

Sign In - Please click here to login and see classified information.

CM-Public



13 October
2017

Information Documents

SG/Inf(2017)33

**Report of the fact-finding mission by Ambassador Tomáš Boček,
Special Representative of the Secretary General on migration and refugees to
Serbia and two transit zones in Hungary
12-16 June 2017**

I. Contents

EXECUTIVE SUMMARY

I. THE MISSION

II. INTRODUCTION

1. Meetings

2. Visits *in situ*

III. SERBIA

1. Seeking international protection

1.1. Access to the asylum procedure in Serbia

1.2. The waiting list for entry into Hungary

1.3. The legal situation of “tolerated” migrants

2. Pushbacks from neighbouring countries

3. General reception issues

3.1. Introduction

3.2. Asylum centres and reception centres

3.2.1. Mobility between reception centres

3.2.2. Conditions

3.2.3. Access to information regarding asylum

3.2.4. NGOs presence and assistance

3.2.5. Smuggling

4. Unaccompanied children

4.1. Reception

4.2. Age assessment

4.3. Guardianship

5. Migration policy beyond the phase of humanitarian assistance

IV. RÖSZKE AND TOMPA TRANSIT ZONES IN HUNGARY

1. Background of the visit

2. Reception

2.1 Admission into the transit zones

2.2 Conditions

2.3 The mandatory stay of asylum-seekers in transit zones

3. Asylum procedures

3.1 Access issues

3.2 First instance decision

3.3 Judicial review

4. Unaccompanied children

4.1 Guardianship

4.2 Age assessment

4.3 Education

V. CONCLUSIONS

Appendix

EXECUTIVE SUMMARY

The Secretary General's Special Representative on Migration and Refugees carried out a fact-finding mission to Serbia and two transit zones in Hungary from 12 to 16 June 2017. In Serbia he visited asylum and reception centres in Adaševci, Principovac, Krnjača, Subotica, Sombor, Bogovađa and Obrenovac and met with representatives of the government, the authorities responsible for asylum and migration-related matters, intergovernmental organisations, the European Union as well as civil society. In Hungary he visited the transit zones of Röszke and Tompa and met with the regional representatives of the asylum authority, as well as with the UNHCR and one NGO.

Serbia has experienced a massive influx of migrants and refugees travelling along the so-called Western Balkans migration route during 2015 and at the beginning of 2016. After the closure of this route in 2016, more than 7 000 refugees and migrants, among whom around 1 000 unaccompanied children, remained in Serbia. The arrival of such a high number of migrants and refugees has presented significant challenges for the Serbian authorities. It is to the credit of their enormous efforts that migrants and refugees have been provided with accommodation, food and other forms of support. Serbia's approach to respect the right to liberty and freedom of movement of migrants and refugees should also be commended.

However, access to the asylum procedure remains problematic. At times migrants and refugees are pushed back from Serbia to its neighbouring countries without being given a real opportunity to claim asylum. In many cases migrants and refugees lack basic information about the possibility of obtaining international protection in Serbia and encounter difficulties in contacting the asylum authorities. Most of those who are currently in Serbia have been certified by the competent authorities as having expressed an intention to seek asylum but have not lodged asylum applications as their end-goal is to reach other European countries. Consequently, the large majority of migrants and refugees are stranded in Serbia for several months without an official legal status, waiting for an opportunity to cross the borders with Hungary or Croatia. The flow of migration from Serbia to Hungary is managed through a waiting list which is compiled in an informal and non-transparent way, raising suspicion that corruption could be involved.

As migrants and refugees' prospects of reaching their destination countries are uncertain they might, over the course of their stay in Serbia, decide to seek international protection in Serbia. Therefore, it is important that they are provided with information on asylum in a systematic way and that they have real opportunities to access the asylum procedure. A strategic approach is also needed to address the precarious legal status of those who cannot be expelled from Serbia although they have not lodged asylum applications and to identify sustainable solutions regarding their social and economic rights.

Due to the high number of migrants and refugees all asylum and reception centres

in Serbia operate beyond capacity. This has had an impact on the reception conditions, in particular the standards of accommodation and services provided, which potentially raise issues under Article 3 of the ECHR. The age of unaccompanied children is often determined haphazardly, leading in certain cases to the accommodation of boys under 18 years together with adult men. This raises serious concerns regarding children's exposure to risks of violence and sexual abuse and sexual exploitation. The presence of a high number of unaccompanied children in some reception centres poses challenges to the provision of guardianship, which in turn results in lack of support for unaccompanied children in processes affecting them. Educational provision for children in asylum and reception centres is rather scarce.

The determination of migrants and refugees to reach other European countries will continue to create demand for smugglers in Serbia. Eventually smuggling could become a complex criminal activity for which Serbian authorities need to be prepared with know-how on how to prevent and fight it, while engaging in effective co-operation with law enforcement authorities in other countries. The Council of Europe can facilitate meetings with technical experts and law enforcement authorities from other countries, including source, transit and destination countries, in order to exchange experiences, develop strategies and set common priorities to prevent and fight smuggling.

Overall, Serbia should develop a strategy which looks beyond the emergency phase and goes further than the provision of humanitarian assistance to migrants and refugees. The ongoing legislative reform of the law on asylum and foreigners provides opportunities for developing such a strategy as well as for co-operation between the Serbian authorities and the Council of Europe to address the issues identified with due regard for the human rights standards of the Organisation.

Hungary, being also a transit country for migrants and refugees travelling along the Western Balkans route, has also faced enormous challenges after the massive arrivals of migrants and refugees during 2015 and 2016. In response to these challenges Hungary has enacted a series of legislative amendments to the legal framework on asylum and immigration. Following those introduced in March 2017, all asylum-seekers, including families with children and unaccompanied children between 14 and 18 years old, are kept within specifically designated areas of transit zones located in Hungarian territory, while their asylum applications are processed. This situation raises concerns about *de facto* deprivation of asylum-seekers' liberty under Article 5 of the ECHR. In particular, the confinement of children needs to be addressed as a matter of urgency. The primary consideration should be the best interest of the child. Every effort should be made to avoid resorting to the deprivation of liberty of migrant and refugee children on the sole ground of their migration status.

Violent pushbacks of migrants and refugees from Hungary to Serbia raise concerns under Articles 2 (the right to life) and 3 (prohibition of torture) of the ECHR. The restrictive practices of admission of asylum-seekers into the transit zones of Röszke and Tompa often make asylum-seekers look for illegal ways of crossing the border,

having to resort to smugglers and traffickers with all the risks that this entails. The asylum procedures, which are conducted in the transit zones, lack adequate safeguards to protect asylum-seekers against *refoulement* to countries where they run the risk of being subjected to treatment contrary to Articles 2 and 3 of the ECHR. The mechanism for the judicial review of decisions of the asylum authority raises concerns in respect of the right to an effective remedy under Article 13 of the ECHR. The Council of Europe is ready to assist the Hungarian authorities, with expert advice, to safeguard the essence of the right to seek asylum in Hungary, while ensuring respect for asylum-seekers' right not to be subjected to unjustified deprivation of liberty or unacceptable living conditions.

Unaccompanied asylum-seeking children between 14 and 18 years old who are in the transit zones are exempted from the scope of application of the legal provisions on guardianship. The assistance provided to these children from local social workers appears rather limited, which leaves unaccompanied children without adequate protection and support. As the stay of unaccompanied children in transit zones is intended for a short period of time there is no educational provision. The Council of Europe can provide assistance in developing a guardianship system that effectively protects the rights of the child and ensures compliance with the principle that the best interest of the child is the primary consideration in all processes affecting him/her.

In conclusion, it is necessary that the Hungarian legislation and practices are brought into line with the requirements of the ECHR. Should the Hungarian authorities decide to engage in this process, the Council of Europe is best placed to assist them by providing expert advice on the basis of the ECHR and the case-law of the European Court of Human Rights.

I. THE MISSION

In 2015 and the first quarter of 2016, an unprecedented number of refugees and migrants, estimated at more than 900 000, passed through Serbia on their way to European Union (EU) countries. After the closure of the so-called Western Balkans migration route[1] in early 2016, more than 7 000 refugees and migrants, among whom more than 1 000 unaccompanied children, remained stranded in Serbia. New arrivals of migrants and refugees to Serbia continued during the first half of 2017, although they were not massive as in the two previous years.

Against this background, from 12 to 16 June 2017, I carried out a fact-finding mission to Serbia.

I also visited the transit zones of Röszke and Tompa in Hungary at the invitation of the Hungarian authorities, and in view of the fact that these transit zones are currently the main gateways to EU countries for migrants and refugees in Serbia. The purpose of my mission was to identify how the Council of Europe can offer assistance to these countries in meeting the challenges posed by the arrival of a high number of refugees and migrants, while ensuring full respect for all

international obligations related to their membership of the Council of Europe.

Overall, this fact-finding mission enhanced my perspective of migration flows through the Western Balkans migration route. In that sense it complements my other fact-finding missions in other countries on this route, namely to Greece, “the former Yugoslav Republic of Macedonia” and Turkey.

I conducted this mission together with the Head of my Office, Mr Stephanos Stavros, and my Legal Adviser, Ms Elvana Thaçi.

I would like to thank the Serbian and Hungarian authorities for their excellent co-operation during my mission.

II. INTRODUCTION

1. Meetings

In Serbia we met with the Minister of Interior, the Mayor of Belgrade, the Acting Ombudsperson, State Secretaries at the Ministry of Education, Science and Technological Development, and the Ministry of Labour, Employment, Veteran and Social Policy, as well as the leadership of the Ministry of Health, of the Commissariat for Refugees and Migration and of the Asylum Office and Commission.

We exchanged views with representatives of the UNHCR, UNICEF, the EU Delegation to Serbia, the IOM and the WHO. We also met with a number of NGOs and lawyers active in providing assistance and advice to refugees and migrants.[2]

In Hungary we met with the Regional Director of the Immigration and Asylum Office and the Director of Röszke and Tompa transit zones. We also had the opportunity to exchange views with UNHCR and a representative of the Hungarian Helsinki Committee in Szeged.

2. Visits *in situ*

In Serbia we visited asylum centres in Krnjača and Bogovađa and reception centres for migrants in Adaševci, Principovac, Subotica, Sombor and Obrenovac. We also visited the Refugee Aid Hub Miksalište, a drop-in centre for refugee and migrant children in the centre of Belgrade, as well as the area close to the train station in the municipality of Šid, where a number of migrants and refugees had gathered after repeated attempts to cross the Serbian-Croatian border. I would particularly like to thank the UNHCR in Serbia and their partner organisation Crisis Response and Police Centre for their invaluable assistance in providing interpretation in Arabic, Kurdish, Farsi, Urdu and Pashto.

In Hungary we visited the transit zones in Röszke and Tompa.[3]

III. SERBIA

1. Seeking international protection

1.1. Access to the asylum procedure in Serbia

NGOs have reported cases of foreigners who, after being caught attempting to enter the Serbian territory irregularly from “the former Yugoslav Republic of Macedonia” or Bulgaria, were immediately returned to the border police in those countries despite the fact that some had allegedly informed the Serbian police of their intention to apply for asylum. NGOs’ reports also suggest that in 2016 there were summary and collective expulsions of foreigners from Serbia to “the former Yugoslav Republic of Macedonia” and to Bulgaria. During our mission, the Serbian authorities confirmed that there had been instances of pushbacks of refugees and migrants from Serbia to the above-mentioned neighbouring countries. This raises concerns under Articles 2 and 3 of the ECHR, which prohibit the return of an individual to the country of origin or a third country where he/she would face a real risk of treatment in breach of these articles of the Convention. Asylum-seekers should be given real opportunities to apply for asylum and the principle of *non-refoulement* should be respected. They must be protected from exposure to a real risk of being subjected to breaches of Articles 2 and 3 of the ECHR, including when such risks result from chain *refoulement*. Also, the collective nature of some of the reported expulsions of migrants and refugees gives rise to concerns under Article 4 of Protocol No.4 of the ECHR.

According to the Law on Asylum of Serbia (Official Gazette No.109/2007), every foreigner who expresses his/her intention to seek asylum to a police officer at border checkpoints or inside Serbia’s territory is issued with a certificate of expression of intention to seek asylum. This document is not an asylum application and as a consequence issuing it does not set the asylum procedure in motion. In practice, the certificate only authorises the person concerned to be admitted and accommodated in an asylum centre or reception centre; he/she must report there within 72 hours. While the majority of migrants and refugees we met in the centres we visited were in possession of this document, there were also quite a few who were not.[4]

Following his/her admission to an asylum centre or reception centre, the Asylum Office should, according to the Asylum Law, register every foreigner and issue a personal identity card confirming his/her status as an asylum-seeker. However, this happens quite rarely in practice. The overwhelming majority of migrants and refugees in the centres we visited do not have such a card but only a document issued by the Commissariat for Refugees and Migration, which has management responsibilities over these centres. This document is officially described as an ID and bears the first and the last name of the person, his/her age, country of origin and picture, as well as the name of the centre where he/she is accommodated, and a serial number. In some cases, however, migrants and refugees were not in possession of this document either or had been issued with substitute documents without photographs.

The asylum procedure is initiated by filling in the asylum application form and submitting it to an officer of the Asylum Office, within 15 days of the above-mentioned registration. Of all centres that we visited, the Asylum Office was present

regularly only in the asylum centres of Krnjača and Bogovađa; in the latter centre we were shown a room assigned to the Asylum Office, which was not manned at the time. The Commissariat for Refugees and Migration provides the Asylum Office regularly with up-to-date information about the persons who arrive in asylum and reception centres and are in possession of a certificate of expression of intention to seek asylum. During the mission we were not able to meet with officials of the Asylum Office in any of the centres that we visited. A migrant in Bogovađa told us that since he had no real option of travelling to an EU country he had decided to seek asylum in Serbia. However, he had not been able to contact the Asylum Office, so an NGO was helping him to do so.

It should be underlined that the overwhelming majority of those who have expressed an intention to seek asylum in Serbia do not wish to stay in the country, as their end-goal is to reach other European countries. Consequently, they do not lodge asylum applications in Serbia or abandon the asylum procedures whenever they have done so. In the first six months of 2017, 3 251 persons registered their intention to seek asylum, of whom only 151 applied for asylum.[5] Despite this, everyone who has expressed his/her intention to seek asylum in Serbia should be provided with accurate information about their legal and administrative situation. It is questionable whether this happens in practice; many of those who have indicated their intention to apply for asylum, but have not lodged such an application, appear to lack basic information about the possibility of obtaining international protection in Serbia. This information is absolutely necessary, given that the situation of migrants and refugees might have changed since the time of their arrival in the country. As the prospects of admission of migrants and refugees by Serbia's neighbouring countries are uncertain and as their presence in Serbia's asylum and reception centres continues for several months, they might decide to lodge asylum applications in Serbia. Therefore, it is important that information on their rights, possibilities and asylum procedures is provided in a systematic way. The provision of such information should be viewed as an ongoing requirement, rather than as a one-off exercise to be completed at the time of migrants and refugees' arrival in Serbia.

Furthermore, everyone who has expressed his/her intention to seek asylum in Serbia should have access to an individualised, fair and effective asylum procedure. Difficulties in accessing the asylum procedure, especially when coupled with substandard reception conditions (see section III. 3.2.2. below), could raise issues under Article 3 of the ECHR. All those who have been issued with a certificate of expression of intention to seek asylum in Serbia should be provided with real opportunities to contact the Asylum Office so that they can exercise their right to seek asylum. Clearly, the capacities of the Asylum Office should be strengthened in order to ensure its effective presence in all asylum and reception centres and the proper discharge of its responsibilities. All decisions on asylum applications should be made in full compliance with Articles 2, 3 and 13 of the ECHR. This also means that effective appeal mechanisms should be available to every migrant and refugee present in any part of Serbian territory.

During our mission, we were informed about legislative proposals to amend the Law on Asylum and the Law on Foreigners, which were being prepared with a view to regularising the legal status of migrants and refugees currently in Serbia. This ongoing reform provides a unique opportunity to strengthen the asylum system in the country, which has been criticised for its structural shortcomings and for its inability to process an increasing number of asylum applications. The Council of Europe can support the Serbian authorities by offering its expert advice based on the ECHR and the case-law of the European Court of Human Rights.

1.2. The waiting list for entry into Hungary

Almost every migrant we have met in the asylum and reception centres that we visited in Serbia complained about the long waiting time, in most of the cases lasting for months, before his/her turn on “the list for Hungary” would come up. I inquired about the nature and the legal status of this list with the Serbian and the Hungarian authorities, as well as with the UNHCR and NGOs.

Originally, the purpose of this list was to manage the admission of large numbers of migrants from Serbia into Hungary at the border crossing points in Röszke and Tompa. In 2015, thousands of migrants and refugees had been camping in Serbian territory in very dire conditions, without shelter, food, water or medical care, a situation which several of my interlocutors described as having been a real humanitarian disaster. In order to cope with this situation, migrants and refugees had decided to select community leaders, who would compile a list with the names of those waiting to be admitted into Hungarian transit zones. The list would subsequently be transmitted to the Hungarian authorities. Later on when migrants and refugees were accommodated in Serbian reception centres, the so-called community leaders continued to compile the list for admission into Hungary. This practice continued in 2016 and is still in place today.

It is my understanding that the waiting list for entry into Hungary is an informal practical tool that governs the migration flow from Serbia into Hungary. The authorities of the two countries do not have formal competence over it, do not play any formal role in its compilation and do not formally communicate with each other on any aspect related to this list. However, several discussions led me to conclude that staff members of the Serbian Commissariat for Refugees and Migration are involved informally in the selection of community leaders as well as in including names in the waiting list. Several people have reported to us that the information about their place on this list is communicated to them by Commissariat staff. There were also several allegations made by migrants and refugees that they had had to pay bribes to be included in or ranked higher on the waiting list. I have also heard that migrants and refugees who had not been able to pay the required fee were ranked further down the list or that their names disappeared completely from it.

Despite the lack of any official status, the waiting list for admission into Hungary *de*

facto determines the amount of time that migrants and refugees actually spend in asylum and reception centres in Serbia, which in most of the cases is several months (on living conditions in such centres see section III.3.2.2 below). Indirectly, the waiting list deters migrants and refugees from making an application for international protection in Serbia and adds more uncertainty and confusion to an already unclear situation with regard to their legal and administrative status in Serbia. Being placed on the waiting list raises the hopes of migrants and refugees that, eventually, they will be admitted in Hungary. In effect this contributes to migrants and refugees being “left out” of the Serbian asylum system, which in many cases would have provided them with the only realistic possibility of obtaining international protection. Also, the level of informality and the lack of transparency with which this waiting list is compiled and handled create a lot of suspicion that corruption is involved. Many migrants and refugees prefer dealing with smugglers to waiting for long periods of time until their turn on the list comes up. Hence, the waiting list should be seen as one of the many aspects contributing to a favourable environment for smuggling migrants and refugees in both Serbia and Hungary.

In view of the fact that the waiting list is instrumental in managing the migration flow from Serbia into Hungary, the authorities of the two countries should be encouraged to improve their communication on this issue and, if appropriate, to co-operate with each other in order to regularise their practices and to ensure that these have no collateral effects on the human rights of migrants and refugees.

1.3. The legal situation of “tolerated” migrants

Refugees and migrants consider Serbia as a transit country in their journeys to other European countries. Almost every migrant we spoke to explained to us that his/her end-goal was to cross the border to Hungary or Croatia and thereafter pursue his/her journey to various other EU member states. It is obvious that, as long as migrants and refugees do not apply for asylum in Serbia, which as explained above (see section I.1.1) is frequently the case, they have no real possibility of being granted refugee status in the country.

In these circumstances, because of the Serbian legal framework, migrants and refugees are liable for criminal prosecution for illegal crossing of the border and entry into the territory of Serbia, which could potentially involve detention before removal from the country. Clearly, the Serbian authorities have made a positive choice not to criminally prosecute and detain migrants and refugees. It should be noted that everyone is offered accommodation and food in receptions centres and there is no immediate plan to deport them. There are still very few voluntary returns to countries of origin, despite an increase in numbers compared to previous years.[6] Most of the people we spoke to described their situation as “waiting to go to Hungary”. Also, numerous migrants and refugees attempt to cross the border to Croatia, often facing pushbacks, including violent ones.

Overall, this situation presents very complex challenges for the Serbian authorities. While for the moment basic living conditions are secured in state-supported asylum and reception centres, the overwhelming majority of migrants and refugees are in a

state of limbo with regard to their legal status and their prospects. They continue to live in Serbia's centres in a situation of uncertainty for extended periods of time, which often range from several months to over one year. The Serbian authorities explained to us that migrants and refugees who are in this situation are considered to have "tolerated status". This essentially means that they are permitted to stay in Serbia, notably in centres, and that they are free to travel to other countries. We were also informed that amendments to the Law on Asylum and the Law on Foreigners were being drafted to reflect the "tolerated status".

In this context, it is of utmost importance that the new legal status entails respect for the human rights and fundamental freedoms of migrants and refugees. First, it is essential that the right to seek asylum, including effective access to asylum procedures and effective appeal mechanisms, is guaranteed to every migrant and refugee (see section I.1.1. above). Second, effective protection measures should be taken for all migrants and refugees who will remain in the territory of Serbia on the basis of whichever legal status is granted to them. In particular, due consideration should be given to their right to education in compliance with Article 2 of Protocol No.1 of the ECHR,[7] as well as their economic and social rights.

2. Pushbacks from neighbouring countries

A number of NGOs that we met with in Serbia reported regular pushbacks of refugees and migrants who attempt to cross the Serbian border with some of its neighbouring countries. In December 2016, the UNHCR recorded 1 237 cases of collective expulsions to Serbia. In some of them violence was reportedly used against migrants by police officers, such as beatings with batons in Croatia and attacks with dogs in Hungary.

In Šid, where around 100 Arabic-speaking migrants and refugees were sleeping rough at the train station area, we spoke to an unaccompanied child. He described his travel by train, in life-endangering conditions, to Croatia and further on in Slovenia. He alleged that although he had sought asylum in both these countries, his claim had not been registered nor otherwise taken into account. The authorities had allegedly failed to acknowledge his age in the registration forms that he had had to fill in.[8]

The Hungarian authorities we met with during our mission in the Hungarian transit zones of Röszke and Tompa did not confirm whether migrants and refugees, who would be apprehended in Hungarian territory after having crossed the Serbian-Hungarian border irregularly, would be returned to Serbia. However, numerous migrants and refugees we spoke to in reception centres in Sombor and Obrenovac in Serbia and NGOs working with them were clear that this was *de facto* the situation. In particular, unaccompanied children staying in the Obrenovac reception centre reported cases of use of violence by police officers in Hungary after having been apprehended on Hungarian territory.

International organisations and NGOs working with migrants and refugees have also reported cases of collective expulsions of migrants and refugees from Bulgaria and Romania into Serbian territory. Some of the migrants and refugees we spoke to

provided similar accounts of their experience trying to cross the Serbian-Bulgarian border.

While collecting information about allegations of pushbacks of migrants and refugees by the authorities of Serbia's neighbouring countries was not the focus of my mission, our Organisation should have a role in ensuring respect for human rights in all situations where there is a risk of their infringement. Pushbacks of migrants and refugees by competent authorities without acknowledging and assessing their asylum claims raise concerns regarding the respect of the principle of *non-refoulement*, which requires that states refrain from removing asylum-seekers without an individual assessment of their cases. Protection against treatment prohibited by Articles 2 and 3 of the ECHR imposes on Council of Europe member states the obligation not to remove any person who, in the receiving country or countries due to chain *refoulement*, would run the risk of being subjected to such treatment. Also, allegations of ill-treatment of refugees and migrants by border police raise serious concerns about compliance with Article 3 of the ECHR. The Council of Europe should continue to provide the necessary political encouragement and operational support to all its member states in order to ensure compliance with their human rights obligations, in particular by providing training on human rights standards to border police officers and strengthening the authorities' capacity to carry out prompt and effective investigations into allegations of pushbacks, collective expulsions and ill-treatment of migrants and refugees.

3. General reception issues

3.1. Introduction

Over 105 000 migrants and refugees arrived in Serbia in 2016. By the time of my mission the count ranged from 6 500 to 7 000. Despite the challenges posed by the arrival and presence of large numbers of migrants and refugees, the Serbian authorities have made praiseworthy efforts to provide shelter, food and medical support to every migrant and refugee present in the country. Also, as mentioned above, a firm approach has been taken against the systematic detention of migrants and refugees, which must be commended.

The Serbian authorities have used existing infrastructure, such as asylum centres, which were built to host refugees of war during the dissolution of Yugoslavia. In addition, they have created new centres to provide accommodation to migrants and refugees whose expressed wish is to go to other European countries, but now find themselves stranded in Serbia. The large majority of those present in Serbia are now accommodated in reception or asylum centres. The transfer to reception centres of approximately 3 000 migrants and refugees who, until a couple of weeks before my visit, had been sleeping rough in Belgrade city centre in very dire conditions,[9] is a clear example of how Serbia tries to provide "basic living conditions"[10] and dignified treatment to all migrants and refugees present in its territory. Many of those who had been living in makeshift camps in Belgrade city centre were transferred to a new reception centre created by Serbian authorities in Obrenovac in January 2017, which at the time of my visit accommodated 988 single

men and 218 unaccompanied children.

Due to the numbers of migrants and refugees, however, all facilities operate beyond capacity. This has had an impact on the reception conditions, in particular the standards of accommodation and services provided, which potentially raise issues under Article 3 of the ECHR (see section III.3.2.2. below).

A noteworthy aspect of Serbia's response to the massive influx of migrants and refugees is the positive attitude that the Serbian population has generally and consistently shown towards migrants and refugees. In our discussions with Serbian interlocutors it was frequently mentioned that the Serbian people, having received thousands of refugees as a result of wars in the Balkans, adopts a humanitarian approach towards all refugees and migrants. This approach had been shown in particular during 2015 and the first quarter of 2016 when more than 900 000 migrants and refugees passed through Serbia without any major incident of clashes with the local population being recorded by law enforcement authorities.[11] Also, there has been no anti-immigration sentiment or rhetoric in the political discourse, which is also to be commended.

3.2. Asylum centres and reception centres

3.2.1. Mobility between reception centres

Asylum centres are set up by the Law on Asylum to provide accommodation to asylum-seekers pending the examination of their asylum applications. The remaining reception centres were created in the last two years to provide accommodation for migrants and refugees who arrived in masses in Serbia. These centres are mostly located in facilities, such as old hotels, which have been transformed and adapted to respond to the needs of refugees and migrants. Currently there is no distinction in practice between asylum and other reception centres as people are accommodated in both, independently of whether they have lodged an application for asylum. Both asylum and reception centres are managed by the Commissariat for Refugees and Migration.[12]

Migrants and refugees move freely from one centre to another and sometimes they register in more than one centre with different names. There are various reasons for this mobility. First, those who should be admitted into Hungary according to the list are transferred to reception centres close to the border with this country, primarily those in Sombor and Subotica. The Subotica reception centre is considered an exit point. Secondly, a high number of migrants regularly attempt to cross the border into Hungary and Croatia, often without success. After they are pushed back to Serbia they may choose to present themselves at a different reception centre from the one where they were previously accommodated and are usually admitted there. Thirdly, the Serbian authorities also organise transfers of migrants and refugees from one reception centre to another according to needs and the centres' capacities. Sometimes, this results in delays in the registration of migrants and refugees in the new reception centres.

This high mobility of migrants and refugees confirms their freedom of movement in Serbia. However, it also means that the authorities cannot provide for the needs of

migrants and refugees at all times. In particular, the Serbian authorities encounter extra difficulties in managing the reception centres and in their efforts to ensure that the living conditions for migrants and refugees there do not breach Article 3 of the ECHR (see also section III. 3.2.2 below). At the reception centre in Sombor we met with several Pakistani men who, after having been transferred there from the reception centre in Obrenovac, could not access basic health care services as they had not been registered yet. Also, the difficulties migrants and refugees encounter in having access to asylum officials in the reception centres are compounded; the same holds true concerning access to education for migrant and refugee children to local schools. The protection of unaccompanied children is of particular concern. A large number of them, especially in Sombor and Obrenovac, move frequently out of and into reception centres after regular attempts to illegally cross the Serbian borders. Consequently, they are exposed to risks of violence, sexual exploitation and abuse and human trafficking. In the context of the ongoing legislative reform on the legal status of migrants and refugees in Serbia, some thought should be given to the issue of specific arrangements for residence assignment of refugees and migrants with a view to ensuring their stable presence in reception centres.

3.2.2. Conditions

a) Accommodation

The challenges of accommodating such high numbers of migrants and refugees are enormous. The Commissariat for Refugees and Migration makes huge efforts not to split families by accommodating them, wherever possible, in special facilities or units within reception centres. Similarly, efforts are made to accommodate single men separately from unaccompanied boys.

Families are usually accommodated collectively in separate rubber tents set up as emergency and temporary shelter solutions (Adaševci), in small rooms of a separate floor of the building (Principovac) or within large rooms in a separate building of the reception centre (Sombor). In the reception centre in Krnjača families were accommodated in individual small rooms in a separate building. Most of these facilities are overcrowded, sometimes with dozens of families sleeping in the same rubber tent or several families sleeping in a small room. Families try to create some privacy using their beds and blankets to carve out some living space for themselves within common accommodation areas; this space is quite often extremely limited. Some of them reported to us that they had been living in such conditions for several consecutive months. Despite efforts made by Serbian authorities, families are not always accommodated separately from single men.

In most of the cases, single men are accommodated together in separate rubber tents (Adaševci, Principovac, Sombor), or separate barracks (Krnjača), or separate rooms of various sizes (smaller ones in Bogovađa and larger ones in Obrenovac). Overcrowding is most striking in the accommodation facilities for this category of migrants and refugees. The number of single men in most of the centres we visited had increased considerably at the time of the mission after they had been transferred from Belgrade city centre. In Adaševci 120 single men out of 163 were

sleeping in a rubber tent, which had only 70 beds. The remainder were sleeping together with families. Even in smaller centres, such as in Subotica, single men sometimes were accommodated together with families.

Most of the facilities, with a few exceptions such as in Krnjača, are overcrowded with sometimes as many as 283 unaccompanied boys sleeping in a rubber tent as it was the case of Adaševci. Very often unaccompanied boys sleep in the same units as single men as it was the case in Sombor and Obrenovac. Overall, the accommodation of unaccompanied children raises serious concerns regarding their exposure to violence and sexual abuse and sexual exploitation (see also section III. 4 below).

b) Hygiene conditions

The Serbian Commissariat for Refugees and Migration makes significant efforts to ensure proper hygiene conditions in all asylum and reception centres. The public health institutions also engage in monitoring these conditions, checking the quality of food and water and keeping any epidemiological situation under control. Despite these efforts, because of overcrowding in most of the asylum and reception centres, hygienic conditions are substandard. In particular, this is most obvious in the rubber tents where hundreds of migrants sleep. The state of cleanliness in toilets and showers is generally poor. In the reception centre in Principovac migrants reported a lack of running water, which was felt in particular during warm days. There was an urgent need to improve the hygienic situation in Obrenovac, which at the time of my visit accommodated 988 migrants and refugees mostly coming from the informal makeshift camps that had existed in Belgrade city centre at the end of 2016 and the beginning of 2017.

c) Health care

In our meetings with the Serbian authorities, we were informed that considerable efforts are being made to ensure the presence of general practitioners or other medical staff in all asylum centres and reception centres. Also, there are sustained efforts to secure specialised medical treatment of migrants and refugees on the basis of the principle that everyone in Serbia should have equal access to medical services in the country. We were also informed about ongoing projects to set up mobile specialised clinics for these centres, such as gynaecology clinics, developing paediatric and immunisation services for new-borns, as well as to putting in place an operational procedure to deal with cases of gender-based violence and sexual violence. Generally speaking, securing funding for basic and specialised treatment of refugees and migrants remains a challenge in Serbia. In particular, specialised health institutions do not receive reimbursement for the treatment that they have given to refugees and migrants. NGOs contribute to the costs of primary health care and psychological support.

Most of the asylum and reception centres we visited had a doctor's room, which was accessible within working hours that differed from one centre to another. Refugees and migrants had access to basic health care in these rooms. In cases of need of specialised treatment, they were referred to the closest hospital or

specialised health institution. The waiting time for an appointment with the doctor in an asylum or reception centre is generally perceived as long or excessive by migrants and refugees. Access to doctors is also often complicated by the fact that not all centres have interpreters in the languages spoken by refugees and migrants.

An issue of concern reported to us notably by NGOs was the psychological deterioration as well as situations of anxiety and anger affecting several refugees and migrants, due to the long time spent in different centres without any prospect as to their future. There were reports about unaccompanied children in transition to adulthood being at breaking point. The psychological support services provided by some NGOs are not sustainable, because NGOs often lack resources and do not co-ordinate properly with each other.

Overall, it should be underlined that the conditions of accommodation of migrants and refugees in asylum and reception centres together with the inadequate health care services offered to them raise questions of compliance with Article 3 of the ECHR.[13]

d) Education

There were 3 994 refugee and migrant children in Serbia at the time of the mission, of whom 1 209 belonged to the primary school age group and the remainder to the secondary education age group. Over 1 000 children are unaccompanied. Almost all the centres we visited have child-friendly spaces (rooms/units) where children of very young age can spend a few hours during the day playing, designing, learning basic maths or languages or accessing the Internet. These spaces are generally supported by NGOs such as SOS Children, Save the Children or the International Rescue Committee. However, there are no sustainable educational programmes, with curricula that are adapted to their age or needs. The lack of educational programmes was most visible in Obrenovac where there is a high number of children.

In 2017, a total of 200 refugee and migrant children were enrolled in local schools in Serbia. The low rate of children's enrolment in local schools is due primarily to lack of knowledge of the Serbian language. Moreover, parents are generally reluctant to send their children to school in Serbia as they think that this might reduce their chances of transfer to other European countries. There are also a number of other issues which limit children's enrolment in local schools, such as lack of information about their vaccination status[14] as well as practical difficulties in making arrangements for children to receive their meals outside the asylum or reception centres where they stay. It should be underlined that these practical difficulties could be easily overcome; the right to education should not be denied on the basis of such considerations. Children who attended local schools followed some classes, generally arts, physical education and intensive programmes to learn Serbian language. The Serbian authorities explained to us that they were experiencing significant shortages in teachers. In order to provide migrant and refugee children with full education, it is estimated that Serbia would need to recruit 350 teachers, which at the moment does not seem feasible due to a general freeze on recruitment

applying throughout the Serbian administration.

Despite these difficulties, at the time of the mission the Ministry of Education was making sincere efforts to have as many migrant and refugee children as possible enrolled in Serbian schools during the upcoming academic year; several projects that would help the authorities pursue this objective were under preparation. There is ongoing work to develop teaching material on Serbian as a foreign language and standardised cards to record and certify the educational programmes attended by children. The Ministry of Education has also issued instructions to every school to set up “an inclusive education team”, composed of a psychologist, a teacher and a parent, which should welcome and provide individual support to migrant and refugee children. Thanks to funding from Save the Children, the Ministry of Education is expected to employ a contact person who will liaise with local schools to plan the placement and enrolment of children in school during the next academic year. In our discussions, the Serbian authorities expressed an interest in the idea of appointing a cultural mediator from within local migrant communities to facilitate children’s integration in local schools.

During our mission we were not made aware of any projects or initiatives to facilitate adults’ learning of the Serbian language or any other education programmes.[15] In view of the fact that refugees and migrants continue to stay in Serbia for long periods of time, it becomes necessary to develop linguistic integration programmes for adult migrants. Council of Europe resources can be made available for these purposes: (i) the Guide to Policy Development and Implementation on the Linguistic Integration of Adult Migrants, which provides practical advice with examples on how to design learning programmes based on skills assessment while taking into account diversity and (ii) the Self-Assessment Handbook for Providers of Courses for Adult Migrants, which can help with the way such courses are set up and overseen (through quality guidelines and quality control).

3.2.3. Access to information regarding asylum

IGOs and NGOs provide refugees and migrants with information about access to asylum procedures in Serbia during their stay in asylum centres or reception centres. The contact information of the Asylum Office is made available to migrants and refugees by the Commissariat for Refugees and Migration, which also refers to the Asylum Office any case when migrants and refugees express their wish to seek asylum. As mentioned above, the presence of the Asylum Office in asylum or reception centres is rather scarce.

Generally speaking, those arriving in Serbia do not express an interest in pursuing asylum claims there, their end-goal being to reach various EU countries. This has had a direct impact on the uncertainty as to their legal and administrative status. Almost all migrants and refugees we spoke to were in a state of confusion about the paths that they were going to take in order to achieve their end-goals. In Bogovađa two people explained to us that, as they saw no real opportunities of reaching EU countries, they were seriously considering the possibility of seeking asylum in Serbia. They complained about lack of information and being discouraged to pursue

this path further.

As explained above, migrants and refugees who are currently in Serbia might decide to apply for asylum in Serbia in view of difficulties encountered in moving to their desired destinations (see also section III.1.1. above). Consequently, it is essential that information about accessing the asylum procedure in Serbia and about the rights associated with the status of an asylum-seeker is provided in a systematic way. For example, the Serbian authorities should consider to proactively provide information about access to asylum to all those to whom the Ministry of Interior has issued a certificate of intention to seek asylum at any point in time between 2015 and 2017.

3.2.4. NGOs presence and assistance

NGOs and IGOs have regular access to asylum centres and reception centres. There was only one case reported to us of an NGO not having access to asylum and reception centres. In Krnjača and Bogovađa asylum centres, the UNCHR and the IOM are present on a regular basis. In Bogovađa posters with information available about how to reach the Belgrade Centre for Human Rights for legal aid were visible in several places within the reception centre. Also, in this centre we saw staff of the NGO Asylum Protection Centre, which offered legal advice to migrants.

The contribution of NGOs during the emergency situation created by the mass arrival of refugees and migrants in 2015 is generally acknowledged by all stakeholders as well as the Serbian authorities. NGOs provide information on asylum, interpretation services in several languages, support child-friendly spaces and educational programmes and cover the costs of medication in a number of cases. However, there were some allegations by both state and non-state actors that the information provided by some NGOs about the migrants' legal status in the country is misleading. Some NGOs' activities are mostly designed as short-term assistance programmes and there is no co-ordination among the NGO-community with regard to the support and services provided by them.

There is no doubt that the NGOs can play an essential role in supporting the transition from the emergency phase or the phase of humanitarian assistance to the eventual integration of migrants and refugees in the Serbian society. The Council of Europe could provide examples of good practices and could offer training to Serbian authorities and NGOs with a view to ensuring their continuous dialogue, reinforcing and maximising the impact of their activities as well as achieving a better co-ordination of activities among NGOs.

3.2.5. Smuggling

Generally speaking, refugees and migrants reach Serbia with the help of smugglers.[16] An Afghani family of 10 members in Sombor told us that they had paid € 30 000 to smugglers over different stages on their migration route. Numerous migrants and refugees in reception centres in Sombor and Obrenovac explained to us that they were waiting to establish contact with smugglers to pursue their

journeys to Hungary and Croatia. There were also reports that in certain cases migrants who live in these centres are involved in smuggling activities. In order to ensure safety and order and to prevent criminal activities, the reception centres in Sombor and Obrenovac, which have accommodated single men who used to sleep rough in Belgrade city centre, are guarded by two police officers at their gates; in Obrenovac there are six police officers present 24 hours. The presence of the police, however, does not prevent migrants and refugees from moving freely in and out of the reception centres.

Smuggling is particularly serious as it affects unaccompanied children. During our visit in Obrenovac all the unaccompanied children with whom we met reported to us that they had made countless attempts to cross the Serbian border to Croatia or Hungary with the assistance of smugglers. Despite the fact that in most of the cases they were caught by the authorities in these countries and returned to Serbia (see also section III.2 above) they were all very determined to continue their efforts to cross the border, which could be successful only with the help of smugglers.

Smuggling of migrants is an international phenomenon, involving networks operating across borders. The determination of migrants and refugees to reach EU countries will continue to create demand for smugglers in Serbia. Smuggling could become a complex criminal activity for which national authorities need to be prepared; they require know-how on preventing and fighting it. The effective co-operation of Serbian authorities with law enforcement authorities in other countries is also essential.

The Council of Europe, with its expertise, can assist Serbian law-enforcement authorities in developing long-term strategies to prevent and combat smuggling. Assistance can also be provided in developing educational and awareness-raising material targeting the migrant and refugee population. The Council of Europe can also facilitate meetings with technical experts and law enforcement authorities from other countries, including source, transit and destination countries, in order to exchange experiences, develop strategies and set common priorities to combat smuggling. In addition, support can be provided in training the Serbian border police officials with a view to enhancing their expertise in detecting smuggling networks or individual smugglers and in distinguishing victims from offenders.

4. Unaccompanied children

4.1. Reception

Over 1 000 unaccompanied and separated children were identified in Serbia during 2016. Many had been sleeping rough in Belgrade city centre at the end of 2016 and the beginning of 2017 in very dire living conditions. Benevolent Belgrade citizens took the initiative, which was later on joined by local and international NGOs as well as UNICEF, to create Miksalište, a day-drop facility in the centre of city, where children could receive food, shelter at night and psychological support.[17] Most of these unaccompanied children had been later on accommodated by Serbian authorities in asylum and reception centres, primarily in Obrenovac. At the time of our visit, close to 1 000 unaccompanied children in need of protection were present

in Serbia, of whom approximately 800 had been accommodated in reception centres.

According to the relevant instructions and guidelines of the Ministry of Labour, Employment and Veteran and Social Affairs, unaccompanied children should be accommodated in residential institutions that have separate units for children. In practice, however, unaccompanied children are generally accommodated in asylum centres and reception centres. In the ones we visited, we noticed that, while there is a genuine effort by the management of reception centres to ensure their accommodation in separate units, often unaccompanied children are accommodated together with adults, generally in overcrowded conditions (see section III.3.2.2 above). The situation is especially serious, given that unaccompanied children spend months in these conditions.

There is generally reluctance to report allegations of serious offences to the law enforcement authorities by the management of reception centres. In one of the centres that we visited there had been complaints regarding a case of paedophilia, which the centre's management had decided to resolve in a manner that did not involve the police. The Council of Europe can offer assistance, in the form of training to the staff of the Commissariat for Migration and Refugees, in creating the necessary conditions for preventing cases of violence against and sexual abuse of children.

There are no uniform practices in respect of identification of vulnerabilities among unaccompanied children nor is special care provided upon their arrival in an asylum or reception centre. In Obrenovac, which at the time of our visit hosted 218 unaccompanied children, it was reported to us by staff of the Commissariat for Migration and Refugees that all of them has undergone a medical examination upon arrival. The staff also reported that there had been allegations of sexual abuse of Afghani boys and young men on a large scale, also during their journeys before arriving in Serbia. However, no specific measures to identify vulnerabilities and to provide the necessary support were taken. Moreover, as mentioned above, a high number of unaccompanied children in Obrenovac attempted to cross the borders irregularly with the help of smugglers. Under these circumstances it is necessary to provide better child-friendly information to them about the risks that they expose themselves to.

Overall, the situation in respect of the accommodation and reception of unaccompanied children raises serious concerns about children's exposure to risks of violence, sexual abuse and exploitation and human trafficking. There is an urgent need to ensure proper accommodation for unaccompanied children in order to prevent criminal activities targeting them and to protect those who have fallen victim to human trafficking or to violence and abuse of children, including sexual violence and exploitation.

4.2. Age assessment

Guidelines on procedures to be followed for the identification of children at risk and on the determination of their best interests were developed under the auspices of

the Ministry of Labour, Employment and Veteran and Social Affairs and issued in March 2016. Children unaccompanied by a parent, guardian or responsible adult are considered at particular risk. A preliminary identification of unaccompanied children can be made by police officers during their regular work with refugees and migrants, or staff of civil society organisations who have received specific training on identification and assessment of the best interest of children.[18]

During our mission we were able to observe that the age-determination practices varied from one reception centre to another. In practice, the staff of the Commissariat for Migration and Refugees refer cases of children suspected of being unaccompanied to the local Centre for Social Workers, which in turn determines the age of the concerned child. The identification of unaccompanied children presents objective difficulties in cases when children travel in groups with adults, as authorities are unable to ascertain whether they are travelling together with their parents or legal guardians. Also, many of the arrivals are teenagers and it is not always easy to ascertain whether they are under 18 years old. Despite all these objective difficulties, the age-assessment procedures of unaccompanied children need to be applied promptly upon identification of unaccompanied children, systematically and in a harmonised way in all asylum centres and reception centres.

4.3. Guardianship

When the Border Police or the Commissariat for Refugees and Migration encounter separated or unaccompanied children, they notify the relevant Centres for Social Workers, which have responsibility for the guardianship of unaccompanied children in their jurisdiction. While the guidelines on the determination of the best interest of unaccompanied children and the follow-up procedures are quite detailed, in practice the guardianship system in Serbia is not able to cope with the challenges raised by the presence of a high number of unaccompanied children on its territory.

The Centres for Social Workers usually appoint a guardian to several children, sometimes 50 or even more. In the reception centre in Obrenovac there was only one guardian for all the 218 unaccompanied children who were accommodated there. Consequently, the appointed guardians are not able to have regular contacts with these children or to provide them with the necessary care.[19] The lack of interpreters aggravates matters. In all other reception centres that we visited, the unaccompanied children with whom we spoke were not aware of guardians being assigned to them, nor had they had any meetings with any social worker.

In the absence of an effective guardianship system, it is impossible to ensure access to asylum procedures and to identify their particular vulnerabilities and exposure to various forms of violence, sexual exploitation or abuse. In our discussions with local and international NGOs, which provide support services in asylum and reception centres, these referred to 40 identified cases of human trafficking of unaccompanied children. They also raised the issue of mental health deterioration due to long periods of time spent in asylum or reception centres, without any prospects for the future and without education.

It is urgent that Serbia takes immediate measures to strengthen its guardianship

system, notably by ensuring that every unaccompanied child has a guardian assigned to him/her promptly upon his/her identification and who effectively supports the unaccompanied child in all processes affecting him/her. The Council of Europe could provide useful expertise and assistance with capacity building projects to improve the guardianship system.

5. Migration policy beyond the phase of humanitarian assistance

Serbia has adopted a genuinely humanitarian approach, receiving thousands of refugees and migrants in the country. In contrast with some other European countries, Serbia has opted for freedom of movement of refugees and migrants in its territory and continues to make considerable efforts to provide shelter and food to everyone.

However, most of the migrants and refugees who are currently in Serbian territory have spent months, some more than a year, without any official legal status and without real possibilities of leaving the country. The Serbian authorities need to take into consideration the possibility that those currently stranded in Serbia might not be able to reach their European countries of destination and might not voluntarily, or otherwise, return to their countries of origin. Therefore, a strategy which looks beyond the emergency phase and goes further than the provision of humanitarian assistance to migrants and refugees is key. In this context, it is necessary to identify solutions regarding the legal situation of migrants and refugees present in the country and their access to social and economic rights during the time that they stay in Serbia in accordance with international standards. Particular attention should be given to the protection and development needs of unaccompanied children. The ongoing legislative reform of the law on asylum and foreigners provides a unique opportunity for developing such a strategy. It is necessary to ensure inter-ministerial and institutional co-ordination as well the participation of local and international NGOs in the preparation and implementation of this strategy.

IV. RÖSZKE AND TOMPA TRANSIT ZONES IN HUNGARY

1. Background of the visit

In 2015, Hungary faced an unprecedented number of arrivals of migrants and refugees, who entered the country primarily through its border with Serbia. While approximately 176 000 persons lodged asylum applications, the large majority left for other European countries, which resulted in the termination of their asylum proceedings in Hungary. In response to the new situation, several legislative amendments to the existing legal framework were enacted. By 15 September 2015 a border fence was constructed on the Hungarian-Serbian border and the transit zones of Röszke and Tompa became operational. A new accelerated asylum procedure and a new asylum procedure to be conducted at the border were introduced (see section 3.2. below). By the end of 2016, 29 432 asylum-seekers were registered in Hungary, which represents a considerable decrease in asylum applications compared to 2015.

In March 2017, new amendments to the legal framework, including to the Act on Child Protection and Guardianship Administration, the Act on the Admission and Right of Residence of Third-Country Nationals, the Act on Asylum and the Act on the State Border, were enacted. The amendments to the Act on Asylum apply during a “State of Crisis Caused by Mass Immigration” which can be declared by government decree. Under these legislative changes, the mandatory place of stay of asylum applicants shall be in designated areas of a transit zone, for the entire time of the processing of and decision-making on their asylum applications, including the time of enforcement of a transfer decision through the Dublin process. Applicants are free to leave the transit zones via the exit gate.[20] These provisions do not apply to unaccompanied children under 14 years of age and vulnerable persons, who should be placed in protection institutions elsewhere on the territory of Hungary (see also section 4 below).

In view of concerns expressed by the Council of Europe Commissioner for Human Rights as well as international organisations and NGOs regarding the conformity of Hungary’s legislative framework on refugees and asylum-seekers with international human rights standards, I had a meeting in Strasbourg with high level officials from the Hungarian Ministry of Justice in May 2017. Following this meeting, the Hungarian authorities invited me to visit the transit zones of Röszke and Tompa.[21] My report does not aim at painting a full picture of the situation of migrants and refugees in Hungary; its findings are limited to the two transit zones in question.

2. Reception

2.1 Admission into the transit zones

Röszke and Tompa transit zones are located on Hungarian territory, a few metres away from the official border line with Serbia. On the side of the border line, the transit zones were bounded by a row of containers with rolls of razor blade wire on their roofs. The three other sides of the transit zones were surrounded by a high barbed wire fence. A similar fence extends parallel to the border between Hungary and Serbia, located a few metres inside Hungarian territory.

Migrants and refugees are admitted into the Röszke transit zone from Serbian territory through a locked rotating gate located on the rear of the first container. An information notice about the possibility to seek asylum and the asylum procedure was posted on this gate. The procedure was set out in English and other languages spoken by migrants and refugees, including Farsi and Pashto. Another rotating gate is located at the other end of the transit zone, which was used to let migrants and refugees exit the transit zone and enter into Serbian territory.[22]

Ten persons are admitted in the transit zones each day (five in each transit zone). Refugees and migrants coming from Iraq, Syria or other Arabic-speaking countries are admitted in Tompa; those from Afghanistan, Pakistan and Iran are admitted in Röszke. Families with children are accommodated in both transit zones. Independently of where they come from children between 14 and 18 years old are accommodated in Röszke, whereas single men are accommodated in Tompa only.

The Hungarian authorities explained to us that the entry quotas were set in order to maintain control of the situation at the Hungarian-Serbian border, which in the past had deteriorated to the extent that between 800 and 1000 people were waiting in dire conditions in front of the transit zones every day. At the time of our visit, there were about ten persons camping every day on Serbian territory, waiting to enter the transit zones (see also section III.1.2. above on the waiting list to enter Hungary).[23] The Hungarian authorities explained to us that they provide one-day worth of food and water to these people. However, they do not play any role in the drawing up of the above-mentioned list and that there was no official communication with the Serbian authorities on it.

Upon entry in the transit zones, migrants and refugees are searched for any tools capable of causing harm; we were informed that they can keep their belongings. Their biometric data, including their fingerprints are registered and pictures are taken. The databases of competent law enforcement authorities are searched to find out whether there are international arrest warrants for the person. We were informed that these control procedures do not last more than one hour, after which the Immigration Asylum Office takes over the process. Only persons who seek asylum in Hungary are admitted in the transit zones. There is a search in the Eurodac database to find out whether an application for asylum has been lodged in another EU country. In the container where the personal search takes place my delegation was shown a notice with information about legal aid, which is provided by the lawyers of local bar associations upon the request of the migrant. Afterwards, all those admitted are escorted by the guards in different sections of the transit zones.

Faced with restrictive practices of admission into the Hungarian transit zones, those who intend to apply for asylum in Hungary often seek and pursue illegal ways of crossing the border, having to resort to smugglers and traffickers with all the risks that this entails. A higher number of daily admissions to Hungary could result in fewer irregular border crossings of migrants and refugees and could help combating smuggling. At the very minimum, this could correspond to the number required to make the accommodation facilities within the transit zones reach full capacity (see section 2.2. below). However, as explained below, the systematic deprivation of liberty of asylum-seekers and the conditions in the transit zones raise human rights issues. The Council of Europe can assist the Hungarian authorities in devising a system of daily admissions of asylum-seekers that would safeguard the essence of the right to seek asylum in Hungary, while ensuring respect for these individuals' right not to be subjected to unjustified deprivation of liberty or unacceptable living conditions. This could also help create an environment that would be less favourable for smuggling networks.

2.2 Conditions

Röszke has a capacity of 500 people. At the time of the visit, 221 asylum-seekers were there, among whom 134 were children, including 24 unaccompanied children. Only families with children and unaccompanied children between 14 and 18 years old are accommodated in this transit zone. We visited two family sections (15 families were accommodated in one of the sections) and two sections where

unaccompanied children were accommodated. These were both rectangular shaped, with containers placed adjacent to each other on three sides and a barbed wire fence on the fourth side. There was a door on the wire fence which was locked and guarded by personnel of the transit zones at all times. There was razor blade wire on the roofs of the containers. In each section there was a small common courtyard, with a small playground for children. The persons who stayed in the section could get out only to visit the doctor or to have their interviews with the asylum authorities. Whenever they had to move outside the section, they were escorted by the guards of the transit zone. We were informed by the authorities that the guards are not equipped with weapons but only handcuffs.

Tompa's capacity is 250 people. At the time of our visit there were 185 asylum-seekers, among whom 87 were children. Single men and families with children were accommodated in separate sections in Tompa. The design of the family sections was the same as in Röske. The section for single men was composed of one row of containers placed adjacent to each other which shared a corridor, approximately 2 metres wide. The individuals within this section could move from one container to another and within its common corridor. People could get out of the family sections or the one for single men only to see a doctor or to have their interviews with the asylum authorities; in both cases they were escorted by the guards of the transit zone.

All accommodation containers measured around 13m² and hosted up to 5 persons.[24] They all had access to natural light. As mentioned before, there are rolls of barbed wire on top of all containers in both transit zones. All containers were equipped with adequate bedding. The state of cleanliness and the hygienic conditions were good. However, the accommodation containers were directly exposed to the atmospheric conditions in both hot and cold weather; at the time of our visit there were several complaints by asylum-seekers about unbearable heat inside the containers.

There were no cooking facilities for families in either Röske or Tompa. The food was distributed by social workers three times per day in plastic bags. One hot meal per day was provided to asylum-seekers, including fruit, while two snacks and extra fruit were offered to children. Some unaccompanied children with whom we met complained that the food they received was not sufficient. We saw the Hungarian Charity Council providing food supplies in the transit zones. We were informed that in one particular case, an Iranian father, who was considered by the authorities to be a repeat asylum-seeker, was kept in isolation in one container, separated from the rest of his family, without being provided with food.

Both transit zones had a doctor's room located in a separate container, where asylum-seekers receive basic medical care. In the family sections, in addition to a small playground, there was a container where children could play with each other and engage in some basic leisure activities, such as drawing. However, there are no educational programmes, language learning programmes or curricula adapted to the particular needs and age of children in either transit zone and children cannot attend local schools.

In the first and second quarters of 2017, the Hungarian Helsinki Committee submitted a series of requests for interim measures to the European Court of Human Rights to stop the placement of asylum-seekers in the transit zones of Röszke and Tompa or to release asylum-seekers from these transit zones. The Hungarian authorities complied with the measures indicated by the Court in two cases that concerned the transfer of asylum-seekers to the two transit zones. The first such case concerned the transfer of eight unaccompanied asylum-seeking children between 14 and 18 years from a specially designated home for children.[25] The second concerned the transfer of a traumatised woman with advanced high-risk pregnancy.[26] The authorities' reaction was, however, different in the cases that concerned asylum-seekers who were already being kept in the transit zones. These cases involved four asylum-seeking families with children. The Court indicated that the Hungarian government should place the asylum-seekers in an environment which did not breach Article 3 of the ECHR, taking into account the fact that the families in question were composed, inter alia, of pregnant women, children and a newborn baby.[27] When I asked about the measures taken to comply with these interim measures, I was informed that the Hungarian authorities regarded the conditions in the transit zones to be in compliance with the requirements of Article 3.

Interpretation in English, German, French, Farsi, Pashto and Arabic is provided at all stages of the asylum procedure. If asylum-seekers request a lawyer, the Hungarian authorities appoint one from the local bar association. Asylum-seekers are also free to contact the Hungarian Helsinki Committee, which provides legal assistance to them. At the time of my visit the UNHCR and the Hungarian Helsinki Committee had access to both Röszke and Tompa every day. In our discussions with the latter NGO, we were informed that for a period of three months its lawyers would not have access to the transit zones; as a result, they were not able to assist asylum-seekers in their asylum procedures. Although this situation had changed at the time of our visit, the Hungarian Helsinki Committee encounters obstacles occasionally. One of its lawyers reported that his meeting with a client in Tompa had been interrupted without any explanation or justification. The Hungarian authorities explained to us that in order to ensure co-ordination and complementarity in the assistance provided by NGOs the number of charities permitted to offer their services in the transit zones had been limited to six.

2.3 The mandatory stay of asylum-seekers in transit zones

At the time of our visit the Hungarian Government had declared a state of crisis caused by mass immigration under the Act on Asylum (see section IV.1 above). Consequently, all asylum-seekers who entered the transit zones in Röszke and Tompa had to stay in designated areas therein, pending the examination of their asylum applications (also on appeal). The Hungarian authorities informed us that the average duration of a stay in the transit zones is 33 days. In our discussions with asylum-seeking families in Röszke we were told that the duration of their stay ranged from one to three months. A 17 and a half year-old Afghani child, who was unaccompanied, told us that he had been there for 69 days without having received

information about the decision on his asylum application.[28] In Tompa, families from Syria and Iraq reported extended periods of stay in the transit zone (up to 50 and 60 days after the time of their appeals against negative decisions on their asylum applications). They also reported cases of other families who had been kept in the transit zone for up to seven months in total.

The Hungarian authorities do not consider that the mandatory stay of asylum-seekers in designated areas within the transit zones qualifies as deprivation of liberty.[29] It was pointed out to me that asylum-seekers enter the transit zones on a voluntary basis and that they are free to leave these facilities to go to Serbia any time they wish, in which case their asylum procedures would be discontinued. Therefore, no detention order is issued by the Hungarian authorities.

The confinement of asylum-seekers in the Röszke and Tompa transit zones raises questions about *de facto* deprivation of their liberty. In the light of case-law of the European Court of Human Rights, holding aliens in border zones involves a restriction on their liberty, which can be justified under Article 5§1 of the ECHR if it is accompanied by safeguards for the persons concerned and if it is not prolonged excessively. Otherwise a mere restriction on liberty can turn into deprivation of liberty under Article 5 of the ECHR.[30] The mere fact that it may be possible for aliens to leave a border zone voluntarily to go to another country cannot rule out an infringement of their right to liberty.[31] The difference between deprivation of liberty within the meaning of Article 5§1 of the ECHR and a restriction upon liberty is one of degree or intensity, and not of nature or substance.[32] In this respect, several objective elements of the mandatory stay of asylum-seekers in the transit zones should be noted: its duration from several days up to two months without the possibility of entering the territory of Hungary beyond the transit zones; the confinement of asylum-seekers in particular restricted spaces within the transit zones (i.e. they are held in specifically designated areas of the transit zones and cannot move freely in the transit zones); the fact that asylum-seekers are supervised and escorted by guards whenever they have to move outside their designated areas; the fact that asylum-seekers have no contacts with persons outside the transit zones, with the exception of their lawyers (even these contacts in certain cases have been problematic) and, lastly, the fact that containers have rolls of razor blade wires on their tops and the transit zones are surrounded by a barbed wire fence (thereby bearing a strong resemblance to places of detention).[33]

In addition to objective elements, the notion of deprivation of liberty within the meaning of Article 5 § 1 of the ECHR, contains a subjective element in that the person has not validly consented to the confinement in question.[34] All asylum-seekers to whom we spoke in Röszke and Tompa, especially families, expressed the feeling that they and their children are in a prison and asked me when they would be able to get out of these facilities. It is hard to imagine how asylum-seekers could have consciously consented to stay in these transit zones, or would choose to voluntarily leave them knowing that they would thereby forfeit their right to seek asylum in Hungary.[35]

Many issues have been identified above regarding compliance with the ECHR. The

situation of confinement of children within designated areas in the transit zones should be addressed as a matter of urgency based on the principle that the best interest of the child should be the primary consideration and that every effort should be made to avoid resorting to the deprivation of liberty of migrant and refugee children on the sole ground of their migration status. The Council of Europe could offer its expertise to the Hungarian authorities in order to bring the Hungarian legislative framework on asylum in line with the requirements of the ECHR and principles established in the case-law of the European Court of Human Rights.

3. Asylum procedures

3.1 Access issues

Due to the quotas restricting admission into Röszke and Tompa, many migrants and refugees try to enter Hungary illegally (see section III.2 above). However, during a state of crisis caused by mass migration declared by the government, asylum applications can only be submitted in the transit zones. Migrants and refugees who have crossed into Hungary illegally and who are apprehended are rarely taken to these zones. During our visit in Serbia, notably in the reception centres of Sombor and Obrenovac, we met several persons, including unaccompanied children, who alleged that they had been apprehended by Hungarian police within Hungarian territory and, thereafter, returned to Serbia without passing through the transit zones. They alleged that violence had been used against them by the police; and they had been beaten or attacked with dogs. Generally speaking, they did not provide details as to whether they had somehow indicated that they wanted to seek asylum in Hungary. It is, however, questionable whether one could reasonably be expected to indicate in these circumstances that he/she wishes to apply for asylum. In one case, a 17-year-old boy alleged that he had applied for asylum in the transit zone in Röszke. His application had been rejected. He also alleged that he had been threatened by the Hungarian authorities so as not to challenge the decision rejecting his asylum claim.

While it is true that, generally speaking, the objective of migrants and refugees who entered Hungary illegally is only to transit through Hungary towards their countries of destination, it is clear that, in practice, they do not have a real opportunity to express their intention to seek asylum in Hungarian territory and to access the asylum procedure. Pushbacks of refugees and migrants under these circumstances raise concerns under Articles 2 and 3 of the ECHR which prohibit the return of an individual to the country of origin or a third country where he/she would face a real risk of treatment in breach of these articles of the Convention. Asylum-seekers should be given access to asylum procedure in full respect of the principle of *non-refoulement*. They must be protected from exposure to a real risk of being subjected to inhuman or degrading treatment, including such risks that result from chain *refoulement*. Also, the allegations of ill-treatment raise questions with regard to Article 3 of the ECHR and should promptly and effectively be investigated.

3.2 First instance decision

During a state of crisis caused by mass immigration, applications for asylum may

only be submitted in person to the Immigration Asylum Office and exclusively in a transit zone.[36] As mentioned above, the mandatory place of stay for asylum-seekers is in designated areas within the transit zones for the entire duration of the asylum procedure, including appeals. An asylum-seeker cannot enter into the rest of the territory of Hungary unless he or she is “a person who requires special treatment” such as an unaccompanied child up to 14 years old, sick or elderly people. These asylum-seekers are granted access to the rest of the territory of Hungary and their asylum applications are processed there.

As already mentioned above (see section IV.2.1), an information notice on the asylum procedures is posted at the entrance of the transit zones. The authorities have also informed us that every person entering the transit zones receives a leaflet which explains the asylum procedure; this is available in English and in the languages usually spoken by asylum-seekers, including Farsi, Pashto and Arabic. Interpretation, including in Farsi, Pashto and Arabic, is provided during the interview of the asylum-seekers by the Immigration Asylum Office. If an asylum-seeker does not speak English or any of these languages the authorities make the necessary interpretation arrangements. During the interview and the entire asylum procedure, asylum-seekers can be assisted by a lawyer who is appointed by the Hungarian authorities or a lawyer of the Hungarian Helsinki Committee, if the asylum-seeker requests such assistance.

A decision declaring an asylum application inadmissible is made by the Immigration Asylum Office within 15 days from the date when the reasons giving rise to inadmissibility are established. Such a decision would be made, *inter alia*, when there is a third country qualifying as a safe third country for the applicant. The list of safe third countries is established by government decree.

Where the Immigration Asylum Office authority has not found the asylum application to be inadmissible, it may apply either the accelerated asylum procedure or the standard procedure. The accelerated procedure is applied, *inter alia*, when the applicant has only disclosed irrelevant information, has misled the authorities by providing false information, has destroyed in bad faith his/her identity documents or when he/she originates from a country listed as safe by either the EU or Hungary. When I asked about the application of rules on safe countries of origin or safe third countries, the authorities explained to me that these are not applied automatically. For example, asylum-seekers are not returned to Serbia automatically although Serbia is considered to be a safe third country according to the applicable rules. Instead an individual assessment of each case is carried out. If the rules on a safe country of origin or safe third country are considered applicable, the asylum-seeker is informed of this by the Immigration Asylum Office. The asylum-seeker can declare within three days why, in his/her individual case, the country concerned does not qualify as a safe country of origin or safe third country. Under the accelerated procedure, the Immigration Asylum Office must issue a decision on the asylum application within 15 days of the date when the reasons giving rise to the application of the accelerated procedure are established.[37]

Both the inadmissibility and the accelerated procedure, which are conducted in the

transit zones in Rösztke and Tompa raise concerns about the absence of adequate safeguards to protect asylum-seekers against *refoulement* to countries where they run the risk of being subjected to treatment contrary to Articles 2 and 3 of the ECHR. I note in particular the very short time periods for making the first instance decision on the admissibility of an asylum application or for making a first instance decision on its merits under the accelerated procedure, which raise questions as to whether a proper individualised assessment of the risk of a breach of Articles 2 and 3 of the ECHR is carried out, especially in cases which might involve chain *refoulement*.^[38]

The list of safe third countries includes countries which are not considered as capable of ensuring respect for the human rights of asylum-seekers in compliance with the ECHR.^[39] I also note the short time at the disposal of an asylum-seeker to rebut the presumption that the country that is considered by the authorities as safe would not qualify as a safe country of origin or a safe third country in his/her individual case. This may be particularly problematic when the asylum-seeker would have to prove that there is a real and concrete risk of treatment in breach of Articles 2 or 3 of the ECHR resulting from chain *refoulement*. In principle, it is for the asylum-seeker to substantiate his/her claim for asylum with reasons and evidence for such a risk. However, when an asylum claim is based on a well-known general risk of treatment in breach of Articles 2 or 3, on which there is information from a wide number of sources, it is incumbent upon the competent authorities to carry out an assessment of that risk on their own motion.^[40]

3.3 Judicial review

An asylum seeker may request a judicial review of a decision of the Immigration Asylum Office declaring his/her application inadmissible or rejecting it under the accelerated procedure within three days of its communication; the court must decide within eight days. An Immigration Asylum Office decision under the standard procedure can be appealed to a court within eight days; the court must decide within 60 days.

The court decision may be made by a judge or an assistant judge (clerk to the court); the latter has the legal status of a judicial officer and can act as a single judge in cases specified by law. Interviews with the asylum seeker may be conducted in person in the transit zone^[41] or by means of a communication network. During the visit, I was informed by the Hungarian authorities that that they were planning to hold interviews with the help of voice and video transmission technologies.

A request to review a decision of the Immigration Asylum Office on the inadmissibility of an application or a rejection decision under the accelerated procedure has no suspensive effect on the enforcement of the decision.^[42] Moreover, the court can only consider the facts and the legal aspects of the case as they existed at the time of the decision by the Immigration Asylum Office. In other words new facts and evidence cannot be submitted in the court proceedings. The court will hear an asylum-seeker in person only if it considers this necessary. The

court cannot substitute its own decision for that of the asylum authority. Instead, the court can only annul administrative decisions found to be against the law and then order the Immigration Asylum Office to conduct a new procedure. There is no further remedy against a court's decision rejecting a request for review of a decision by the Immigration Asylum Office; this concludes the procedure.

After the court decision rejecting the appeal, the procedure of expulsion of the person concerned is set in motion. Pending deportation, the person concerned stays either in the transit zone or in an open centre for the reception of aliens in the territory of Hungary or in a detention centre for aliens, depending on the circumstances of the case. The authorities informed us that, in any case, they do not send asylum-seekers back to Greece for reasons of solidarity with this country, which hosts a large number of refugees.

Overall, the effectiveness of the mechanism for the judicial review of Immigration Asylum Office decisions declaring asylum applications inadmissible, or rejecting them under the accelerated procedure, is highly questionable. This raises concerns in respect of the right to an effective remedy under Article 13 of the ECHR (in conjunction with the relevant provisions guaranteeing substantive rights). I note in particular the short deadlines for lodging an application for judicial review, the lack of automatic suspensive effect of the judicial review application on the enforcement of the first instance decision, the absence of an obligation for the court to hear the applicant in person, the fact that final decisions may be taken by an assistant judge, the impossibility for the asylum-seeker to present new facts or evidence before the court, the absence of any further legal remedies against a decision by the court concluding the asylum procedure^[43] and, finally, the problems reported by NGOs providing legal assistance to asylum-seekers, such as the Hungarian Helsinki Committee, regarding their access to transit zones prior to my visit.

It is clear that changes are needed to bring the Hungarian legislation and practice in line with the requirements of the ECHR. Should the Hungarian authorities decide to engage in such reform, the Council of Europe is best placed to assist them by providing expert advice on the basis of the ECHR and the case-law of the European Court of Human Rights.

4. Unaccompanied children

4.1 Guardianship

During a state of crisis caused by mass immigration unaccompanied children below 14 years old are accommodated outside of transit zones in institutions specialised for the protection of children. The asylum authority makes arrangements for their temporary placement and, at the same time, contacts the guardianship authority. A child protection guardian should be appointed within eight days of the receipt of a request by the Immigration Asylum Office. Unaccompanied children between 14 and 18 years old are accommodated in one of the transit zones. At the time of the visit, there were 24 unaccompanied children in Rösztke, who were accommodated in separate sections of the transit zone.[44]

The amendments to the Act XXXI of 1997 on Child Protection and Guardianship Administration provide that unaccompanied asylum-seeking children over 14 but under 18 years of age are exempted from the scope of application of this act during a state of crisis caused by mass migration. This means that they are considered to have full legal capacity and, therefore, are not assigned guardians. The Hungarian authorities explained to us that, nevertheless, unaccompanied children benefit to a certain extent from the child protection scheme. A social worker from the local office is appointed to children between 14 and 18 years old. The social workers are present in the transit zone during proceedings relating to asylum applications submitted by children. The children in Rösztke, to whom we spoke, explained to me that social workers had been present during their interviews with the Immigration Asylum Office, and that they had also been assisted by a lawyer of the Hungarian Helsinki Committee. However, their interactions with social workers beyond asylum proceedings had been very limited; the only contacts established outside these proceedings are those during the time of distribution of their daily meals.

This raises questions as to whether the system in place adequately addresses the protection and development needs of unaccompanied children throughout the period of time during which they stay in the transit zones, in accordance with their age, their particular needs given their vulnerability or, more broadly, their well-being. The Council of Europe can provide assistance in developing a guardianship system that ensures compliance with the principle that the best interest of the child is the primary consideration.

4.2 Age assessment

The identification of asylum-seekers who are under 18 years old presents objective difficulties as many of the asylum-seekers in the transit zones are teenagers who do not possess any identification documents. Consequently, it is not always easy to ascertain their age. Whenever there is a doubt about the age of the person, a forensic medical expert from the local health institution is called upon to conduct an age assessment procedure. This will usually consist in medical examinations, including an X-ray examination of the wrist, collar bone or pelvis. Usually, there is no individualised psychosocial and culturally-sensitive assessment. If individuals

considered to be adults insist that they are children, a second age determination procedure can take place, including by means of medical examinations in the local hospitals. The person concerned does not have to bear the costs of the second medical examination. However, it is not clear how long this procedure lasts. Therefore, this might have an impact on the accommodation of a potential child with adults in the transit zones. The Council of Europe can assist with its expertise in developing an interdisciplinary and child-friendly approach to age-assessment of unaccompanied children.

4.3 Education

Asylum-seeking children under the age of 16 are entitled and obliged to attend school; primary or secondary school is mandatory for all children until the age of 16 in Hungary, regardless of their immigration status. The legislative amendments enacted in 2017, which apply when a state of crisis caused by mass immigration has been declared, do not specifically provide for any derogations from these rules. During the visit we were informed by the Hungarian authorities that, since the school year had already finished, only after-school activities were provided in the transit zones. We were also informed that the Ministry of Education had the competence to develop curricula for children present in the transit zones.

Unaccompanied children in Röszke could not attend local schools and there were no educational programmes carried out in the transit zone. A container located in the section where unaccompanied children were accommodated served as leisure space, where children could watch television, play some basic games (some of which were clearly for a younger age and not suitable for children over 14 years old) or socialise. The situation might be due to the fact that the stay of unaccompanied children in transit zones is intended to be for a short period of time. However, as mentioned before, in practice their stay in the transit zones can be of considerable duration (perhaps more than two months). It should also be taken into account that these children have been travelling from their countries of origin for several months, sometimes even years, before arriving in the transit zones. During this time, they have usually not attended school; nor have they had access to educational programmes. Hence, the fact that unaccompanied children do not receive education in the transit zones aggravates an already problematic situation.

V. CONCLUSIONS

Serbia is faced with the challenge of a high number of migrants and refugees, whose original intention was to reach other European countries, now being stranded on its territory for extended periods of time. Exemplary efforts have been made by the Serbian authorities to provide accommodation, food and other forms of support, as well as to allow freedom of movement for all migrants and refugees. As their prospects of reaching their countries of destination in Europe continue to shrink, a strategic approach is needed to address issues related to their legal and administrative status and to identify sustainable solutions in order to guarantee their social and economic rights in the case of an eventual prolongation of their stay in

the country.

The massive arrivals of migrants and refugees in Hungary during 2015 and 2016 created enormous challenges for the country. However, several measures taken to respond to the situation raise serious concerns about the protection of human rights and fundamental freedoms of migrants and refugees.

My report does not aim to paint a full picture of the situation of migrants and refugees in Serbia and Hungary, nor does it aim to provide a full analysis of all relevant policy considerations in the two countries. [45] Its purpose is to identify some issues in respect of which the Council of Europe can provide meaningful assistance to these two member states, upon their request, in order to ensure that both countries can address the challenges of migratory flows whilst respecting their obligations under the Organisation's standards and human-rights protection mechanisms. Against this background,

I recommend that we:

- assist the Serbian authorities with their ongoing reform of the legislation on asylum and foreigners. In particular, we can provide the Council of Europe's expertise and advice in creating a legal status for every category of foreigners present in Serbia, which would be in compliance with the ECHR and in ensuring the enjoyment by all migrants of social rights, according to all relevant international human-rights standards;
- encourage and support the Serbian authorities in strengthening the capacity of the Asylum Office, through human-rights training under the European Programme for Human Rights Education for Legal Professionals (HELP) and facilitating exchanges of good-practices in relation to the registration of asylum-seekers and the processing of their applications, with a view to ensuring that the right to seek asylum is guaranteed and that all asylum and immigration decisions are made in full compliance with the ECHR, including its Articles 2, 3 and 13 and Article 4 of Protocol No.4;
- support the border police authorities in Serbia and its neighbouring countries with training on how to meet their obligation to provide asylum-seekers with access to asylum procedures in full respect of the principle of non-*refoulement* and provide Council of Europe expert advice in building or strengthening complaints mechanisms on allegations of human rights violations;
- provide examples of good practices and offer training to Serbian authorities and NGOs with a view to ensuring a more effective dialogue, reinforcing and maximising the impact of their activities as well as achieving a better co-ordination of activities among NGOs;
- support the Serbian authorities in taking action to ensure transparency and to prevent corruption in the context of handling the refugee and migration flow, in particular as regards the waiting list for admission into Hungary, also bearing in mind that GRECO's 5th evaluation round will cover agencies responsible for border control. In this context, encourage the Serbian authorities and the Hungarian

- authorities to improve their communication on this issue and, if appropriate, to co-operate with each other in order to regularise their practices and to ensure that these have no collateral effects on the human rights of migrants and refugees;
- support the Serbian authorities in taking further measures to prevent and combat trafficking of migrants and refugees, in particular by providing expertise on how to ensure adequate monitoring and supervision of the reception centres where they are accommodated. Support training of staff in these centres to recognise signs of human trafficking amongst migrants and refugees and to facilitate victims' access to assistance provision. Provide assistance to the Serbian authorities through the transfer of know-how and exchange of best practices so that they can raise awareness among migrants and refugees about the risk of trafficking in human beings.
 - assist law-enforcement authorities in Serbia in developing long-term strategies to prevent and combat smuggling of migrants and refugees, in particular by facilitating meetings with technical experts and law enforcement authorities from other countries, including source, transit and destination countries in order to exchange expertise and experiences, develop strategies and set common priorities to combat smuggling. Support Serbian border police officials with a view to enhancing their expertise in detecting smuggling networks or individuals and distinguishing victims from offenders. Provide assistance in developing educational and awareness-raising material for the benefit of the migrant and refugee population;
 - explore ways to further assist the Serbian authorities, through the Migrant and Refugee Fund of the Council of Europe Development Bank, in financing migrant and refugee-related infrastructure projects, including additional capacity to accommodate migrants and refugees in appropriate conditions. Subject to availability of funds assist the Serbian authorities in taking immediate measures to ensure the separate accommodation, in appropriate conditions, of unaccompanied children and families with children;
 - support the Serbian authorities in taking additional measures to prevent sexual abuse and sexual exploitation of children, in particular unaccompanied children, as well as to protect child victims and to prosecute perpetrators, *inter alia*, through supporting training programmes for the staff managing reception centres and law enforcement authorities to ensure that children are able to report violence, including sexual violence, and that child victims receive the necessary support;
 - support the Serbian authorities, through expertise and capacity-building programmes, in strengthening the protection system for unaccompanied children, notably by developing a sustainable guardianship system;
 - call on the competent Serbian authorities to ensure compulsory education for every child in asylum and reception centres, in accordance with Serbian legislation. In this connection, provide the Serbian authorities with expertise and best practices on how to adapt the Serbian school curricula to address the needs of refugee and migrant children, to provide linguistic support to children entering the education

system and to develop incentives and mechanisms for enhancing school attendance;

- support the Serbian authorities in developing effective policies on linguistic support for adult migrants, in line with Council of Europe standards, while making full use of Council of Europe resources, such as the Guide to Policy Development and Implementation on the Linguistic Integration of Adult Migrants and the Self-Assessment Handbook for Providers of Courses for Adult Migrants;
- support the Serbian authorities in developing sustainable and comprehensive integration policies, through facilitating the sharing of know-how and good practices based on the relevant expertise of the Organisation's key monitoring mechanisms, including the European Commission against Racism and Intolerance, and other programmes, such as the Intercultural Cities network.

In respect of Hungary, I recommend that we:

- call on the Hungarian authorities to take the necessary measures, including by reviewing the relevant legislative framework and changing relevant practices, to ensure that all foreign nationals arriving at the border or who are in the Hungarian territory are not deterred from making an application for international protection due to practices such as allowing only a limited number of people into the transit zones but, instead, have effective access to asylum procedures with proper safeguards against the risks of *refoulement* and chain *refoulement*;
- call on the Hungarian authorities to ensure compliance with Articles 3, 5 and 13 of the ECHR in the fields covered by this report;
- call on the Hungarian authorities to make every effort to ensure that no migrant child is deprived of his/her liberty on the sole ground of his/her migration status and progressively to consider developing and implementing alternative measures to immigration detention;
- support the Hungarian authorities in addressing all the above-mentioned issues, in particular by providing Council of Europe advice and expertise in eventual legislative changes, as well as by assisting the asylum and law enforcement authorities with training on human-rights standards, in order to ensure compliance with the country's obligations under the ECHR;
- call on the Hungarian authorities to take the necessary steps, including steps of a legislative nature, to ensure an efficient guardianship system for all unaccompanied children, including those between 14 and 18 years old, and support the Hungarian authorities by offering technical expertise to put in place such guardianship system for unaccompanied asylum-seeking children;
- in view of the necessity to ensure access to compulsory education for every child present in transit zones in accordance with Hungarian legislation, support the authorities with best practices and expertise on how to provide educational programmes adapted to the age and needs of refugee and migrant children.

Appendix

Monday, 12 June 2017

10:00-11:30	Visit of Adaševci Temporary Reception Centre,
11:30-12:15	Meeting with Mr Vladimir Cucić, Commissioner for Refugees of the Republic of Serbia
12:35-13:00	Meeting with migrants and refugees in Šid
13:20-14:30	Visit of Principovac Temporary Reception Centre
16:30-18:30	Visit of Refugee Aid Hub Miksalište, Belgrade

Tuesday, 13 June

08:30-9:00	Working breakfast with UNHCR, EU Delegation to Serbia, IOM, UNICEF, WHO
9:00-11:30	Meeting with NGOs
11:45-12:15	Meeting with Mr Milos Jankovic, Acting Ombudsperson
12:30-13:15	Meeting with Ms Vesna Knjeginjic, Assistant Minister, Ministry of Health
14:00-17:00	Visit of Krnjača Asylum Centre
20:00-22:00	Meeting with UNHCR and Hungarian Helsinki Committee in Szeged, Hungary

Wednesday, 14 June

08:30-10:00	Meeting with Dr József Seres, Regional Director of the Immigration and Asylum Office and Dr. Róbert Mátó, Director of the Röszke and Tompa transit zones
10:00- 11:20:00	Visit of Röszke transit zone
12:00-14:00	Visit of Tompa transit zone
15:00-17:00	Visit of Subotica Temporary Reception Centre
17:00- 20:00	Visit of Sombor Temporary Reception Centre

Thursday, 15 June

08:30-09:00	Meeting with Mr Siniša Mali, Mayor of Belgrade
10:15-13:00	Visit of Bogovađa Asylum Centre
14:50-18:30	Visit of Obrenovac Temporary Reception Centre

Friday, 16 June

09:00-09:45	Meeting with Ms Anamarija Vicek, State Secretary, Ministry of Education, Science and Technological Development
10:00-11:30	Meeting with Mr Nebojsa Stefanovic, Minister of Interior and representatives of the Asylum Office and Asylum Commission
11:30-12:00	Meeting with Mr Nenad Ivanisevic, State Secretary, Ministry of Labour, Employment, Veteran and Social Policy

[1] The term refers to the itinerary followed by many refugees and migrants trying to reach Western and Northern Europe from Turkey, via the Balkans.

[2] Belgrade Center for Human Rights, the Danish Refugee Council, Save the Children, Médecins du Monde, CARE, Refugee Aid Hub Miksaliste, the Red Cross of Serbia, the Center of Youth Integration, the Asylum Info Centre, Group 484, Novi Sad Humanitarian Center, Humanitarian Center for Integration and Tolerance (HCIT), SOS Dečija Sela, Atika, Adra Serbia, Astra, Anti-Trafficking Action, Intersos, Praxis and the Asylum Protection Centre.

[3] The programme of the fact-finding mission appears in the Appendix.

[4] According to the Law on Asylum, a foreigner shall be obliged to report to an asylum centre, within 72 hours from the time of the issuing of his/her certificate of expression of intention to seek asylum. Some NGOs have reported cases of foreigners' not being re-issued with a certificate of expression of intention to seek asylum (although they expressed an intention to do so); these cases concern foreigners who failed to present themselves at an asylum centre, within 72 hours following the issuing of the original certificate, or who returned to Serbia having gone to one of its neighbouring countries following the issuing of the original certificate.

[5] During this period of time, no asylum-seeker was granted refugee status or international protection. By February 2017, of the total number of 12 821 persons who had expressed an intention to seek asylum in Serbia, only 574 persons had lodged an asylum application, of whom 41 were granted refugee status or international protection.

[6] At present, only 100 migrants availed themselves of the opportunity offered by the IOM to be voluntarily returned to their countries of origin.

[7] On issues related to the right to education see section III.3.2.2. (d) below.

[8] In Šid, we also met with a Tunisian man who reported that he had been beaten by Serbian police officers when he tried, in one of his several attempts, to cross the border to Croatia. The Serbian police had served him with a decision in Serbian language which stated that his residence permit had been withdrawn.

[9] We were informed that the migrants and refugees who had been living in makeshift camps in Belgrade at the end of 2016 and beginning of 2017 had been subjected to dire and inhuman conditions, especially in January 2017 when temperatures had dropped to -20°C.

[10] The Asylum Law provides that "[p]ending the adoption of the final decision on asylum applications, asylum-seekers shall be provided with accommodation and basic living conditions at the Asylum Centre [...].

[11] However, the situation may change as migrants and refugees continue staying in Serbia for extended periods of time. When leaving the reception centre in Sombor, we noticed a small gathering of local residents. We were told afterwards that there had been a demonstration concerning an incident involving a person staying in the centre and a member of the local community.

[12] The reception centre in Preševo is the only reception centre that is managed jointly by the Ministry of Labour, Employment, Veteran and Social Affairs and the Commissariat for Refugees and Migration.

[13] See, for example, *M.S.S. v. Belgium and Greece*, (application No. 30696/09), 21 January 2011 and *Tarakhel v. Switzerland*, application No. 29217/12, 4 November 2014.

[14] Immunisation of children is obligatory before their enrolment in Serbian schools.

[15] In Principovac there was a tailor's workshop and a carpenter's workshop.

[16] The concentration of a high number of migrants at the train station in Belgrade city at the end of 2016 and

beginning of 2017 was also attributed to the fact that, at this particular site, it was easier to connect with smugglers.

[17] In Miksalište specialised staff identified vulnerable children and carried interviews to assess their best interest. Other services included providing information to unaccompanied children about the possibility of being accommodated in reception centres, registration with police authorities, registration of new-born babies and protection from smugglers and human trafficking.

[18] These could be officers of UNHCR, the Red Cross or specialists employed by Centres of Social Work. The preliminary assessment may take place at border crossing points, at the reception centre or in whatever other place children may be found. In case of uncertainty about the children's age during the preliminary assessment, there can be referrals to medical care, to a social worker or to a civil society organisation specialised in working with children.

[19] While 1 000 unaccompanied children were identified in 2016, a best interest assessment was conducted in only 197 cases.

[20] This means that applicants may leave the transit zones to go to Serbia.

[21] A delegation of the Lanzarote Committee visited Hungary from 5 to 7 July 2017 to assess the situation of children in the transit zones of Röszke and Tompa.

[22] During our visit in Tompa we concentrated on aspects other than the facilities for entering into and exiting from the transit zone.

[23] The fact that the number of persons waiting outside the transit zones is equal to that of the daily admissions into the transit zones shows that the migration flow is effectively managed by means of the above-mentioned waiting list.

[24] Families were placed in one or more containers depending on the number of family members.

[25] *Hersi Muhyadin and others v. Hungary*, application No. 22934/17.

[26] *Nalubega v. Hungary*, application No. 23321/17.

[27] *A.S. v. Hungary*, application No. 34883/17; *R.R. and Others v. Hungary*, application No. 36037/17; *N.A. and Others v. Hungary*, application No. 37325/17; *A.A.A. and Others v. Hungary*, application No. 37327/17.

[28] Under the standard asylum procedure, the deadline for deciding on an asylum application is 60 days.

[29] In its Chamber judgment in the case of *Ilias and Ahmed v. Hungary*, application No.47287/15, 14 March 2017, the European Court of Human Rights held that there had been a violation of Article 5 §§ 1 and 4 (right to liberty and security) of the ECHR because the applicants' confinement in the Röszke transit zone had amounted to detention. At the time of the writing of this report the case had been referred to the Grand Chamber of the European Court of Human Rights.

[30] See *Amuur v. France*, application No. 19776/92, § 43, 25 June 1996.

[31] *Riad and Idiab v. Belgium*, Nos. 29787/03 and 29810/03, § 68, 24 January 2008.

[32] See *Creangă v. Romania*, application No. 29226/03, § 91, 23 February 2012; *Austin and Others v. the United Kingdom*, Nos. 39692/09, 40713/09 and 41008/09, § 57, ECHR 2012.

[33] In the light of the case-law of the European Court of Human Rights the notion of deprivation of liberty within the meaning of Article 5 § 1 of the ECHR contains objective elements such as the type, duration, effects, and manner of implementation of the measure in question, the possibility to leave the restricted area, the degree of supervision and control over the person's movements and the extent of isolation; see, for example,

Guzzardi v. Italy, application No. 7367/76, 6 November 1980, § 95; *H.M. v. Switzerland*, application No. 39187/98, § 45, ECHR 2002 II; *H.L. v. the United Kingdom*, application No. 45508/99, § 91, ECHR 2004 IX; and *Storck v. Germany*, application No. 61603/00, § 73, ECHR 2005-V.

[34] *Stanev v. Bulgaria*, application No. 36760/06, § 117, ECHR 2012.

[35] *Riad and Idiab v. Belgium*, cited above.

[36] Unless the applicant is subject to a coercive measure or punishment restricting his/her personal liberty or to asylum detention ordered by the asylum authority or he/she is legally present in Hungary and has not applied for placement in an accommodation centre (Act on Asylum, Chapter IX/A, § 7, § 80/J (1).

[37] Under the standard procedure, the Immigration Asylum Office must issue a decision within 60 days following the submission of an application.

[38] The expulsion of migrants and refugees to Serbia involves the risk of migrants and refugees being further expelled to “the former Yugoslav Republic of Macedonia” and further on to Greece.

[39] For example Greece, in respect of which the European Court of Human Rights found that the reception conditions of asylum seekers, including the shortcomings in the asylum procedure, amounted to a violation of Article 3, read alone or in conjunction with Article 13 of the Convention, see *M.S.S. v. Belgium and Greece*, cited above, §§ 62 to 86, 231, 299 to 302 and 321. The Committee of Ministers has not yet resumed its examination of the adequacy of the measures that Greece has taken to comply with this judgment.

[40] *M.S.S. v. Belgium and Greece*, cited above, § 366.

[41] The Immigration Asylum Office carried out its interviews in one of the containers in the transit zones.

[42] With the exception of a decision of inadmissibility issued on the basis of the safe third country concept or a rejection decision issued under the accelerated procedure in cases when the applicant entered into or stays in Hungary unlawfully and failed to submit an application within reasonable time.

[43] The absence of further legal remedies raises serious questions especially in cases where a court decision is taken by an assistant judge.

[44] There were no unaccompanied children in Tompa.

[45] As far as Hungary is concerned, the report only addresses the situation in the transit zones.

Related documents

No related documents