

# “Tolerated” but for how long?

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Unwilling to claim asylum but unable to travel further, over 4,400 refugees and other migrants in Serbia await new legislation to determine their future.

## Transit and delays

Before the closure of the so-called Western Balkans route and the introduction of the EU-Turkey Agreement in March 2016, refugees and other migrants arriving in Europe considered Serbia to be a transit country. Intent on reaching their planned destinations in central and northern Europe, most refugees and other migrants arriving in Serbia did not apply for asylum, typically crossing the country in a matter of days, most commonly via Croatia or Hungary.

Today, however, people arriving in Serbia through irregular means can no longer transit so easily. Closed borders mean that many must stay for months, rather than moving forward as planned. Although some continue to leave the country – either regularly with the acceptance of Hungarian authorities who allow a small number of people on a waiting list to cross each week, or irregularly with the help of smugglers – the large majority remain in limbo, unwilling to seek asylum in Serbia or to return home.<sup>1</sup>

By 20 August 2017, 4,405 refugees, migrants and asylum seekers were registered in Serbia, the vast majority living in government-run reception and asylum centres. The 18 centres are dispersed across the country and provide basic assistance such as food, accommodation, clothing and medical care. Most people in these centres hope to continue their journeys, but have little information about how long they will have to wait.

## Legislative gaps

Under Serbia’s current Law on Asylum, which dates from 2007, all irregular arrivals must apply for asylum “without delay,”<sup>2</sup> or be considered liable “for violating the legal entry regime and residing in the country.”<sup>3</sup>

This process takes place in two stages. First, a foreigner must “express the intention to seek asylum in Serbia,” either from within the country or at a border point. Officials from the Ministry of the Interior record this and issue a certificate of intention to seek asylum. Unless they have notified the Asylum Office that they intend to stay in private accommodation, foreigners must report to their assigned reception or asylum centre within 72 hours. Possessing the certificate entitles people to receive assistance in these centres, but does *not* constitute the initiation of the asylum procedure.

The second stage is a formal asylum application, which should take place within 15 days of the expression of intention to seek asylum. According to the 2007 Law (Article 25), any person failing to do so “shall lose the right to reside in the Republic of Serbia if he/she unjustifiably fails to abide by the time limit.”

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<sup>1</sup> As of May, 70 people had reportedly returned from Serbia in 2017.

<sup>2</sup> Republic of Serbia National Migration Management Strategy, 2009.

<sup>3</sup> Article 8, Law on Asylum, Official Gazette of the Republic of Serbia, 109/2007.

Today, the large majority of irregular arrivals to Serbia are understood to complete the first stage of registration, regardless of their long-term intentions.<sup>4</sup> In contrast, only a small proportion enters the second stage of the process. In 2016, for example, 12,821 individuals registered an intention to seek asylum in Serbia, but less than 5% (574) submitted a formal asylum application.<sup>5</sup> Those people who do not apply for asylum fall into a legislative gap, although for the moment they continue to receive assistance and protection in reception and asylum centres.

## An uncertain wait

The majority of refugees and other migrants in Serbia – those who have registered but not made an asylum claim – are allowed to stay in reception centres beyond the first 15 days of their stay, despite the stipulations of the current law. Although in practice they continue to receive services and aid, there is technically no legal framework governing their status and rights.

Two forthcoming pieces of legislation, the new Asylum Act and the new Foreigners Act, will clarify their situation somewhat, although both are currently behind schedule. The new Asylum Act was included in an action plan as part of Serbia's EU accession process, and was anticipated to come into effect in mid-2016. A draft has been published for consultation and all proposed amendments from civil society have reportedly been accepted. However, as of August 2017, the law is yet to be passed. Of most relevance to the majority of refugees and other migrants who have not made a formal application for asylum is the new Foreigners Act. This will include a 'Decree on Tolerated Residence', which will deal specifically with the situation of people stranded in Serbia but who are unwilling to apply for asylum. Because the text of this decree is not publicly available, the precise nature of its content is unknown. However, it is likely to formalise access to basic rights such as shelter, food, healthcare and education, but unlikely to extend those rights further than what is currently tolerated.

For the relatively small number of refugees and other migrants who *do* seek asylum in Serbia, the process can be very long. Upon submitting a formal application, asylum seekers must hand over any identity papers from their country of origin, and should then be issued a new identity card. One organisation providing legal aid to asylum seekers in Serbia reported that issuing new documentation can be subject to long delays, which inhibit applicants' ability to prove their identity and move freely while they wait. A compilation of annual data on the asylum process shows that in 2015, 196 identity documents were issued compared to 583 asylum applications, highlighting that many applicants may not receive documentation at all. Once issued, the formal application process begins, during which an asylum seeker has no right to seek work for the first nine months.<sup>6</sup>

With a backlog of cases, Serbia's asylum process has come under criticism in recent years. In 2014, a report by the European Commission called for a comprehensive reform of the asylum system, in which "applicants have no effective access to the asylum procedure [...] and their asylum applications are not effectively processed."

While the government of Serbia has since made changes to the asylum system, processing times remain slow. According to annual asylum statistics for 2016 compiled by the Belgrade Centre for Human Rights, 574 asylum applications were filed and 160 people were interviewed. Decisions on asylum applications typically took between four and six months, instead of the two months stipulated by law, while the applications of 484 individuals had to be abandoned, as these people had already left their reception centre – or the country – by the time they were called to interview.

## What next?

**For those who have applied for asylum**, the wait is far from over. According to UNHCR, only one person was granted refugee status in the first eight months of 2017. Discussions with current asylum seekers reveal differing perspectives. Some were determined to wait, while others explained that they had applied as an 'insurance policy', but ultimately lack faith in the system and plan to continue to their intended destinations when they can. A report by the European Commission comes to a similar conclusion, highlighting how ineffective processing of asylum applications "tends to encourage asylum applicants to see Serbia as a transit country for entering the EU illegally."

**For those who have not applied for asylum**, their legal situation remains precarious and subject to change. Without making a formal asylum application, people may lack access to civil procedures, such as divorce. In the case of a young migrant woman wishing to leave an abusive relationship, for example, this situation can exacerbate existing protection concerns. For others, fear of deportation is a concern. Many of the thousands of refugees and other migrants living in squats in Central Belgrade in early 2017 cited fear of deportation as their reason for not going to a formal reception centre. More recently, NGO protection workers

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<sup>4</sup> UNHCR no longer publishes data on 'arrivals' to Serbia, so the only official statistics are of those who register an intention to seek asylum. Aid actors at major transit points continue to assist small numbers of unregistered individuals, although the total number of irregular arrivals is likely to be higher.

<sup>5</sup> According to statistics compiled by the Belgrade Centre for Human Rights, an additional 94,756 transit certificates were also issued between January and March 2016.

<sup>6</sup> Article 13, Employment of Foreigners Act, Official Gazette of the Republic of Serbia, no. 128/2014.

reported that individuals at Sombor Transit Centre were spending the nights in the nearby forest, afraid of being moved by authorities in the early morning.

With few other options, many people are resigned to waiting for their name to appear on the list in order to enter Hungary. Others complain that the list is too long and the process unfair, and see smugglers as their only possible means to continue their journeys within Europe. According to a recent report by UNICEF, isolation, inadequate access to services and slow, bureaucratic family reunification schemes are all factors that push people to resort to smugglers. When they do, they risk injury, theft, beatings, and apprehension. Many of those who manage to cross are later forcibly returned to Serbia from Croatia. Aid actors have recorded cases of verbal, physical and sexual abuse from human traffickers and smugglers, while many people have reportedly been denied the opportunity to seek asylum.

For many of the refugees and other migrants interviewed as part of an ongoing study by the Mixed Migration Platform, the prospect of staying even another six months in Serbia was too painful to talk about. Desperate to leave but stuck in legal limbo, refugees and other migrants who have not applied for asylum in Serbia require clarity on their rights and situation. The entry into force of new legislation to govern their situation will be an important first step.

*This article forms part of a larger research project conducted by the Mixed Migration Platform and the Danish Refugee Council. The forthcoming study, 'Life in Limbo,' will examine the household economies and coping strategies of refugees, migrants and asylum seekers in Serbia.*