in two Serbian online newspapers, available at <http://www.e-novine.com/drustvo/59942-Hapenje-masovna-deportacija.html> and <http://www.subotica.com/vesti/imigranti-nisu-vise-u-fontani-id9962.html>

<sup>65</sup> <http://www.mia.com.mk/default.aspx?vId=77453255&Id=2&pmId=502>

<sup>66</sup> Interview with Ms. Svetlana Jovanović, the Manager of the Bogovađa Centre, on 4 April 2012.

unreasonable or impractical, because it is **isolated from any medium-size or large urban settlement** and there is no internet connection or mobile phone coverage. In March 2012, 84 new people were accommodated in the centre.



The asylum procedure is conducted on the premises of the facility, with case officers and legal counsellors travelling several times per week from Belgrade. In Banja Koviljača, the interviews with the asylum seekers are conducted in the same manner – case officers from Belgrade travel by appointment and free legal counselling is provided by two NGOs (Asylum Protection Centre and Belgrade Centre for Human Rights). Serbia **does not provide free-of-charge legal assistance** for asylum seekers. The legal counsellors work for independently funded NGO's, one of which (Belgrade Centre for Human Rights) is funded by the UNHCR.

Despite a growth in capacity, the two centres still cannot accommodate all asylum seekers. Those on the waiting list must report every morning to one of the centres in order to maintain their

intention to seek asylum. They are left to their own devices and scarce resources when it comes to finding accommodation and food. This can easily lead to destitution.

Table IV. Reception of asylum seekers in the Republic of Serbia<sup>67</sup>

Year	Reception centre	Capacity	Total number of new persons accommodated	Persons who manifested the intention to seek asylum	Registered asylum seekers
2011	Banja Koviljača	82	372	3 134	488
	Bogovađa	170	394 <sup>68</sup>		
January-March 2012	Banja Koviljača	82	46	378	156
	Bogovađa	170	115		

There are plans to open a third reception centre for asylum seekers in Serbia. This is scheduled for the second half of 2012, but neither the capacity nor the location have been disclosed yet.<sup>69</sup>

Irregular migrants who are caught on the territory of the Republic of Serbia and do not ask for asylum are placed in **administrative detention** at the **Padinska Skela** facility. This centre has a maximum capacity of **100 persons**, and according to the Asylum Office, in 2011, very few irregular migrants were transferred there.<sup>70</sup> In 2011, only 7 asylum claims were submitted by persons detained in Padinska Skela.

A practice that raises concerns is **the reception of unaccompanied minors who ask for asylum, but cannot be accommodated in one of the reception centres due to a lack of space**. When the HHC visited Serbia in April 2012, several sources<sup>71</sup> confirmed that three minors were accommodated in the Vaša Stajić juvenile correctional facility where their freedom of movement was restricted. It is important to note that while the facility for unaccompanied foreign minors is physically located in a juvenile correctional facility, it is run separately. Although there is little transparency regarding this practice and contradictory information was collected, several sources explained that **minors are accommodated in the correctional facility only on a temporary basis and when places become available in one of the reception centres, they are transferred**. At the time of the HHC's visit, the three minors mentioned above had already been in the Vaša Stajić facility for three months. Their asylum application had not been filed, since according to the understanding of the Asylum Office, asylum seekers must reside

<sup>67</sup> Information provided by the Commissariat for Refugees.

<sup>68</sup> The figure is representative only for the second half of the year, as the Bogovađa centre opened only on 20 June 2011.

<sup>69</sup> Interview with Mr. Vučković on 3 April 2012.

<sup>70</sup> Interview with Mr. Vučković on 3 April 2012.

<sup>71</sup> Experts interviewed on 2-3 April 2012 - Miljan Vučković (Asylum Office), Radoš Đurović (APC) and Dušan Aralica (UNHCR Belgrade) - confirmed the fact that three minors were accommodated in the Vaša Stajić facility.

in one of the reception centres in order to formally submit their claim and for a case officer to interview them. The HHC team unfortunately could not visit these minors in the Vaša Stajić centre, as access was denied by the management of the facility.

## 5. The Serbian-Hungarian border section – “parking lot” at the doors of the EU

Vojvodina lies on the southern border of Hungary; it is an autonomous province of Serbia with a multiethnic population of about 2 million people. Due to its geographic location in Northern Serbia, it has become **an important location for migrants and asylum seekers waiting to cross the border to the Schengen area**. It is difficult to estimate the exact number of foreigners staying temporarily in Vojvodina, as by the very purpose of their stay, they remain clandestine. However, there is reason to believe that their number ranges between a few hundred and a few thousand, depending on the time of the year.

The migrants are scattered along the border and await the next opportunity to cross over to Hungary. According to Ivana Vukašević, the legal advisor of the Humanitarian Center for Integration and Tolerance (HCIT), the migrants gather around three cities: Subotica, Kikinda and Kanjiža.<sup>72</sup> In Serbia there is no facility to accommodate foreigners who do seek asylum. **Irregular migrants who are caught by the police and do not express their intention to seek asylum are placed in administrative detention** in Padinska Skela until their deportation can be arranged in coordination with the embassies of their countries of origin. In practice, the vast majority of migrants are not detained, but they are left free to continue their journey through Serbia. Those who wish to submit an asylum application are referred to one of the reception centres in Bogovađa or Banja Koviljača, while those who manage to avoid any run-ins with the police stay around these cities and wait.

The media has reported the presence of **a larger group of foreigners living around Subotica, next to the garbage dump in the forest, in the so called “Jungle”**.<sup>73</sup> The HHC mission met representatives of the Subotica City Council, Subotica’s Trustee for Refugees and the Red Cross to inquire about the fate of these foreigners and the position of the authorities in this respect. Ms Mária Biači, the councillor responsible for social and health care, said that *“care for illegal migrants and illegal border crossers is not foreseen by the law in Serbia; thus it falls on civil society to take care of them”*.<sup>74</sup> Mr Stojan Ivošević from the Subotica’s Trustee for Refugees confirmed that both according to Serbian and international law, assistance should be provided only to asylum seekers.<sup>75</sup> However, the newly adopted Law on Social Services<sup>76</sup> stipulates that foreigners in emergency situations can also apply for social assistance. As Mr Blažić, the Head of the Social Service Centre, explained, this law was passed in order to comply with EU regulations.<sup>77</sup> However, prospective beneficiaries must be registered in order to be able to apply for such assistance. Since August 2011, only one person received the requested aid, due to his domestic partnership with a Serbian citizen.

Despite all these considerations, the Municipality of Subotica decided to help the foreigners in the “Jungle” during the harsh winter of 2012. On 3 February, 180 people were given shelter and food for 15 days as a result of the cooperation of the Municipality of Subotica, Caritas and the Red Cross. Fontana, an abandoned hotel in Palić 10 kilometres away from Subotica, was turned into a shelter with the help of the Red Cross. Food was provided by the municipality’s soup kitchen, and Caritas provided hot water for bathing on their premises. As Mr Mihály Pecze, the Red Cross representative, told the HHC, the foreigners’ health condition was precarious.<sup>78</sup> A medical screening found that many persons had tuberculosis, as well as different dermatological and respiratory problems. The Red Cross could only provide basic medical assistance and clothes for the people.

All actors taking part in this winter emergency assistance regard this as a one-time humanitarian action triggered by extreme cold conditions in winter. As a general rule, city residents offer occasional assistance (food, clothes) to foreigners in the “Jungle” on a merely voluntary basis. Giving shelter on the other hand is regarded as becoming an accomplice to a crime. As Mr Pecze stated: *“It is problematic to help these people because they are re-offenders; they will cross the border illegally again.”*<sup>79</sup>

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<sup>72</sup> Interview conducted at the office of HCIT in Novi Sad on 2 April 2012.

<sup>73</sup> See the detailed description of the alleged deportation that concerned its inhabitants in Section II.3.

<sup>74</sup> Interview conducted with the representatives of the local administration – Ms. Mária Biači, the Councillor responsible for social and health care, Mr Mihály Pecze, the representative of Red Cross, Mr. Stojan Ivošević from the Subotica’s Trustee for Refugees and Mr. Milutin Blažić, the Head of the Social Service Centre - at the Subotica City Council on 2 April 2012.

<sup>75</sup> Interview conducted at the Subotica City Council on 2 April 2012.

<sup>76</sup> Adopted on 31 March 2011, entered into force 12 April 2011. Published in Sl. glasnik RS, No. 24/11.

<sup>77</sup> Interview conducted at the Subotica City Council on 2 April 2012.

<sup>78</sup> Interview conducted at the Subotica City Council on 2 April 2012.

<sup>79</sup> Interview conducted at the Subotica City Council on 2 April 2012.

Taking this reality into consideration, Mr Tibor Varga, a priest of the Eastern European Mission, has been visiting the residents of the "Jungle" since the autumn of 2011.<sup>80</sup> Members of the Mission bring food, clothes, plastic tent covers and blankets on a regular basis. Most people in the Jungle come from Pakistan, Afghanistan, India and Bangladesh. The majority are single young men, but very often there is also family or a woman with children. In Mr Varga's experience, people spend on average two to three months in the "Jungle". At the time of the interview, he estimated the number of "Jungle residents" to be around 60, but also added that a few weeks earlier there had been twice that many people. The residents appreciate the attention and the assistance they receive from the Mission and fear the police raids, which also take place periodically when political pressure on the police grows. In a raid in March, about 60 people were arrested and one tent was burnt down by the police – added Mr Varga.

**Many potential asylum seekers decide not to ask for asylum in Serbia.** The reasons for this are numerous. On the one hand, the European Union is the desired final destination for most people. On the other hand, the recognition rate remains zero in Serbia (an apparently well-known fact for many potential applicants) and asking for asylum would imply having to move to one of the reception centres in Banja Koviljača or Bogovađa. As both villages are far from Serbia's borders with the EU, migrants would rather stay in garbage dumps to wait for the next opportunity to enter what they perceive as a "better world". Building a shelter or a reception centre in Vojvodina would seem a logical solution to their continued presence in the region, but this is a very sensitive question according to the Subotica Town Council.<sup>81</sup> During the war in Yugoslavia, the town gave shelter to over 20,000 displaced people, and as Ms Biacsi, the local councillor said, the town does not feel ready for this sort of hospitality again.

With summer approaching, the number of migrants in the "Jungle" is likely to increase. The Subotica Town Council would like to see a long term solution for this problem, but in the eyes of the immigration authorities, it has been resolved. In Mr Vučković's opinion, after the February Palić placement the problem no longer exists: "*There is no camp in Subotica right now, I believe*" he said.<sup>82</sup>

#### IV. CONCLUSIONS

##### 1. Asylum authorities still lack sufficient resources and capacities

Despite the increasing number of asylum seekers in Serbia, **the capacity of the Asylum Office has remained basically unchanged and thus is clearly insufficient.** At the time of reporting, **4 asylum officers** had to deal with the huge workload of **600-700 cases per year.**

##### 2. Access to the asylum procedure and to reception conditions is limited

In 2011 and the first four months of 2012, there is no record that any of the persons who were denied entry at the airport in Belgrade claimed asylum.<sup>83</sup> In light of the experience of other international airports (including those in the Central European region), this fact gives rise to **serious concerns about access to asylum at the Belgrade Airport.**

**85 percent of the people who express their intention to seek asylum fail to have their request registered** at one of the Serbian reception centres.<sup>84</sup> Although **reception conditions have improved** with the opening of the centre in Bogovađa, there is still **no state-funded legal assistance** for asylum seekers.

**When a reception centre is full, it cannot accommodate even those asylum seekers who are sent there.** Based on the information provided by the Asylum Office, in these cases the claims are not processed until the asylum seeker can be accommodated in the centre.<sup>85</sup>

Currently, there is **no mechanism to monitor whether asylum seekers are properly informed** about their rights and if they are actually referred to the asylum procedure.

##### 3. Zero recognition rates and safe third countries

The recognition rate for refugee status remains zero, **no asylum seeker has ever been granted refugee status by Serbian authorities. Only two persons were granted subsidiary protection.**

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<sup>80</sup> Interview conducted with Mr. Varga in Subotica on 2 April 2012.

<sup>81</sup> Interview conducted with the representatives of the local administration at the Subotica City Council on 2 April 2012.

<sup>82</sup> Interview conducted with Mr. Vučković, 3 April 2012.

<sup>83</sup> See statistical data in Section 1.

<sup>84</sup> See statistical data in Section 1.

<sup>85</sup> Interview with Mr. Vučković, 3 April 2012.

**In 2011, only two decisions were taken on the merits.** The vast majority of decisions issued were rejections based on a rather problematic application of the concept of safe third country. The Administrative Court considers that the **safe third country concept should be applied to every claimant**, without examining whether the country from the list is really safe for that particular person in, without any individualised assessment. Thus, asylum seekers entering Serbia from any of the countries on the list are to be automatically returned without having their claim ever examined on the merits. The list of safe third countries has not changed: **Macedonia, Turkey and Greece** still figure in the list.

The asylum law still provides for an **automatic rejection of an asylum application if the asylum seeker previously requested asylum in another country** before entering Serbia.

Due to these policies, **there are no recognised refugees in Serbia** and, for the very few enjoying a lower level of international protection, there are no avenues for integration. (No change could be found in this respect since the 2011 Serbia Report.)

#### **4. Risk of chain refoulement**

The current practice of the Hungarian authorities and the dysfunctional Serbian asylum system still pose the risk of chain *refoulement* for persons in need of international protection; their **protection needs are not examined on the merits**, which was confirmed by the incident in Palić in February.

#### **5. Minors in detention**

The prolonged stay of unaccompanied minors in the Vaša Stajić juvenile correctional facility is problematic because their **freedom of movement is limited** and their **access to the asylum procedure** is seriously delayed, since the start of the asylum procedure is tied to the availability of places in one of the reception centres.

#### **6. Danger of destitution**

Due to its geographic location, the Vojvodina region will continue to be a gathering place for migrants wishing to enter the EU. Many of the numerous migrants staying in this area are potential asylum seekers in need of international protection. The **lack of a reception infrastructure** in the area limits their access to protection and often leads to destitution.

#### **7. Buying time instead of a durable solution**

What seems to unite asylum seekers and the authorities in Serbia is the way they perceive the asylum system. Both groups associate it with **"buying time"**. Asylum seekers apply for asylum, stay in one of the reception centres and wait for the next opportunity to leave for the EU. As one of them said in Bogovađa, *"we are just buying time here"*.<sup>86</sup> The head of the Asylum Office also said that the asylum procedure has been heavily abused by illegal migrants and the vast majority of asylum applications in Serbia are meant to "buy the time" in the course of finding a way to illegally cross the border from Serbia to Hungary.<sup>87</sup> Therefore the system is built on this concept and is **not designed to provide for an effective protection mechanism and a durable solution**. At the same time, it should not be disregarded that several asylum seekers stay until the decision is taken in their asylum case.

In light of the information gathered, the current Serbian asylum system is **not sufficiently functional. It is neither able to ensure the proper determination of international protection needs for an increasing number of asylum seekers, nor does it provide effective protection for those who would qualify for refugee status**. The above being a pre-condition for considering a country as a safe third country, Serbia still cannot be regarded as such in the sense of Article 27 (1) of the Procedures Directive.<sup>88</sup>

**The Hungarian Office of Immigration and Nationality and Hungarian courts are urged to stop considering Serbia as a safe third country for asylum seekers and to stop removing asylum seekers to that country.**

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<sup>86</sup> Interview conducted at Bogovađa on 4 April 2012.

<sup>87</sup> Interview with Mr. Vučković, 3 April 2012.

<sup>88</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.