

Response of Western Balkan Countries to Migration Crisis

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A. Introduction

The ex-Yugoslavia (whose constituent republics were Serbia, the former Yugoslav Republic of Macedonia (FYROM), Croatia, Slovenia, Bosnia and Herzegovina and Montenegro) actively participated in the Conference on Plenipotentiaries,¹ and were among the first countries to ratify the 1951 Convention on the Status of Refugees.² However, the ratification of the Convention was not followed by adequate legislation,³ and until 1991, authorities made *ad hoc* decisions on international protection.⁴ In a majority of cases, authorities allowed asylum seekers to contact UNHCR representatives, who provided them with accommodation and humanitarian assistance, and

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1 See The Refugee Convention, 1951: The travaux préparatoires analysed with a commentary by Weis, www.unhcr.org/protection/travaux/4ca34be29/refugee-convention-1951-travaux-preparatoires-analysed-commentary-dr-paul.html (15/9/2017).

2 The former Yugoslavia had signed the Convention on 28/7/1951 and ratified it on 15/12/1959; UN Treaty Series, vol. 189, chapter V, Refugees and Stateless Persons.

3 Only few provisions were included in the Law on Movement and Stay of Foreigners from 1980. See Articles 44-60 of the Law on Stay and Movement of Foreigners, Official Gazette SFRY No. 56/1980.

4 Those requests were mostly from Hungary (after Soviet intervention in Hungary in 1956) and Chile (after the assassination of Chilean president Allende in 1973). Mitrovic, Serbian migration policy concerning irregular migration and asylum in the context of the EU integration process, *Etnoantropoloski problemi*, n.s. god. 9, sv. 4, 2014, p. 1107.

worked to find their country of final destination.⁵ Therefore, authorities in the Western Balkan countries didn't have much experience in providing international protection to those in need. They all struggled to establish a comprehensive and efficient asylum system, which was a real challenge for them.

In 2015, with the outbreak of the migration crisis, the Western Balkan route has become one of the most important corridors for migrants to reach Europe, transiting the territories of FYROM and Serbia. Before the migration crisis, both countries struggled to establish an effective asylum procedure, and to provide protection from the risk of refoulement, as required by relevant international law.

Since June 2015, FYROM and Serbia have been additionally faced with limited government capacity to carry out registration and fingerprinting, and the subsequent inability to accept migrants and to identify migrants at risk. Their reactions to increased migration flow were different, as FYROM declared a state of emergency and in some phases denied access to its territory, while Serbia received migrants and in most cases treated them humanely, but at the same time considered itself as a transit state only. Serbia also initiated an adoption of amendments to the existing law on asylum in order to secure its compliance with EU standards, but this process was not completed until May 2017. The reaction of both states to the migration crisis was also caused by the incapacity of Greece to deal with migrants, and with the conduct of some other neighbouring EU member states, such as Croatia and particularly Hungary, which sealed its southern border and on many occasions violated human rights of refugees and migrants. These aspects will be further analysed in the paper.

B. The European Migrant Crisis

According to the UNHCR, the number of refugees worldwide reached 59.5 million at the end of 2014.⁶ However, that number increased significantly in 2015, with the outbreak of the European migrant crisis. This term indicates the period between January 2015 and March 2016, when rising numbers of people arrived in the EU, travelling across the Mediterranean Sea or overland through Southeast Europe. The total number of asylum applications in the EU in 2015 was 1.321.560, mostly submitted by asylum seekers coming from Syria, Afghanistan and Iraq.⁷ This situation resulted from the conflict in Syria, the ongoing violence in Afghanistan and Iraq, but was also a consequence of the bad economic situation in Kosovo, as well as human rights abuses in Eritrea and other countries. Great numbers of asylum seekers were stranded in

5 *Krstić/Davinić*, *Pravo na azil – međunarodni i domaći standardi* (The Right to Asylum – international and domestic standards), 2013, p. 311. More on this issue see Rakic (ed.), *Ljudska prava izbeglica, interno raseljenih lica, povratnika, azilantata i zrtava trgovine ljudima u Srbiji i Crnoj Gori* (Human rights of refugees, internally displaced persons, returnees, asylum seekers and victims of human trafficking in Serbia and Montenegro), Group 484, 2006, pp. 150-155.

6 See UNHCR Population Statistics, http://popstats.unhcr.org/en/persons_of_concern (15/9/2017).

7 BBC News of 4/3/2016, *Migrant Crisis: Migration to Europe explained in seven charts*.

disastrous conditions on the Greek islands and along the Western Balkan route.⁸ The EU focused on preventing departures and combating smuggling through cooperation with Turkey, Libya, and other transit countries. However, many refugees and migrants managed to irregularly enter into Italy and Greece.

Greece has been a major entry point for irregular migrants to Europe, the majority of whom transited through Turkey. In 2006, 95,239 people arrived in Greece, while in 2008 that number reached 146,337.⁹ Each year the number was growing significantly, and in 2011, the European Court of Human Rights (ECtHR) in its judgment concerning the case of *M.S.S. v. Belgium and Greece* acknowledged the existence of serious shortcomings in the Greek asylum procedure, as well as inadequate conditions in administrative detention.¹⁰ The major significance of this judgment was that the ECtHR found that EU Member States cannot eschew from their obligations under the European Convention of Human Rights, when implementing the Common European Asylum System. The ECtHR broke the assumption that EU member states respect the minimum standards in the area of asylum.¹¹ Many “push-back” factors such as refusal of entry at the land border, “push-backs” at sea, and deportations after arrest inland were reported.¹² Risk of forced expulsion, a lack of access to the asylum procedure and inhuman conditions in detention centres were also found in another case before the ECtHR against Greece.¹³ Also, in December 2014, the UNHCR acknowledged many deficiencies and shortcomings in the asylum system in Greece. It first underlined that in 2014, around 43,500 refugees and migrants arrived in Greece (280 % increase from 2013), mainly from Syria, Somalia, Afghanistan and Eritrea.¹⁴ “Push-backs” at the Greek-Turkish land and sea borders continued, with limited access to the asylum procedure due to lack of human and technical resources.¹⁵ There was also a risk, for those who didn’t have a chance to access asylum procedure or who

8 Human Rights Watch, Europe’s Migration Crisis, www.hrw.org/tag/europes-migration-crisis (15/9/2016).

9 Secretariat General, Communication from NGOs (joint communication from ICJ and ECRE) in the case of *M.S.S. against Belgium and Greece* (Application No. 30696/09) and reply of the Greek authorities, DH-DD(2012)625 of 22/6/2012, p. 2.

10 See ECtHR (GC), no. 30696/09, *M.S.S. v. Belgium and Greece*, judgment of 21/1/2011. This case concerns an asylum seeker from Afghanistan, who submitted an asylum application in Belgium. However, Belgium sent him back to Greece, where he had entered the EU, based on the Dublin II Regulation. After his return to Greece, he was placed in detention on two occasions and was subject to degrading conditions. After his release, he was abandoned to live in open space, and Greek authorities did not provide any help and protection for him.

11 More on judgment see *Clayton*, Asylum Seekers in Europe: *M.S.S. v. Belgium and Greece*, Human Rights Law Review 11 (2011), pp. 758-773.

12 See for example Amnesty International, Greek authorities put lives in danger by pushing refugees and migrants back to Turkey, News of 9/7/2013.

13 ECtHR, no. 16643/09, *Sharifi and others v. Italy and Greece*, judgment of 21/10/2014.

14 UNHCR, Greece as a Country of Asylum, UNHCR Observations on the Current Situation of Asylum in Greece, December 2014, chapter 3.

15 Ibid.

didn't have any ID, of being placed in administrative detention for several months.¹⁶ All these shortcomings contributed to the reason for perceiving Greece only as a transit state by a considerable number of refugees and migrants. In this situation, Greece met a new wave of migrants.

Syria has been the main country of origin of asylum seekers in the course of 2015, as opposed to Afghanistan in 2013 and 2014. Due to the increased flow of refugees, on 14 April 2015, the Greek government declared that all Syrian refugees would receive documents, which would enable them to travel further to EU countries.¹⁷ After this announcement, between April and August, arrivals increased by 721 percent.¹⁸ As of 30 September 2015, 390.814 persons were reported to have arrived in Greece since January, compared to 43.500 in 2014.¹⁹ The number of arriving migrants was so high that it was hard to adequately apply the reception mechanisms, as well as to provide proper registration, identification and referral systems for the most vulnerable refugees and migrants.²⁰ At the same time, "push-backs" at the Greek-Turkish border continued, with many incidents reported in 2015.²¹ On two occasions in September 2015, the EU Council adopted the Decision to relocate persons in need of international protection from Italy and Greece, and under this Decision 50.400 persons were planned to be relocated from Greece.²² However, the majority of refugees and migrants continued their trip to other EU Member States, using the most popular route through FYROM and Serbia.

I. Former Yugoslav Republic of Macedonia

After the dissolution of Yugoslavia, during the 90s, the former Yugoslav Republic of Macedonia (FYROM) had an influx of refugees from Bosnia and Herzegovina and Croatia, and in the late 90s from Kosovo and Metohija. In total, temporary humanitarian protection was granted to 400.000 refugees from the region, but the majority

16 European Committee on Legal Co-operation (CDCJ), Codifying Instrument of European Rules on the Administrative Detention of Migrants, 1st Draft of 18/5/2017, A.2.i): Administrative detention is "the deprivation of liberty of a migrant in a closed detention centre, pursuant to an order or decision of a competent authority, in application of laws relating to migration and asylum, excluding remands in custody pursuant to a criminal charge or detention following a criminal conviction and other restrictions of liberty."

17 Greek Reporter of 14/4/2015, Greek Government to Supply Syrian Refugees with Travel Documents.

18 *Gaetan*, An Aegean Alliance, Greece, Turkey and Migration Cooperation, Foreign Affairs of 29/9/2015.

19 Asylum Information Database, Overview of the main changes since the previous report update, November 2015.

20 Asylum Information Database, Country report: Greece, Greek Council for Refugees, ECRE, November 2015, p. 16.

21 *Ibid.*

22 Council Decision (EU) 2015/1523 of 14/9/2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, OJ L 239 of 14/9/2015, p. 146; Council Decision (EU) 2015/1601 of 22/9/2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 248 of 22/9/2015, p. 80.

have since returned home, while only 812 individuals remain on FYROM's territory.²³ Nevertheless, FYROM adopted the Law on Asylum and Temporary Protection in 2003,²⁴ establishing an asylum system in the country. This law regulates the conditions and procedure for granting and terminating international protection, as well as rights and obligations of asylum seekers, refugees and those who were granted temporary protection. The law was amended several times prior to 2015, in order to adjust domestic norms to the EU *acquis*.²⁵ Major changes were adopted in 2012, prescribing minimum standards for reception conditions for asylum seekers and on procedures for granting and withdrawing refugee status. However, inexperience of asylum officials led to the adoption of unreasoned decisions in the majority of cases, as well as the rejection of asylum application due to the application of a "safe third" country principle.²⁶ In many cases, the Administrative court and the Higher Administrative court did not adopt judgments in the prescribed period, did not hold any hearings and made judgments on the merits.²⁷ In 2013 the European Commission urged FYROM to improve the efficiency of their asylum system,²⁸ while in 2014 the European Commission required FYROM to establish better cooperation between the Ministry of Interior and the Centre for asylum in order to improve access to the asylum procedure.²⁹ The European Commission found that 1.323 asylum applications were submitted in 2013, which is a significant increase compared to 2012, but in 96 % of the cases, the asylum procedure was suspended as asylum seekers had left the asylum centre.³⁰

However, with the outbreak of the migrant crisis, the government has been faced with limited resources to ensure protection for the increasing number of refugees and migrants. Many shortcomings were identified, such as no timely issuance of IDs, non-efficient asylum procedure, poor quality of decisions and limited access to information and interpreters.³¹ The first response to this situation was to amend the existing Law on Asylum and Temporary Protection in June 2015, in order to introduce a procedure

23 UNHCR, The Former Yugoslav FYROM as a Country of Asylum, Observations on the situation of asylum-seekers and refugees in the former Yugoslav Republic of Serbia, August 2015, p. 4.

24 Zakon za azil i privremena zaštita, Official Gazette of RM No. 49/03 of 25/7/2003.

25 Zakon za izmenuvanje i dopunuvanje na Zakonot za azil i privremena zastita, Official Gazette of RM No. 66/07, No. 142/08, No. 146/09, No. 166/12.

26 AIRE, Study of the Asylum System in the FYROM, British Embassy Skopje, 2016, p. 8.

27 Ibid.

28 European Commission, The FYROM 2013 Progress Report, SWD(2013)413 final of 16/10/2013, p. 51.

29 European Commission, The FYROM 2014 Progress Report, SWD(2014)303 final of 8/10/2014, p. 49.

30 Ibid.

31 UNHCR, The Former Yugoslav FYROM as a Country of Asylum, Observations on the situation of asylum-seekers and refugees in the former Yugoslav Republic of Serbia, August 2015, p. 3.

for registration of the intention to submit an asylum application at the border.³² Afterwards, the foreigner was allowed to reside legally in the country for 72 hours, without formal registration and during this time, he or she was obliged to give a certificate to officers of the Asylum Office in order to enter the asylum procedure.

On 20 August 2015 FYROM declared a state of emergency in order to stem the flow of migrants and to reduce illegal border entry over its southern border with Greece, deploying riot police in armored vehicles.³³ This decision was made after days of chaotic scenes at the local railway station, when thousands of people tried to board trains to Serbia. On 13 October 2016, FYROM extended the state of emergency along its borders with Greece and Serbia until the end of June 2017.

Since 19 November 2015, the position of the authorities and border officials was that only Syrian, Iraqi and Afghan nationals are allowed to enter into FYROM. Therefore, various limitations of the freedom of movement and inhuman treatment were documented along the border. In addition, those who entered the territory without managing to submit an asylum application were exposed to the risk of being detained and removed from the territory as irregular migrants. In its report for FYROM for 2015, the European Commission urged the country to fully implement the existing legislation by ensuring that access to the asylum procedure and information about this procedure was available.³⁴

II. Republic of Serbia

As other ex-Yugoslav republics, Serbia did not have experience in providing protection to asylum seekers and refugees under the Convention on the Status of Refugees from 1951 and its Protocol from 1967. However, it had experience in providing humanitarian aid and shelter to those in international need, as during the 90s, the country received almost 900.000 refugees and displaced persons from Croatia, Bosnia and Herzegovina and Kosovo and Metohija. Those persons mainly remained on Serbian territory, compared to refugees, who received shelter in FYROM. In 1992, the Law on Refugees was adopted, limiting protection only to those originating from the territory of ex-Yugoslavia.³⁵ In April 2008, Serbia established a comprehensive asylum system with the adoption of the Law on Asylum³⁶ several years after the Macedonian law. The law stipulates principles, conditions and procedure for granting and terminating asylum, as well as the legal position, rights and obligations of the asylum seekers and persons granted asylum in Serbia. This law was not amended since its adoption.

32 Zakon za izmenuvanje i dopolnuvanje na Zakonot za azil i privremena zastita, Official Gazette of RM No. 101 of 18/6/2015. Another minor amendment to the Law on Asylum and Temporary Protection had been done in September 2015. See Zakon za izmenuvanje i dopolnuvanje na Zakonot za azil i privremena zastita, Official Gazette of RM No. 152 of 3/9/2015.

33 The Guardian of 20/8/2015, FYROM declares state of emergency to tackle migrant crisis.

34 European Commission, FYROM 2015 Report, SWD(2015)212 final of 10/11/2015, p. 62.

35 Law on Refugees, Official Gazette of RS No. 18/1992; Official Gazette of FRY No. 42/2002; Official Gazette of RS No. 30/2010.

36 The Law on Asylum, Official Gazette of RS No. 109/2007.

In 2012, the UNHCR adopted its observations on Serbia as a country of asylum.³⁷ The UNHCR assessed that Serbia has lacked the resources and performance necessary to provide sufficient protection against refoulement, and that the asylum procedure is not efficient and fair.³⁸ It also acknowledged that asylum officials are widely applying the concept of “safe third” country, rejecting asylum applications without consideration on the merits and concluding that due to all deficiencies, Serbia cannot be considered a “safe” third country of asylum.³⁹

The number of persons expressing the intention to seek asylum in Serbia has been growing from year to year. Before the crisis, in 2013, 5.065 expressed intentions to seek asylum were recorded, while in 2014 this number was more than three times as many (16.500 expressed intentions).⁴⁰ In comparison to the number of expressed intentions indicated above, in 2013 only 153 persons submitted asylum applications, while in 2014 that number was 388. At the same time, in 2013 and 2014 only 37 interviews were conducted, showing inefficiency of asylum procedure and lack of capacity of the Asylum Office to properly manage its job. In its Progress Report for Serbia for 2013, the EU Commission underlined that Serbia needs to make further efforts to ensure respect for the rights of asylum seekers and alignment of its domestic law with the EU *acquis*.⁴¹ In its report for Serbia for 2014, the European Commission urged Serbia to improve the processing of applications by employing sufficient and well-trained staff, and to strengthen accommodation capacities, bearing in mind the increase in the number of asylum applications.⁴² Limited access to the asylum procedure and its inefficiency leads to the fact that the majority of those in international need perceive Serbia only as a transit country to their desirable destination in the EU.

In 2015, with the outbreak of the migration crisis, Serbia has witnessed a great number of migrants arriving at and transiting through its borders. This year, a total of 579.518 migrants and asylum seekers were registered arriving at the main entry point, Presevo transit and registration centre. Therefore, mixed-migration flows increased dramatically, creating a substantial burden on the Serbian asylum and migration framework. However, Serbia made a substantial effort to ensure that refugees and migrants received shelter and humanitarian supplies, which was also acknowledged in the EU Report for Serbia for 2015.⁴³ Experience in providing humanitarian assistance to refugees during the 90s helped the Government and motivated the citizens to provide first aid and shelter to refugees and migrants. Unlike FYROM, Serbia did not declare a state of emergency, nor did it change the law in order to introduce an accel-

37 UNHCR, Serbia As a Country of Asylum, Observations on the Situation of Asylum-Seekers and Beneficiaries of International Protection in Serbia, August 2012.

38 Ibid., p. 3.

39 Ibid., p. 22.

40 Krstić/Davinic, The Efficiency of Serbian Asylum Procedure, ZEuS Sonderband 2016, p. 208.

41 European Commission, Serbia 2013 Progress Report, SWD(2013)412 final of 16/10/2013, p. 49.

42 European Commission, Serbia 2014 Progress Report, SWD(2014)302 final of 8/10/2014, p. 52.

43 European Commission, Serbia 2015 Report, SWD(2015)211 final of 10/11/2015, p. 6.

erated procedure and procedure at the border and in the transit zone. Nevertheless, Serbia, like FYROM, introduced transit certificates for those coming from Syria, Afghanistan and Iraq. On 24 September 2015, the Serbian Government adopted the Decision on the Issuance of Certificates of Entry into the Territory of the Republic of Serbia to Migrants Coming from Countries Where Their Lives are in Danger.⁴⁴ These transit certificates allowed migrants to stay in Serbia for 72 hours and to use the services of banks, stay in facilities providing accommodation and seek the requisite medical assistance, stipulating that people who were issued with such certificates did not have the status of asylum seekers. In other words, people who were issued with transit certificates could not express the intention to seek asylum, which caused problems in practice when they were not allowed to continue their journey towards the EU.⁴⁵ Consequently, transit certificates were already abolished on 19 February 2016. Others were allowed to enter into the asylum procedure, and in 2015, 586 asylum applications were submitted and 98 interviews were conducted, which again showed that the asylum procedure was not so efficient and that in the majority of cases, asylum seekers abandoned the procedure leaving their accommodation. In its report for Serbia for 2015, the European Commission urged for better coordination of all institutions involved in asylum and migration, and requested that Serbia process a greater number of cases, to meet the needs of vulnerable refugees and migrants, as well as to align domestic legislation with the EU *acquis*.⁴⁶

III. Reaction of EU Neighbouring States

The busiest route during the Europe migration crisis in 2015 was from Turkey to Greece, via FYROM and Serbia. In 2015, the Hungarian-Serbian border became one of the three main entry points for irregular migrants and asylum-seekers to the EU, mainly from Syria, Afghanistan and Iraq. By August 2015, 103.000 asylum applications were registered, but the majority of asylum seekers continued their trip to other desirable destinations in the EU, mainly to Germany.⁴⁷ By the end of the year, Hungary moved into second place with 177.130 asylum applications.⁴⁸ As a result in July 2015, Hungary adopted a National list of Safe Countries, also putting Serbia on that list.⁴⁹ It amended its Law on Asylum to reject asylum applications of asylum seekers

44 Decision on the Issuance of Certificates of Entry into the Territory of the Republic of Serbia to Migrants Coming from Countries Where Their Lives are in Danger, Official Gazette of RS No. 81/2015.

45 AIRE Centre, Right to Asylum in the Republic of Serbia, British Embassy Belgrade, 2016, p. 27.

46 European Commission, (fn. 43), p. 60.

47 Hungarian Helsinki Committee of 7/8/2015, Building a Legal Fence – Changes to Hungarian asylum law jeopardize access to protection in Hungary.

48 BBC News of 4/3/2016, Migrant Crisis: Migration to Europe explained in seven charts.

49 Government Decree 191/2015 (VII. 21.) on the national list of safe countries of origin and safe third countries, http://njt.hu/cgi_bin/njt_doc.cgi?docid=176824.296526 (15/9/2017).

who came through a safe third country,⁵⁰ and introduced an accelerated procedure.⁵¹ At the same time, Hungary started to build a 175-km-long fence along the Serbian-Hungarian border section, and completed it by the end of August 2015, despite criticism by the European Parliament and the UNHCR.⁵² In 2015, two public opinion surveys were conducted in all EU countries that contained some questions regarding the refusal or acceptance of migrants, and opinions concerning policies aimed at tackling the emerging problems of the massive and unexpected inflow of asylum seekers.⁵³ Hungary was one of the EU countries with a higher percentage of its population supporting additional measures to fight illegal migration than the EU average, and a lower percentage agreeing with the concept of a Common European Asylum Policy than the EU average.⁵⁴ On 16 September 2015, after the closure of the Hungarian border, several hundred refugees and migrants stormed the fences, throwing rocks and bottles at the Hungarian police, who responded by firing tear gas and water cannons.⁵⁵ This action was particularly condemned by the UN Secretary-General⁵⁶ and human rights groups.⁵⁷ In November 2015, it was reported that more than 1.000 refugees, mostly from Syria, Afghanistan and Iraq, were detained in overcrowded Hungarian prisons and detention facilities.⁵⁸

In September 2015, after the closure of Hungarian border, migrants were diverted to Croatia. On 17 September, more than 11.000 migrants entered this EU member country from Serbia. They were transferred in an organised way to the border of Croatia. Since the beginning of the migration crisis around 658.000 migrants entered Croatia, with around 5.500 entries each day.⁵⁹ On 3 November 2015, Croatia and Serbia signed a Protocol on Cooperation in the Migration Crisis and Prevention of Illegal Migration, according to which the transfer of migrants was implemented. However, the response of the Croatian state was significantly dependant on the Austrian and Slovenian border police and, at some point, it accepted only refugees fleeing from conflict zones, while other refugees and migrants were using irregular ways to enter the territory of Croatia. Although the President of Croatia invoked the use of military several times due to security issues that arose as a consequence of the high

50 Hungarian Law on Asylum, Section 51(2)(e) and Section 51(4)(a)-(b).

51 Hungarian Law on Asylum, Section 47(2).

52 DW of 30/8/2015, Hungary completed anti-refugee fence on Serbian border.

53 Surveys were conducted in May 2015, http://ec.europa.eu/public_opinion/archives/eb/eb83/eb83_first_en.pdf, and in September 2015, www.europarl.europa.eu/pdf/eurobarometre/2015/2015parlemeter/eb84_1_synthese_analytique_partie_1_migration_en.pdf (both 15/9/2017).

54 Simonovits/Bernát, *The Social Aspects of the 2015 Migration Crisis in Hungary*, 2016, p. 12.

55 Daily Mail Online of 16/9/2015, *Storming the Barricades, Hundreds of migrants smash their way through Hungary's razor-wire border with Serbia after hurling rocks at riot police who hit back with tear gas and water cannon.*

56 Connelly, *Refugee crisis: UN secretary urges compassion after Hungary fires tear gas at refugees*, The Independent Online of 16/9/2015.

57 See, e.g., UN News Centre of 17/9/2015, UN rights chief “appalled” at recent treatment of refugees, migrants by Hungarian authorities.

58 Thorpe, *Migrant Crisis: Hungarian jails crowded by ‘illegal’ refugees*, BBC News of 12/11/2015.

59 Ostojic, *A European Perspective of the Migration Crisis: Croatian Experiences*, June 2016.

inflow of migrants, the Prime Minister dismissed her proposal on several occasions.⁶⁰ However, since August 2015, there have been regular reports suggesting the use of excessive force against refugees and migrants by police and security at the Croatian and Hungarian border.⁶¹

C. Closure of the Balkan Route

The overloading of the Balkan route resulted in significant pressure on the Western Balkan countries, which demanded the finding of a viable regional solution. During the Leaders' Meeting on refugee flows along the Western Balkans Route, which was held in Brussels on 25 October 2015, a Leaders' statement on refugee flows along the Western Balkans route was agreed.⁶² Just 10 days before, the EU-Turkey Joint Action Plan was adopted.⁶³ At the meeting of heads of state or government, Turkey and EU decided to activate the Joint Action Plan from October 2015 on 29 November, in order to support Syrians under temporary protection.⁶⁴ However, the main purpose of this plan was to stem irregular migration, as those not in need of international protection would be prevented from traveling to Turkey and the EU, and would be quickly returned to their country of origin. In other words, under this Action Plan, Turkey was supposed to make significant progress in preventing irregular departures of migrants and refugees from its territory, and to diminish the number of migrants entering the EU.

In addition, Austria restricted quotas for refugees and those restrictions forced the authorities of the Balkan countries to impose additional measures to control the number of refugees transiting through their countries. At the meeting held on 18 February 2016 by the heads of Police of the transiting countries (FYROM, Serbia, Croatia, Slovenia and Austria) the common registration form was introduced, and the Heads of Police Services agreed that the migration flow along the Western Balkans route had to be significantly reduced.⁶⁵ By the end of February 2016, the Western Balkans route was in practice closed to all but a few hundred refugees and migrants per week. However, even with this document many refugees are arbitrarily being denied entry into Serbia.

On 18 March 2016, Turkey and the EU reconfirmed their commitment to the implementation of their joint action plan activated on 29 November 2015. Border closures and a March 2016 deal with Turkey led to a significant decline in arrivals of

60 Ibid., p. 4.

61 Council of Europe, Human rights of refugees and migrants – The situation at the Western Balkans, Resolution 2108 of 20/4/2016.

62 European Commission, Meeting on the Western Balkans Migration Route: Leaders Agree on 17-point action plan, IP/15/5904 of 25/10/2015.

63 European Commission, EU-Turkey joint action plan, MEMO/15/5860 of 15/10/2015.

64 See European Council, Meeting of Heads of State or Government with Turkey, EU-Turkey statement of 29/11/2015.

65 See Joint statement of heads of police services from the meeting held in Zagreb, Croatia, on 18/2/2016.

migrants to Greece compared to 2015.⁶⁶ Thus, from January to November 2016, 169,993 migrants arrived to Greece, mostly in the first three months. However, there are still hundreds of arrivals in Greece and the application process is slow, leaving many migrants in limbo with an uncertain future. Also, despite the fact that FYROM sealed its border, more refugees continued to arrive,⁶⁷ and reports underline that their trip is now more difficult, expensive and dangerous.⁶⁸ In addition, some reports underlined that the authorities continued to return refugees and migrants arbitrarily to Greece during 2016, in some cases using violence and force.⁶⁹ On the other hand, the same cannot be said for Serbia. However, it is noticeable that Serbia had a significant decrease in asylum applications in 2016, as only 12.821 persons expressed intention to seek asylum,⁷⁰ compared to 144.000 migrants registered during that time.⁷¹ The majority of persons expressing intention for asylum in Serbia were not from Syria (2.313) as in 2015, but rather from Afghanistan (5.591) and Iraq (2.700).⁷²

In March and April 2016, FYROM amended its Law on Asylum and Temporary Protection in order to specify the right to family reunification to those granted subsidiary protection and to define the “safe third countries”. At the same time, Serbia did not change its legislation. The work on the draft Law on Asylum and Temporary Protection had already begun in 2013 and intensified during 2015. The first draft was presented in December 2015 and an improved version three months later at the public debate. Civil society organisations were invited to contribute to the consultation process and they actively participated by preparing concrete proposals for improving the draft law. The text was prepared with the focus on provision of better access to asylum procedure and its efficacy, as well as with the aim of including gender sensitive procedures and protecting separated and unaccompanied children. The draft law also stipulates accelerated procedure, and procedure at the border and in the transit zone. The major change in the draft law is that Serbia will abandon the list of safe third

66 Human Rights Watch, European Union, Events of 2016, Migration and Asylum, www.hrw.org/world-report/2017/country-chapters/european-union (15/9/2017).

67 *Squires/Holehouse/Freeman*, FYROM closes its border “completely” to migrants, The Telegraph of 9/3/2016.

68 See *Dernbach*, Balkan migration route is “not closed”, Euractiv of 13/3/2017.

69 Amnesty International, FYROM 2016/2017, Annual Report, www.amnesty.org/en/countries/europe-and-central-asia/fyrom/report-fyrom/ (15/9/2017).

70 Belgrade Center for Human Rights, The Right to Asylum in the Republic of Serbia (*Pravo na azil u Republici Srbiji*), 2016, p. 23. They expressed asylum in police stations (10.506), the reception center in Presevo (1.210), border check points (602), the Asylum office (440), detention centers (43), and at the airport (19).

71 Serbian Protector of Citizens, Annual Report for 2016, p. 157.

72 Other asylum seekers are from the following countries: Iran (278), Algeria (173), Somalia (162), Morocco (141), Cuba (92), Bangladesh (46), Libya (44), Palestine (37), Sri Lanka (31), Eritrea (29), democratic Republic of Congo (21), India (16), Egypt (12), Ghana and Cameroon (10), Tunis and Nigeria (9), Western Sahara (7), Ethiopia (6), USA, Nepal, Lebanon and Croatia (5), Uzbekistan, Turkey, Russia, Guinea and Bosnia and Herzegovina (4), Yemen, Tajikistan, Mali, Liberia, Slovenia, Saudi Arabia, Ruanda, Greece, FYR of FYROM, Bulgaria (2), Ukraine, Romania, Poland, Montenegro, Moldavia, Mexico, Mauritania, Central African Republic, Ivory Coast, Republic of Congo, Burundi, Albania (1), and 3 asylum seekers from Oceania, see *ibid.*, p. 23.

countries, and that the “safety” of the third country will be assessed on a case-by-case basis. However, despite the fact that the European Commission urged Serbia to align its legislation with the EU *acquis*, Serbia has not yet adopted legislative changes.

Compared with FYROM who has very limited reception facilities, Serbia has been opening temporary reception centres since 2015, with the support of the international community. The main aim is to provide emergency reception conditions for persons who irregularly enter Serbia and who are not interested in seeking asylum in Serbia, but are transiting towards their preferred destination countries in the EU. In early 2017, there were 12 reception centres, meant only for temporary accommodation and humanitarian assistance and not for a long-term stay.⁷³ However, due to limited access to territories of EU neighbouring countries, migrants are staying much longer than expected, and this situation causes distress and anxiety among the migrant population.

D. Concluding Remarks

Reactions of different countries along the Balkans route to the migration crisis during 2015 and the beginning of 2016 showed how much they respect human rights standards and how efficient and flexible their asylum systems are in terms of adjusting to current needs. Although the EU applauded Serbia for its humane approach during the crisis, which cannot be underestimated, it has to be underlined that the Serbian asylum system is still not efficient and that Serbia, as well as FYROM, perceive themselves only as transit states. There are several reasons for this: a not very efficient asylum procedure which takes longer than expected, broad application of the so-called “safe third country” concept which leads to rejection of asylum applications in a great number of cases, weak economy and very limited options for work, lack of integration policies, lack of refugee community, etc. Also, the initial access to territory is hampered by regular practices of “informal push-backs” in many countries in the region, which may take place at the border, as well as if the persons are found inside the territory. In some cases, it is reported that access to the asylum procedure is denied due to a feeling that asylum-seekers are abusing the system, as their primary motivation is to move onwards. However, this practice is not in accordance with Article 13 of the European Convention of Human Rights.⁷⁴ Bearing in mind that both FYROM and Serbia are candidate countries, it is high time that the EU stop tolerating simulated reforms and start insisting on the better implementation of norms.

In early 2017, the number of persons arriving and likely to be in need of international protection is far higher than the number of those entering into the asylum procedure. The large majority are hoping to move onwards, although they are blocked from doing so because of extensive controls, interceptions and push-backs from Hungary and Croatia, as well as the very limited number of asylum claims accepted at the border with Hungary (this used to be around 30 and then 15 per day each at two crossings and in February 2017 it was down to only five per day). Longer stays in Serbia and

73 Asylum Information Database, Country Report: Serbia, last updated 3/4/17, p. 29.

74 ECtHR, no. 9152/09, *I.M. v. France*, judgment of 2/5/2012.

FYROM raises questions relating to the establishment of a functional and efficient asylum system and adoption and implementation of integration programmes to the forefront. This situation also requires a comprehensive system for confronting irregular migration, including readmission systems, primarily with neighbouring countries, as well as human rights protection of irregular migrants. Both states need to improve protection of unaccompanied and separated children and protection of vulnerable groups of refugees and migrants, especially those who are victims of gender based violence. There is, however, generally no or little differentiation at this stage between persons who have sought asylum and those who have not, although the composition of countries of origin has changed over time, and there are increasing numbers of persons less likely to be in need of international protection. Furthermore, capacities are also very limited and they may require further strengthening in view of the numbers of persons remaining in FYROM and Serbia and the potential increase in the number of persons seeking asylum.

After the border closure in 2016, the number of arrivals significantly decreased. However, the continued crisis in Syria, as well as conflicts in Afghanistan and Iraq that can escalate at any time, are capable of producing another migrant crisis in Europe. In addition, since August 2016, Turkey constantly threatens to tear up a deal to stem the flow of migrants into Europe, and it can be expected that both states will continue to be affected by the migration crisis, which already created a substantial burden on their asylum and migration system.⁷⁵ In other words, both states need to make more effort to accelerate procedures, to train their staff to conduct interviews and deliver reasoned judgments, and to apply international standards in domestic decisions. They also need to better perform identification and referral mechanisms in cases of victims of human rights abuses. This is particularly important as the March 2016 EU-Turkey deal, along with the closure of the Western Balkans route, made the trip to EU countries more expensive and risky for the lives and well-being of refugees and migrants. In addition, there is an increase in the number of unaccompanied children, which is a consequence of difficulties migrants and refugees experience in reaching their desirable destinations and awareness of parents that their children will have better treatment along the way.

Nevertheless, it must be expected that Serbia and FYROM are affected by the behaviour of two EU Member States, Hungary and Croatia. They will not increase their human rights standards and improve their asylum systems while EU neighbouring states are violating human rights of refugees and migrants. The EU itself needs to build and further strengthen its mechanisms to call into account EU Member States that violate human rights. It is not enough to leave that role to the Council of Europe and the ECtHR, which in its judgment from March 2017⁷⁶ ruled that detention conditions of the applicants at the transit zone were not in accordance with the European Convention on Human Rights, and that Hungary, by their expulsion to Serbia exposed

75 European Commission Staff Working Document, Serbia 2016 Report, SWD (2016) 361 final of 9/11/2016, p. 6.

76 ECtHR, no. 47287/15, *Ilias and Ahmed v. Hungary*, judgment of 14/3/2017.

applicants to possible “chain-refoulement” to Greece. Also, it must be emphasised that the EU-Turkey deal is also very questionable from a human rights perspective and the suggestion of having a deal with some other partners (e.g. Tunisia, Libya) would not be recommendable. It would be more advisable that the EU engages all its efforts to try to solve conflicts in countries generating refugees, as well as to support development of some countries that produce economic migrants. Finally, another issue that needs to be urgently tackled is regional cooperation and the imposition of greater responsibility to some EU Member States who reject the quota system and shared responsibility and who do not accept relocation schemes.