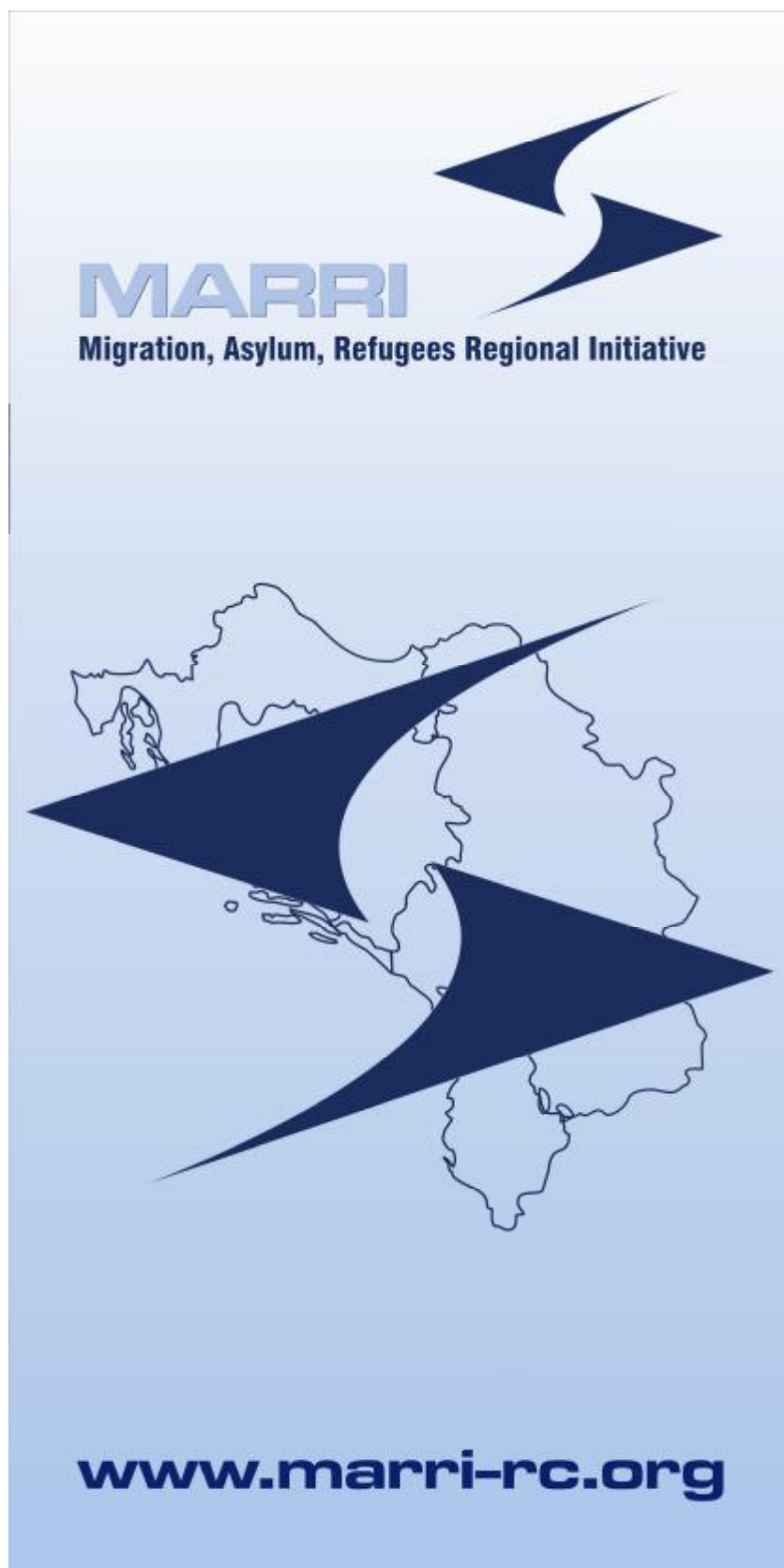


MARRI ASYLUM REPORT 2006



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INTRODUCTION

Following a request from the MARRI Regional Centre in December 2006 to conduct an assessment by the end of the same month of the progress that has been achieved in the field of asylum in Albania, Bosnia-Herzegovina, Croatia, Montenegro, Republic of Macedonia and Serbia, short trips were organised to the countries mentioned. Interviews of one to two hours (taking into account interpretation and depending on time of the hosts) were held with the asylum authorities and UNHCR in each of the countries. Where possible, interviews were held with NGOs dealing with legal representation as well.

Due to the tight schedule and with a view to efficiency, for each country the UNHCR Asylum Module Country Progress Report of 2005 was taken as a basis for the interviews.

The exact aim of the assessment was to describe the progress that was made during 2006 as regards legislation and its implementation taking into account capacity, staffing and management of the different stages in the asylum procedure.

Therefore, based on the information that was received during the interviews mentioned, this report will only mention the progress that has been achieved. As the situation in each of the visited countries is different and the developments therefore are in different stages, the topics that are elaborated in the reports differ too.

Rahela Dosen
Satko Mujagic

The Hague, Netherlands, 23 January 2007



ALBANIA

I. INTRODUCTION

In Albania, interviews were held with

- the Directorate for Citizenship and Refugees of the Ministry of the Interior (MOI): Ms. Drita Ferra, Director
- UNHCR: Ms. Edlira Baka Peço

II. LEGISLATION

Asylum legislation in Albania is laid down in the *Law on Asylum of the Republic of Albania* [December 1998] and the *Law on Integration and Family Reunion of Persons Granted Asylum* [July 2003].¹

According to the UNHCR Country Progress report of 2005, the legislation is in line with both internationally laid down principles in the *1951 Geneva Convention and its 1967 Protocol* as well as the minimum standards in the *EU acquis communautaire*. National legislation exists on identification of asylum-seekers, access to procedures, procedure for family reunification, referral system, first instance and appeal procedures and integration of refugees. Subsidiary protection, abusive and manifestly unfounded claims and accelerated procedures are included in the legislation. Much effort has been devoted the past years to improve the pre-procedural and

¹ Relevant legal acts: *the Law on Foreigners* (No. 8492 of May 1999); *Law on the Guarding and Control of the State Borders* (No. 8772 of April); *Law on Citizenship* (No. 8389 of August 1998); *Law on the Defence and the Safeguarding of the Personal Data of Refugees and Asylum-seekers Staying in the Republic of Albania* (1999) MoPo Instruction on the procedure to be followed by the state police to facilitate the pre-screening of foreigners [No. 2008] (October 2004); *Decision by the Council of Ministers of 23 April 2004 on transferring the administration responsibility of the national reception centre for asylum-seekers in Babrru, Tirana, to the Ministry of Public Order as well as on its functioning, and for an amendment to the foreseen number of employees by this Ministry*; *Decision No. 146 by the Council of Ministers on Some Changes and amendments in the Decision No. 439 [4 August 2000] of the Council of Ministers on Entry, Stay and Treatment of the Foreigners in the Republic of Albania*.

Source: UNHCR Country Progress Report Albania, 2005 (UNHCR Progress Report)

reception stages, in particular the prevention of *refoulement*, the identification of persons in need of protection and reception standards.²

Although the rights of the child are safeguarded through the ratified Convention on the Rights of the Child, no specific provisions on unaccompanied minors have been laid down yet in the Albanian laws on asylum.

The Ministry of the Interior has stated that in 2007, according to the National Action Plan, amendments are planned to the Law on Asylum and to some of its by-laws. The time frame of 51 days for taking a decision after hearing an asylum seeker will be changed. A working group will be established to draft by-laws on, among others, unaccompanied minors, victims of sexually or gender based violence and trauma.³ These by-laws are to be ready in the first quarter of 2007 and, hopefully, will be adopted by Parliament in the 2nd quarter of 2007. According to UNHCR, the *Law on Integration and Family Reunion* still needs a lot of sub-legal acts on e.g. education, health, labour, family reunification⁴. The MOI has, to that end, formed a task force with the Ministry of Education, Ministry of Health, Ministry of Foreign Affairs, Ministry of Labour, Social Affairs and Equal Opportunities as well as the Ministry of Transport, Telecommunication and Territory Regulation in order to draft by-laws on various aspects of integration. These sub-legal acts are to be drafted in the 1st quarter of 2007 too.

Also, the Ministry of the Interior is about to finish (by the end of 2006) an Internal Regulation on the National Reception Centre for asylum seekers (Babrru), which will unite different provisions from various laws pertaining to the reception of asylum seekers into one Regulation, including the reception of applicants in detention, the possibility to reduce or withdraw reception conditions in case of abuse, etc.⁵ The Regulation is drafted by a working group consisting of both UNHCR, a foreign expert and the Directorate for Citizenship and Refugees.

III. IMPLEMENTATION

The asylum procedure

Competent authorities

The Directorate for Citizenship and Refugees (DfCR) of the Ministry of the Interior (formerly the Ministry of Public Order) is responsible for the processing of asylum requests as well as for the management of protection and assistance to people who have been granted a status.

The National Commission for Refugees (NCR) decides on appeals against the DfCR and on the status of persons during times of mass-influx. Appeals against decisions of the second instance can be lodged at the Administrative Court. As of June 2006, the Border and Migration Police of the Ministry of the Interior are responsible for the pre-screening procedure.

Influx in 2006

From January – mid December 2006, there have been 10 requests for asylum. In 6 of the 10 cases, a decision has been taken and a status was given to the asylum seekers. There are

² UNHCR Progress Report.

³ This was one of the short-term recommendations in the UNHCR Country Progress Report.

⁴ This was one of the short-term recommendations in the UNHCR Country Progress Report.

⁵ This was one of the short-term recommendations in the UNHCR Country Progress Report.

another 5 cases from 2005 which are to be decided on. In all, the DfCR stated that 9 cases are pending at the moment.

According to the DfCR all the cases pending before NCR have been decided since 2005 or earlier and the decisions have been notified accordingly to UNHCR and the asylum seekers. Until the end of 2006, UNHCR had no written information that these decisions were communicated accordingly to the asylum seekers. DfCR will forward to UNHCR in 2007 the written evidence mentioned above. No cases have been reviewed by the Administrative Court in 2006 either.

Countries of origin of asylum seekers are: China, `Arab` countries, Serbia (Kosovo), Macedonia, Bangladesh, Morocco, Turkey, Uzbekistan.

Capacity

DfCR

Staff and recruitment

According to the Law on Asylum (art.17), interviews and decisions in asylum cases are to be taken and signed by 5 persons (4 `specialists` + the Director of the DfCR). Until June 2006, the DfCR consisted only of 3 persons (2 specialists + the Director), as a consequence of which no decisions could be taken.

As of July 2006, the DfCR is fully staffed (2 `specialists`, 2 pre-screening officers and 1 Director). The two specialists both have a Law degree, while the 2 pre-screening officers have a Language degree and a degree in Social Studies. As mentioned before, in 2006, there were 10 asylum requests: in 6 cases, asylum has been granted within the time limits of 51 days. In the other 4 cases, the time limit of 51 days has been exceeded and a decision is to be taken yet. The reason of the delay is the lack of staff until June 2006.

With a view to the influx of 10 in 2006, the staffing of the DfCR is sufficient.

Each decision maker has a computer with access to the internet, intranet and e-mail. Interpreters are hired and financed by UNHCR.

Refugee Status determination

RSD procedures are in place, and decisions have improved much in recent years but - according to UNHCR - there is still room for substantial improvement in the decision making process. UNHCR has not been informed on the existence of any Internal Regulation of DfCR that would elaborate on the procedures that are to be followed by the DfCR when determining the status of asylum seekers in order to make up for lacks in Law on Asylum. During the interview, the DfCR stated that there is an Internal Regulation in place and that the only Regulation which is lacking, is the one for the Reception Center.

As of January 2007, a Col expert will be hired for one year in order to train the DfCR staff on the collection and usage of COI. This expert, which will be hired by UNHCR, will be based at the DfCR.⁶

Furthermore, UNHCR stated that the notification of decisions which was not done adequately by the DfCR in the past direct written communication and handing over the decisions by DfCR

⁶ This was one of the short-term recommendations in the UNHCR Country Progress Report.

to the asylum seekers improved in 2006. .. Translation of decisions into the language of the asylum seeker is provided orally.

According to UNHCR, individual case management at the DfCR has not yet achieved the requirements which are stipulated in the *Law on Asylum* and the *Administrative Code*. The filing system that was created in 2003 is still not regularly maintained. Especially now that the old staff has been partially replaced by new staff, this poses problems.

Training of staff

In order to get a view of the functioning of asylum systems in other countries, study visits have been organised to The Netherlands, Czech Republic, Romania, Slovenia, Italy, France, Croatia and Austria.

UNHCR's training objectives for 2007 comprise the training of eligibility staff such as case-workers and decision-makers on file management, interviewing techniques with a special focus on gender, age, trauma and illiteracy sensitivity, assessment writing, and credibility assessments. In addition, interpreters will be trained on gender, age and cultural sensitivity, on possible indicators of trauma and on the obligation of confidentiality.

Border Police

Staff and training

Under the auspices of OSCE, UNHCR and IOM, 1500 officials at the border have been trained on the pre-screening procedure in order to identify persons who are in need of protection.⁷ In the meantime, 90% of these officials have been removed from their position (on different levels) and others have come in their place. It will be necessary to train the new officials and to prevent an even higher frequency of rotation of personnel.

Pre-screening procedure; non-refoulement

As mentioned before, in June 2006, the pre-screening procedure was handed over to Border Police of the Ministry of the Interior. While during the two years preceding the handover, more than 360 persons were pre-screened and interviewed, in the six months between June and December 2006, 3-4 cases were reported as irregular migrants. The difference in numbers either implies no reporting or refoulement. At the same time, as of June 2006, 5 asylum seekers have approached UNHCR in Albania and requested for asylum. They were not in the possession of documents and had illegally entered the country. None of the five mentioned had been screened at the border.

Second and third instance

Upon the initiative of the asylum seeker, appeals can be submitted to the NCR. Procedures at the NCR and the Administrative Court are slow: the NCR meets rarely, because of which the processing of cases at the NCR can last one year. At the Administrative Court, processing takes one year as well.

In addition, the NCR is in a crisis right now and, although seven cases (of twelve individuals) were presented to the NCR by the Legal Clinic in 2006, none of them have been reviewed yet.

⁷ UNHCR Progress Report.

Training needs

Some of the NCR members have attended local training courses, but the rotation among the NCR members is rather high. Therefore, additional courses are needed. No study visits to other countries or exchange of information with colleagues from abroad have been organised lately.

Access to legal representation

The Refugee Migrant Service in Albania (RMSA) offers legal counselling and representation for all. No *pro bono* legal aid is currently offered by authorities. The lawyers and UNHCR as well as the DfCR attend the decision-making meetings and the interviews of the asylum seeker by the NCR.

Registration system

An electronic registration system (a national database on all matters pertaining to the procedure, reception and integration of asylum seekers and refugees) is still lacking.⁸

Identity Documents

The DfCR provides asylum seekers with an identity letter (a document in A4 format). When a person is granted a status, the identity letter is replaced by a travel document and/or residence permit. Convention Travel documents are issued to refugees upon request. Information on the identity documents that have been issued is manually entered into excel sheets, as there is no registration system yet.

Accelerated procedures

There are provisions in the Asylum law on the accelerated procedure in case of abusive and manifestly unfounded cases. Due to the low number of applications, the accelerated procedure has not been implemented yet.

Rejected cases

There has been no return or expulsion of rejected asylum seekers in 2005 – 2006.

Readmission agreements

Readmission agreements have been signed with Italy, (1997), Switzerland (2000), Belgium (2001), Hungary (2001), Bulgaria (2002), Germany (2002), Romania (2002), Croatia (2002) and Macedonia (2004).⁹ In addition, a readmission agreement was signed with the EU Member States in 2006. Readmission agreements with Moldova, Bosnia-Herzegovina, Turkey and Norway are under negotiation.

IV RECEPTION

Competent authorities

The DfCR is responsible for the management of National Reception Centre for asylum seekers Babrru. UNHCR provides for material (financial) assistance, such as clothes, but tickets, financial means for language courses, social activities and school materials that are not offered by the state.

⁸ One of UNHCR's mid-term recommendations is the establishment of an electronic registration system which is linked to that of the border authorities.

⁹ UNHCR Progress Report.

At 11 border-crossing points, transit facilities for pre-screening purposes have been established.

Staff and training of staff

In November 2006, training courses for the RC personnel were organised, upon request of DfCR with a view to enhancing reception capacity: topics on the agenda were, among others, treatment of asylum seekers in the RC, treatment of vulnerable groups and intercultural communication. Also in January, another training course will take place with a special focus on vulnerable groups. To that end, a local NGO will be involved as a facilitator.

Integration

Working permits are issued to asylum seekers with the help of DfCR and the RMSA. The latter has a supporting role as facilitator. UNHCR still supports the accommodation of most of the refugees. Those who have been granted asylum, receive financial assistance (public relief) from UNHCR.

The MOI has organised language courses for asylum seekers in 2006 and there are plans to organise more in 2007.

IV. ACTIONS PLANNED

As of 2001, a National Action Plan on the implementation of the Albanian asylum system is being updated (and endorsed by Government) on a regular base. The last update was drafted in April 2005.

Through the CARDS national programme and the regular UNHCR programme, UNHCR could cover and finance its activities in all stages of the asylum procedure, from the beginning until the end. In 2007, UNHCR will still directly or indirectly be involved in all the stages of the asylum system.

V. CONCLUSION

In Albania, a lot has been done in the field of asylum. At the moment, various by-laws are being drafted. The by-laws are to bring about a clear division of responsibilities between different ministries/ departments and fill up the gaps in the implementation of laws. Although UNHCR was not informed about all the Ministry of Interior's plans regarding by-laws, the organisation hopes that it will, as previously, be involved in the drafting procedure.

After having completed its staff, the DfCR can focus on the processing of asylum requests, COI and individual case management. In addition, some action will be needed in the second and third instance. Furthermore, it will be necessary to establish an electronic registration system which will contain data on the procedure, reception and integration of asylum seekers and refugees.

The implementation of the pre-screening procedure, which functioned in an exemplary way until June 2006, has become an issue which will need more attention after the Albanian authorities took over responsibility.



BOSNIA AND HERZEGOVINA

I. INTRODUCTION

In Bosnia and Herzegovina, interviews were held with:

- Ministry of Security, The Asylum Sector: Mr Marijan Baotic, Assistant Minister;
- The UNHCR: Ms Liv Feijen, Legal officer.

II. LEGISLATION

Asylum law

Asylum legislation in Bosnia and Herzegovina is laid down in the Law on Movement and Stay of Aliens and Asylum (LMSAA). This law came in to force in October 2003. Other relevant laws are the Law on Immigration Service, Law on Surveillance and Control of State Border Crossing and Law on State Border Service, Law on the Court of Bosnia Herzegovina and Law on Administrative Procedure¹⁰.

The LMSAA is generally in the line with international and European standards in the field of asylum. This law contains provisions regarding: the principle of non-refoulement, non-punishment for illegal entry or stay of asylum seekers, access to the asylum procedure for unaccompanied or separated minors, the obligation to inform asylum seekers about the procedure, the right to legal aid, confidentiality of data and the right to an interpreter and interviewing officer of the same sex.

During 2005 the Ministry of Security, which is responsible for creating and implementation of policy in the field of asylum, started drafting amendments to the LMSAA. The amendments contain provisions regarding the accelerated procedure, the establishment of a Commission for Appeal, the procedure for asylum seekers who apply for asylum when they are residing in the Immigration Centre pending the expulsion procedure, and provisions on subsidiary protection (in accordance with EC Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees)¹¹.

¹⁰ Source: UNHCR, Country Progress Report, 2005.

¹¹ The last two provisions were short-term recommendations by the UNHCR;

According to UNHCR, the new draft provisions on subsidiary protection are in line with the EU *acquis*.

The introduction of the accelerated procedure that is foreseen in the draft amendment is one of the priorities of the Ministry of Security for 2007, as well as the introduction of a Commission for Appeal¹².

This draft amendment has been made in cooperation with other relevant Ministries and UNHCR. It was finalised in July 2006 and sent to the Minister of Security. Then the draft is to be submitted to the Government and eventually the parliamentary procedure will follow.

According to UNHCR and the Ministry of Interior, there is a possibility that a new Law on Asylum will be drafted, instead of amending the current Law on Asylum.

One of the EU-provisions (EC Council Directive 2001/55/EC on minimum standards for temporary protection in the event of a mass influx), was according to UNHCR apparently not amended in the draft mentioned above¹³. Furthermore, there is no legislation on the procedures for cancellation or revocation of refugee status as provided in the EC Council Directive 2004/83/EC. According to UNHCR, this is still an open issue that is not covered in the amendments to LMSAA¹⁴

In October 2006, the amendment to the LMSAA was adopted which foresees in a body (Ministry of Human Rights and Refugees) responsible for the implementation of the rights of temporarily admitted persons and persons with temporary residence on humanitarian grounds due to risk of torture, inhuman or degrading treatment or punishment.¹⁵ The implementation in practice is yet to take place.

Adoption of by-laws

The LMSAA foresees in by-laws on the establishment and management of an asylum centre, the asylum procedure, and one central database for aliens.

A by-law on the asylum procedure was adopted in 2004, as well as several other by-laws and rulebooks. In 2005, a by-law on a central database for aliens was drafted by a working group that included the Ministry of Security, Ministry of Foreign Affairs, as well as the IOM and UNHCR. This by-law was adopted in November 2005.¹⁶

The by-law on the establishment and management of an asylum centre has not been drafted yet. The working group, which is responsible for this by-law, will start with its work in January 2007¹⁷.

NB: The Ministry of Security committed itself to implement the recommendations of the UNHCR within the timeframes proposed.

¹² Source: Ministry of Security.

¹³ This was one of the recommendations of UNHCR.

¹⁴ UNHCR Recommendation.

¹⁵ This was one of the short-term recommendations of UNHCR.

¹⁶ Source: UNHCR, Country Progress Report, 2005.

¹⁷ The adoption and implementation of a by-law on reception standards, an asylum centre was one of the short-term recommendations of UNHCR.

Furthermore, the by-law on Access to Rights (for refugees) was adopted in November 2006. This by-law was drafted by UNHCR, while several relevant ministries were involved and provided input.¹⁸

According to UNHCR, one of the main problems regarding the legislation in Bosnia and Herzegovina is the fact that many by-laws are not harmonised with the (main) law(s). Apparently, there is not enough attention within the Bosnian authorities to deal with this issue yet in order to harmonise legislation¹⁹. Furthermore, there is still no by-law on the internal systematisation of the Ministry for Human Rights and Refugees that provides for the establishment of a sector in charge that would ensure access to rights for recognised refugees and others in need of international protection.²⁰

III. IMPLEMENTATION OF LEGISLATION

The asylum procedure

Competent authorities

In Bosnia and Herzegovina, asylum requests are administered and processed by the Ministry of Security. The Ministry of Security is (a.o.) responsible for creating, taking care of and implementing the policy of immigration and asylum.²¹

The UNHCR was responsible for the determination of refugee status in Bosnia and Herzegovina until July 1st 2004. Within the Ministry of Security there is an asylum sector which deals with determination of refugee status ever since (the handover was completed in June 2006). The conditions for implementation of refugee status determination and cooperation with UNHCR are laid down in the joint Protocol on the Handover of Refugee Status Determination and other Asylum-Related Responsibilities from UNHCR to the Ministry of Security signed on 29th December 2004.

Appeals against negative decisions on asylum requests can be lodged at the State Court. The draft amendments to the Law on Asylum foresee in a Governmental Commission for Deciding in an Administrative Procedure in the second instance.

Influx

From July 2004 (take over of responsibilities from UNHCR) up to mid December 2006, the Asylum sector received 172 asylum applications. At that moment there were 20 cases pending. According to the Ministry of Security, the average duration of the asylum procedure in Bosnia and Herzegovina is about 18 months.

Capacity

Staff and recruitment

The Asylum Sector is headed by an Assistant Minister. Currently there are 13 employees within the Sector while 22 staff members are envisaged (four new employees were assigned in December 2006).

¹⁸ This was one of the recommendations of UNHCR.

¹⁹ This was one of the recommendations of UNHCR.

²⁰ This was one of the recommendations of UNHCR.

²¹ Source: UNHCR Country Progress Report, 2005.

The UNHCR welcomes the enlargement of the Sector, but is of the opinion that this number of staff is not sufficient yet to deal with all its tasks and responsibilities properly.²²

Training of staff

Within the framework of a 2005 National EC CARDS project the UNHCR has provided several training courses, seminars and study visits in 2005 and 2006.

In 2006, 40 different activities were organised for the officials of the Ministry of Security, the Ministry for Human Rights and Refugees, Cadets of the State Border Service, law professors and law students and NGO 'Vaša prava'.

The Ministry of the Interior stated that all officers of the Asylum Sector have followed several relevant courses within this project. The officers assigned in December 2006 will be educated in 2007.

After the EC 2003 CARDS project, (between the UNHCR and the Delegation of the European Commission) which ended in December 2005, another national CARDS project was approved and started in 2006.²³

Registration

There is no national registration system yet on all matters pertaining to the reception and integration of asylum seekers and refugees. A country of origin system (recommended by the UNHCR) was to be put in place in the week of the assessment. The software (worth 36.000 euro) was donated and installed by the government of Czech Republic.

Information

The Ministry of Security published an information leaflet including relevant information for asylum seekers. This leaflet is available in several languages and is published with the assistance of UNHCR.

The Ministry of Security informs asylum-seekers of their rights, while the NGO 'Vaša prava' provides free legal aid to refugees and asylum-seekers.

Accelerated procedure

The draft amendments on LMSAA foresee in an accelerated procedure for manifestly unfounded claims. According to the Ministry of Security, this procedure will be useful in practice and enable the Ministry to reduce the costs of the current long procedure.

Non-refoulement

According to UNHCR, the majority of the officers of the State Border Service are aware of the LMSAA provisions that are applicable to asylum seekers, as well as the exemption of asylum seekers and refugees from sanctions for illegal entry and presence. The definition of the principle of non-refoulement is fully consistent with the 1951 Convention.²⁴

²² Assignment of staff within the Asylum Sector was one of the recommendations of the UNHCR.

²³ Source: UNHCR, Country Progress Report, 2005.

²⁴ Source: idem.

No refusals of entry of asylum seekers were observed or reported to the UNHCR, but according to UNHCR despite regular monitoring missions, more is needed to ascertain adherence to the principle of non-refoulement²⁵

Detention

In Lukavica (Eastern Sarajevo) there is an Immigration center for detention of illegal immigrants. The procedure for illegal immigrants who apply for asylum when they are residing in the Immigration Centre pending the expulsion procedure is one of the amendments to the LMSAA which is covered in the draft (see also legislation).

IV. Reception

Competent authorities

The Ministry of Security is responsible for the reception of the asylum seekers, as well as for the financial assistance and health care of asylum seekers. The rights of persons under temporary protection and recognised refugees are under responsibility of the Ministry of Human Rights and Refugees, assisted by the UNHCR.

Reception Centre

The Reception Centre for asylum seekers is situated in Rakovica near Sarajevo. The centre is managed by the Ministry of Security. Asylum seekers are provided with monthly supplies of food and hygienic materials, assistance for transportation to schools and basic educational materials.

The other facilities for accommodation of refugees and persons with temporary protection are situated in Salakovac and Bosanski Petrovac.

According to the UNHCR, the infrastructure at Rakovica is not suitable for pro-longed use as an accommodation centre in terms of capacity and conditions. However, the Ministry of Security has stated that the application for funding of a new site for accommodation of asylum seekers was rejected recently.²⁶

According to the Ministry of Security, some practical facilities, such as better transportation of asylum seekers have been arranged in 2006. At the moment, there are three vehicles in use for the transportation of persons from the reception centres to schools and hospitals. One vehicle (van) has been provided by the UNHCR recently.²⁷

Social and economic rights

The rights of asylum seekers and refugees are defined in the LMSAA. Recognised refugees have the right to work and have access to education (secondary and university as well as primary for the children), health care and social welfare.

²⁵ Source: idem.

²⁶ The identification of a site for the construction of a new Asylum centre and start of the construction work was one of the recommendations of the UNHCR.

²⁷ Better communication with the competent authorities and transport of asylum seekers were recommended by the UNHCR.

According to UNHCR, there is room for improvement when it comes to the implementation of the rights of asylum seekers and refugees in practice.

In November 2006, a by-law on the Access to Rights was adopted. Still, there is no department within the Government of Bosnia and Herzegovina that deals with the rights of recognised refugees in practice (see also footnote 11).

ACTIONS PLANNED

The Ministry of Security expects the adoption of the draft amendments on the LMSAA in 2007. Furthermore, several by-laws are expected to be drafted by the working group and adopted in 2007.

The National CARDS project of the UNHCR will continue in 2007. The Ministry of Security plans to educate its entire staff within the framework of this project.

V. SUMMARY

The most important goals and challenges for Bosnia and Herzegovina in 2007 will be to find and assign more staff and to continue educating the staff involved in asylum matters and officials at the borders. The drafting of several by-laws on the asylum procedure and reception will be other important goals in the field of legislation, in particular the by-law on the establishment and management of an asylum center and a by-law on the Internal Systematisation of the Ministry for Human Rights and Refugees including a provision on the establishment of a sector in charge ensuring access to rights for recognised refugees and others in need of international protection as well as harmonisation of several by-laws with the (main) Law.

Furthermore, the LMSAA still does not foresee in several provisions, in particular the EC Council Directive 2001/55/EC on minimum standards for temporary protection in the event of a mass influx and the procedures for cancellation or revocation of refugee status as provided in the EC Council Directive 2004/83/EC which are not included in the draft amendments to the LMSAA.

The conditions in the reception centre for asylum seekers in Rakovica are apparently not in the line with the relevant EU-provisions (Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers).



REPUBLIC OF CROATIA

I. INTRODUCTION

Interviews were held with:

- The Asylum Unit of the Directorate for Inspection and Administrative Affairs of the Ministry of the Interior (MOI): Ms. Verica Kuhar Hrlic, Head Asylum Section
- UNHCR: Ms. Jasna Barberic, Associate Protection Officer
- Croatian Law Center (CLC): Goranka Lalic

II. LEGISLATION

The *Law on Asylum* applies to all non-Croatian nationals in need of international protection including temporary protection, while the *Law on Foreigners* applies to all other non-Croatian nationals, including rejected asylum seekers.²⁸

The Law on Asylum entered into force on 1 July 2004. The Law on Foreigners had entered into force on 1 January 2004. In the same year, all by-laws that were necessary for the implementation of the *Asylum Law* were adopted.²⁹

Draft Law on Asylum

According to the National Programme for Accession of Croatia to the EU it was foreseen that amendments to the Law on Asylum would be adopted by Parliament in the 4th quarter of 2006.

²⁸ Asylum Country Progress Report Croatia 2005, UNHCR (UNHCR Country Progress Report).

²⁹ UNHCR Country Progress Report; the following by-laws were adopted: Rule Book regarding Accommodation of Asylum Seekers, Asylees and Foreigners under Temporary Protection; Rule Book on Forms and Way of keeping Records for Asylum Seekers, Asylees and Foreigners under Temporary Protection", and Rule Book regarding the Amount of Financial Assistance that will be granted to Asylum Seekers, Asylees and Persons under Temporary Protection.

However, due to numerous changes, it was decided to pass an entirely new law. The draft of the new Law on Asylum (LoA) was adopted by the government on 10 November 2006 and sent to Parliament for adoption. The proposal of the law has to go through 2 readings; the first reading took place on 30 November and on 1 December Parliament passed a conclusion on the adoption of the proposal. Parliament sent the proposal to the MOI with comments which are either to be included or an explanation has to be given if a certain comment will not be included. At the same time, a draft of the new Law on Foreigners (LoF) was going through the same procedure. At the moment of the assessment, the text of the final LoA was not official yet, but it was known that the new LoA would bring about the following changes:

- inclusion of subsidiary forms of protection³⁰
- alignment of the principle of non-refoulement to international standards (also in the LoF)³¹,
- abolishment of the Commission of the Government of Croatia for Deciding on Appeals Lodged by Asylum Seekers and Asylees as the 2nd instance and introduction of the Administrative Court as the 2nd instance in asylum matters instead; suspensive effect in the 2nd instance;
- the right to work after 1 year; the right to secondary education;³²
- extension of the right to family reunion;
- sanctions against the breach of restrictions of movement or structural breach of House Rules of the Reception Centre
- regulation of procedures in case of asylum requests on the border or in transit premises of airports and ports;
- introduction of the accelerated procedure in manifestly unfounded cases;
- introduction of the `single procedure`;
- introduction of the benefit of the doubt;

Furthermore, financial means will be requested for the implementation of the law, among others for: the right to free legal assistance; right to education; right to work; health and social protection; language courses, etc.

The LoA is to enter into force on 1 July 2007. UNHCR has stated that there is a tendency to achieve the Minimum Standards Directives. Furthermore, UNHCR has stated that there are a few provisions which go even beyond that (e.g. vulnerable groups). After the law has been adopted, by-laws will have to be drafted.

In 2006, Croatia has expressed its intention to accede to the Convention on the Reduction of Statelessness and the first steps have been undertaken to that end. UNHCR is closely monitoring this process.

³⁰ One of the recommendations from the UNHCR Country Progress Report.

³¹ One of the recommendations from the UNHCR Country Progress Report.

³² One of the recommendations from the UNHCR Country Progress Report.

III. IMPLEMENTATION

Competent authorities

In Croatia, asylum requests are processed by the Asylum Unit of the Ministry of the Interior. Applications for asylum are to be submitted in the Kutina Reception Centre for Asylum seekers, unless they are submitted by persons from Jezevo Centre, the closed centre for illegal migrants. Those persons have been issued a deportation order and are to stay in the closed centre and wait for the result of their asylum procedure in Jezevo.

The Border Police and the Police Stations forward people who have made clear their intention to apply for asylum to the asylum authorities, who – as stated before - take care of the processing of the application. According to the current LoA, the second instance in asylum matters is the Commission of the Government of Croatia for Deciding on Appeals Lodged by Asylum Seekers and Asylees (Commission), whereas the Administrative Court is the third instance. According to the draft LoA, the Commission will be replaced by the Administrative Court as the second instance and there will be no third instance.

The Asylum Unit is responsible for the management of the Reception Centre for Asylum Seekers. Rejected cases are dealt by the Department for Illegal Migrations of the Border Police Directorate.

Influx

Up to 8 December 2006, 84 persons have applied for asylum in Croatia in 2006. Ten cases are pending and in one case a positive decision was issued. This was the first positive decision since the introduction of the LoA (1 July 2004).

Capacity

Asylum Unit

Staffing and recruitment

The Asylum Unit officially has 14 full-time employed officials: 1 Head of Unit, 1 interpreter, 7 decision makers, 2 persons who take record of the interview, 3 persons who deal with Country of Origin Information (COI). There is one vacancy at the department, for the position of the person who takes records of the interview. As the workload is not that high, this has not posed any significant problems so far. Bearing in mind that, two to three interviews per week are conducted, 14 staff members is sufficient. The rotation of the staff has stabilised. There is sufficient office space. All decision makers have access to the internet.

Refugee Status Determination

According to UNHCR, the quality of decisions by the Asylum Unit is entirely satisfactory. Merits of the case are elaborated and country of origin information (COI) is used to support the decision. The COI unit (Information and Documentation Centre, IDC) has an impressive database and library. In short, there is no lack of information or skills when it comes to taking decisions. However, there might be a lack of political willingness to grant asylum, according to UNHCR. Until 2006, there was a zero recognition rate. In the last quarter of 2006, finally, the first positive decision was issued. Hopefully, this is a precedent and – if necessary - more positive decisions will follow.

Training needs

In the framework of the CARDS Asylum Reform II Twinning, training on interviewing vulnerable groups is planned. In order to ensure professional interviewing of vulnerable groups, UNHCR suggested to include in the staff of the Asylum Unit social workers or psychologists or to provide lawyers with training on this sensitive subject. Furthermore, training courses are planned on the evaluation of evidence, the detection of fraudulent documentation, age assessment methods and even on assessment writing, the use of COI and credibility assessment.

Second and third instance

Staff and work load

Since its establishment, the Commission has only interviewed one asylum seeker in the administrative appeal procedure and has overturned only one first instance decision. According to both UNHCR and the CLC, the problem is that Commission Members are not permanently employed, but are to fulfil their tasks in addition to their jobs. Furthermore, the rotation of the Members is high and not all Members have experience with asylum matters.

The judges in the third and final instance on the other hand, did not look into the merits of cases.

According to the CLC, in 2005 and in 2006, no appeals were lodged at the Administrative Court. The CLC has stated that it does not recommend asylum seekers to appeal to the Administrative Court, because there is no suspensive effect.

According to the draft LoA, this all will change. As mentioned above, the Commission will cease to act as the second instance in asylum matters and it will be replaced by the Administrative Court of Croatia. There will be no third instance. Contrary to before, the Administrative Court of Croatia will not limit itself to an evaluation of the procedural aspects of the appealed decisions but look into the merits of the cases too. Also, appeals will have a suspensive effect. Money from the state budget has been requested to the costs which will follow from this.

Training needs

According to both UNHCR and the Croatian Law Centre, it is necessary to train the Administrative Court judges on EU Directives, on the Geneva Convention of 1951 and the European Human Rights Charter.

The MOI has stated that the judges are invited whenever training on asylum matters is given. So far, three judges of the Administrative Court have participated in training courses on asylum matters that were held in the framework of the National CARDS Twinning. The judges still work at the Administrative Court; one of them will be the President of the Chamber. The judges will be involved in two regional AENEAS seminars that are to take place yet (organised by CLC).

Right to appeal

Asylum seekers are entitled to legal assistance, but the assistance is not provided by the state. As of 1 July 2004, CLC started providing legal representation before the MOI and the Commission. The Croatian Law Centre receives notification of first instance decisions and advises asylum seekers on appeal procedures in the case of a negative decision. If a person

applies for asylum for economic reasons, CLC assists in compiling the complaint; if, according to CLC, there are serious grounds for asylum, CLC writes and prepares the appeal. In 2005 and 2006, CLC has assisted the majority of the asylum seekers (more than 90%). The others were assisted by their own representatives.

Border Police Directorate

Training needs

By Croatia's planned accession to the EU the Ministry of the Interior intends to have trained all border police officers on the identification of persons in need of protection, the asylum procedure, the Law on Asylum and the Law on Foreigners. To that end, training course of two months, covering 12 topics, are being organised by the Police Academy. The head of the Asylum Unit provides the officers with a five-hour course on asylum, i.e. the identification of persons who need protection and proceedings by the border police in case of an asylum application.

On top of that, in the framework of different (EC) programmes, various 'Train the trainer' courses are being organised on e.g. communication (and interviewing) techniques. In addition, 26 police officers were trained on the interviewing of victims of trafficking. To date, however, there have been no applications for asylum by victims of trafficking.

A complicating factor in the context of training courses is the high frequency of rotation within the Border Police.

Registration system

There is a database for aliens including asylum seekers at the Central Information System of the MOI. In the framework of CARDS Twinning Project Reform of Asylum II, preparations will start regarding the introduction of Eurodac.

Non-refoulement

The draft LoA is in line with the non-refoulement principle.

UNHCR does not monitor the borders, but it is not aware of any persons refused access to asylum procedures either at the border or at the police station. Nor is UNHCR aware that any asylum seeker has suffered *refoulement* because of it. The CLC has started initial talks with the MOI with a view to investigate (financial) possibilities to start monitoring borders and all illegal entries in order to get a better picture of the actual situation. The MOI has responded positively to this idea.

Accelerated procedures

The draft LoA introduces the accelerated procedure; no interviews will be held in the accelerated procedure; applications are to be submitted in written form or are filled in by an official. There are questionnaires in nine languages. If a person is illiterate, interpreters assist.

Interagency co-operation

The Asylum Unit and the Border Police Directorate work closely together. UNHCR has stated that the MOI co-operates very well and that the relationship is good.

IV. RECEPTION

Competent authorities

The Asylum Unit of the Directorate for Inspection and Administrative Affairs is responsible for the management of the Reception Centre for Asylum Seekers. The MOI is responsible for health care, while the CLC offers free legal aid (financed by UNHCR). UNHCR and the MOI share the financial costs of the social workers (2 in total).

Capacity

In June 2006, a Reception Centre for Asylum Seekers was opened in Kutina, a small town, some 70 km from Zagreb.³³ Arrangements have been made to keep the Centre in Kutina until the end of 2008. As of 2009, another location, closer to Zagreb (in Zagreb Region) will have to be found.

Kutina Centre is an open facility, which can accommodate 90 persons. Unless restriction of movement (ROM) has been imposed, persons can freely leave the centre (at the time of the interview, ROM against two persons was imposed). There are separate living quarters and facilities for single men and single women, families with children and single women with families.

The medical checks, vaccination, identification, registration, interviewing of the asylum seeker and issuance of ID cards take place in Kutina. There are three social workers and a nurse in the centre. In addition, staff has been hired for the cleaning and security of the premises. According to UNHCR, the reception of asylum seekers with special needs in Kutina suffices.

With a view to the low influx of asylum seekers, the current number of personnel working in Kutina suffices.

All employees who need to work with a computer have a computer at their disposal that is connected to the internet.

Integration

All integration matters of the one person who has been issued a status in Croatia are currently dealt with by the Asylum Unit, ID, medical health care, social welfare, registration in the work agency, etc) In the future, it will be necessary to appoint one person who will deal with the integration of refugees.

V. ACTIONS PLANNED

With a view to Croatia's accession to the European Union, the EC is closely monitoring the progress in Croatia. In that context, various progress reports are being written and with a view to the continuous realisation of progress, various EC funds have been made available.

Various topics have been put on the country's agenda for the following two years. Following the new LoA, by-laws will have to be drafted. Also, a lot is planned to be done in the framework of another Twinning Project on Asylum Reform, such as the preparation for the implementation of the Eurodac Regulation, the training of staff of the new Reception Centre, improvement of the current data processing and storing system, etc. (for more specific information on the activities planned, see CARDS Twinning Project Fiche).

³³ This is a mid-term recommendation from the UNHCR Country Progress Report.

Also, other funds of the European Commission (AENEAS programme, implemented by the CLC) are used, among others, to improve co-ordination of asylum matters among all actors involved, to raise public awareness regarding human rights, to develop the concept of Regional Border Monitoring, to create a website containing regional news in the field of asylum and migration (incl. return matters). In all, the training courses that are recommended in UNHCR's Country Progress Report on the short term, will be covered through the EC programmes mentioned.

VI. CONCLUSION

Croatia is very active with its preparations to the accession to the EU. In that context, a considerable amount of work has been done with the drafts on the LoA and LoF and the opening of the Reception Centre for Asylum Seekers. The next step will be to adjust the by-laws and to realise the implementation of legislation. Furthermore, in 2006, the first status has been given to an asylum seeker and a lot of effort has been put in the integration of this person. Hopefully, if there where necessary, more will follow.



REPUBLIC OF MACEDONIA

I. INTRODUCTION

In Macedonia, interviews were held with

- Section for Asylum of the Ministry of the Interior: Head of Asylum Section, Mr. Zivko Kocev
- UNHCR: Ms. Catherine Walker: Representative
- Civil Society Resource Center: Mr. Zoran Gavriloski
- Section for Provision of Care for Asylum Seekers, Refugees, Migrants and Returnees from Readmission Agreements of the Ministry for Labour and Social Policy (MLSP): Mr. Dejan Ivkovski, Advisor (input provided as a written report)

II. LEGISLATION

Asylum legislation in the Republic of Macedonia is laid down in the Law on Asylum and Temporary Protection (LATP) of 2003.³⁴

The Ministry of the Interior has stated that amendments to the LATP are planned – it is expected that they will be ready in June 2007 and enter into force in 2008. The amendments will include several provisions from the EC Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees³⁵, the Convention on the Rights of the

³⁴ Other laws applicable to the situation of refugees and asylum seekers are the Law on General Administrative Procedure, the Law on Administrative Disputes, the Law on Family, the Law on Child Protection, the Law on Health Insurance, the Law on Social Protection, the Law on Primary Education, Law on Secondary Education, Law on Higher Education, the Law on Association of Citizens and Foundations, the Law on Public Assemblies, Law on Employment and Insurance in Case of Unemployment, the Law on Citizenship, and the Law on Movement and Residence of Aliens and the Law on Employment of Aliens (the latter is subject to ongoing revision). Source: UNHCR Asylum Module Country Progress Report Macedonia, 2005 (UNHCR Progress Report).

³⁵ The last two provisions were short-term recommendations by the UNHCR.

NB: The Ministry of Security committed itself to implement the recommendations of the UNHCR within the timeframes proposed.

Child, issues related to asylum seekers with special needs, such as survivors of Sexual and Gender Based Violence (SGBV) and - in addition to the currently existing humanitarian protection - subsidiary protection.³⁶ Furthermore, the amendments are to give solutions to some practicalities, such as e.g. the cessation of the right on asylum after death, which according to the current law is not possible.

According to both UNHCR and the Civil Society Resource Center, the LATP is, in general, in line with international standards, whereas its implementation and division of responsibilities remain a problem.

A new Law on Aliens has been adopted in 2006, but it has not entered into force yet. In addition, a new Law on Administrative Procedure has been adopted. According to this law, the Administrative court is to be established – this has not happened yet, although the deadline has passed. In the meantime, the Supreme Court is responsible for the Asylum cases.

Either a by-law or guidelines on return policy for rejected asylum seekers will be drafted in the course of 2007.³⁷

III. IMPLEMENTATION

Competent authorities

In Macedonia, asylum requests are administered and processed at the Section for Asylum (SfA) of the Ministry of the Interior. According to the LATP, the Border Police and the Police Stations forward asylum claims to the SfA. Appeals against negative decisions on asylum requests can be lodged with the Governmental Commission for Deciding in an Administrative Procedure in the Second Instance in the Field of Interior, Judiciary, State Administration, Local Self-Government and Issues of Religious Character (Governmental Appeals Commission, GAC), whereas the third instance is the Supreme Court of Macedonia.³⁸

The Ministry of Labour and Social Policy (MLSP) is responsible for the provision of material assistance and reception of asylum seekers as well as social welfare assistance to recognised refugees and their integration. The activities and capacity of the MLSP will be elaborated in the chapter on reception.

Influx in 2006

Up to mid December, in 2006, the SfA received 8 applications (of 9 persons): 1 from Bulgaria, 1 from Albania while the other requests were all from citizens from Serbia (Kosovo). Out of these 8 cases, 5 were rejected, 1 procedure was aborted, 1 application for the extension of Humanitarian protection was extended, and in 1 case Humanitarian protection (since 1987) was stopped and the person in question returned home.

In three cases, an appeal was initiated in the second instance. In all three cases, a negative decision by the GAC followed. None of the three cases went to the Supreme Court, the third instance in asylum matters. Out of the 3 rejected cases, in two cases the persons returned to Kosovo.

³⁶ This is in line with the recommendations from the UNHCR Country Progress Report.

³⁷ This was one of UNHCR's mid-term recommendations.

³⁸ UNHCR Progress Report.

In all, there are 28 refugees in Macedonia. UNCHR mentioned that it happened twice that a refugee status was issued just after UNHCR had arranged for a resettlement in another case.

Capacity

Section for Asylum

Staffing and recruitment

The SfA counts 8 approved positions: a head of section, a chief inspector who conducts interviews, takes decisions and supervises decisions, 2 senior inspectors, who conduct interviews and take decisions, 3 `independent` inspectors, who conduct interviews and take decisions and 1 administrative staff. The position of chief inspector is empty at the moment but most probably will be filled through promotion of an employee who already works at the SfA. At the beginning of 2006, the positions were still financed by UNHCR, but in the meantime funds have been made available from the national budget and as of July 2006, all positions are financed by the MOI.

With a view to the influx of asylum seekers in 2006 – 9 in total from January until mid-December (see also below) - the staffing of the SfA suffices.

For all positions at the SfA, except for the one of administrative employee, at least a degree in law is required. The SfA continues to be bound by administrative criteria established for the recruitment of public clerks and cannot do much about internal decisions or appointments of staff. Rotation of staff has not been an issue so far. All SfA employees have access to internet and intranet on their computers.

Refugee Status Determination

In the framework of a national CARDS project, an `Asylum Handbook` , a step-by-step user's guide on Refugee Status Determination (RSD), has been written.³⁹ This handbook, based on the LATP, was finalised in mid-December 2006 and will be disseminated to all those working in the field of asylum (e.g. at the border crossing points).

At the moment, gender sensitive interviews are conducted with female interviewers. This is currently not a problem, as most of the SfA staff is female.

The SfA does not share the perception of UNHCR that in negative decisions on asylum requests, details and quotes from sources on country of origin information (COI) should be given; the mention of the source should be enough. At the moment, the SfA has no specific COI software, although the idea exists to include COI in the registration system which is to be purchased yet.

The SfA has stated that it is willing to implement together with UNHCR the recommendation⁴⁰ to further mainstream into capacity building efforts UNHCR's observations during RSD interviews and joint evaluation of interview technique and assessment of the claim.

³⁹ This was one of UNHCR's short term recommendations.

⁴⁰ UNHCR Progress Report.

Training of staff

UNHCR has provided the SfA with training on Sexual/Gender Based Violence. According to UNHCR, training in best needs of the child would be needed; however, there are no children among the new arrivals.

Also, training sessions took place in the framework of CARDS Regional, which according to UNHCR was very useful. Furthermore, one person from the SfA attended COI training in Geneva (UNHCR) last year. Also, a NATO-training on trafficking was attended by the SfA last year.

The SfA mentioned the need of training on interviewing techniques; forced return practice as well as the issuing of ID`s.⁴¹ UNHCR mentioned the need of training of concerned officials on methods of working with asylum seekers with special needs, such as (unaccompanied) minors, SGVB, victims of torture and persons with mental disabilities.⁴²

Second and third instance

In UNHCR`s progress report on Macedonia, it was stated that ...`most of the GAC members have no particular expertise in the examination of asylum cases... and that`the GAC lacks the capacity and substantive know-how...` Furthermore, it was stated that the Supreme Court of Macedonia hardly reviews the merits of the case....⁴³ With regard to the judges of the Supreme Court, during the interviews it was stated that in general they take over decisions of the 2nd instance, that they in fact lack knowledge of asylum matters and do not go into the merits of the case.

Late 2006, the Academy of Judges of Macedonia approached UNHCR with a request for training on asylum matters. Training of judges in the second and third instance will hopefully improve the situation described and enhance the effectiveness of both the second and third instance.

Border Police and Police Stations

As mentioned above, the Border Police and the Police Stations are to forward asylum requests of asylum seekers to the SfA. This implies that the police officers at the border crossings and at the police stations should be well informed about the asylum procedure, how to deal with people who ask for international protection, especially vulnerable groups.

While UNHCR is worried about the very low number of asylum claims in 2006, as this might imply that there is a problem in identifying asylum seekers, the SfA claims that the Border Police forward asylum requests without delay to the SfA and that it is well informed about what to do in such cases: short interview of the person in order to establish his/her identity and travel route, search the person and then forward the case to the SfA. To this purpose, the SfA has organised training sessions for the border police at 70% of the border crossings; the same training will be given to the police stations in mid 2007. Furthermore, only recently a Handbook on Asylum has been written for officials who deal with asylum seekers. This Handbook and CD-Rom will be disseminated to all border crossing points. Also, brochures about the asylum procedure in Macedonia in English and in Macedonian have been disseminated to the border crossing points. Up to mid-December, no asylum claims were forwarded from the Border Police to the SfA in 2006.

⁴¹ This is also a recommendation from UNHCR Country Progress Report.

⁴² This is one of UNHCR`s short term recommendations.

⁴³ UNHCR Progress Report.

During the last year, the SfA was involved in giving lectures – 8 hours in total - to Police Academy students on asylum matters. It is expected that this practice will be continued.

The department for illegal migration of the Border Police will most probably in the future (after the Law on Aliens enters into force) be responsible for the implementation of forced return. The SfA however is planning to design the guidelines on the implementation of forced return.

Registration

At the moment, there is no national database in Macedonia on all matters pertaining to the reception and integration of asylum seekers and refugees.⁴⁴ According to UNHCR, through EAR, most probably a tender will be issued for a database that will include the possibility of statistical tracking. Furthermore, UNHCR stated that it should not be too complicated to include data on vulnerability, origin, etc.

The SfA on the other hand has stated that the Government is in the course of a second tender for software for the registration of asylum seekers; COI is to be included in this system too. The idea is not to connect the software on the MOI network. At present, the SfA uses the existing MOI registration system for foreigners: it contains only fields for permanent and temporary residence; the idea is to adapt the system and add fields for refugees and humanitarian protection. As this system is on the MOI network, it can be used by all those who are authorised for it. The SfA does not intend to share data with the MLSP. Therefore, the Reception Centre, which is under the responsibility of the MLSP, will have its own registration system, says SfA.

Documentation

The Ministry of the Interior has printed different identity cards for refugees, for people with humanitarian protection and for asylum seekers. Currently, only identity cards for asylum seekers are being issued, meaning that e.g. refugees hold identity cards for asylum seekers. About this issue, SfA has stated the following. There are over 300 aliens whose request for asylum has been denied. Now the MOI wants to expel them, but due to political pressure from the outside (up to the Prime Minister), their expulsion has been suspended. The SfA will not start issuing the new IDs as long as the people that the MOI intends to expel cannot be expelled. In the meantime, it will continue issuing the yellow IDs for asylum seekers to all. Those who intend to travel will receive a travel document for foreigners. Children do not get their own ID; their data (name, date of birth, sex) are mentioned on the ID of one of the parents, that is, on the ID for asylum seekers. In the ID for persons under humanitarian protection and the ID for refugees, there is no space for the registration of children.

Information

The SfA has printed and disseminated brochures on the asylum procedure to some of the border crossing points and local police stations. The brochures, which are available in Macedonian and in English, contain information on the asylum procedure (how to apply for asylum, rights and obligations of asylum seekers, the interview) and some important addresses (UNHCR, the MOI, MLSP, the reception centre and the Red Cross). The SfA has stated that there where an asylum seeker does not understand Macedonian or English, (s)he is informed of the contents of the brochure by an interpreter.

⁴⁴ This is one of UNHCR's mid-term recommendations.

Access to legal representation

Legal assistance is provided through the Civil Society Resource Centre, an implementing partner of UNHCR. Access to the Supreme Court costs 600 MKD, an amount that most asylum seekers cannot afford.

Accelerated procedure

According to law, unaccompanied minors and mentally disabled persons are exempted from accelerated procedures. Nevertheless, UNHCR had to take action in order to undo the accelerated procedure in a case of a mentally and physically disabled person. The person in question has been placed in an institution now. No decision has been taken on the asylum application yet.

Rejected cases

There are no procedures on return yet. The plan is to draft them in 2007, either in the form of guidelines or in a form of a by-law.

As mentioned above, there are between 300 and 400 rejected cases. According to UNHCR, many of the cases should not have been rejected. The MOI however intended to expel the people involved. After international pressure was put on the Macedonian government, the deportation was put on hold.

So far, according to the SfA, there has been only one case of forced return: a case of a Kosovar some two years ago. In most of the rejected cases, people leave on their own initiative within 30 days, says the SfA.

There is still a lack of resources for the removal of unsuccessful asylum seekers who originate from outside the region.

Implementation of readmission agreements

Readmission agreements have been signed with: Italy, France, Slovenia, Slovakia, Germany, Hungary, Spain, Poland, Benelux countries, Denmark, Austria, Sweden, Switzerland, Croatia, Albania, Bulgaria and Romania. An agreement is about to be concluded with: Norway, Bosnia and Herzegovina and Moldova. With Ukraine, Montenegro, Turkey and Serbia, agreements are still under negotiation. Estonia, Ireland, Latvia and the United Kingdom have stated that there is no need to sign readmission agreements with Macedonia.⁴⁵

According to UNHCR, Macedonia still lacks the resources for the full implementation of the readmission agreements it has signed. Not fully implementing the agreements fosters secondary movement: people either disappear or ask for asylum elsewhere.

⁴⁵ UNHCR Overview Readmission Agreements, update 14 December 2006.

Non-refoulement

Presently, neither UNHCR nor the NGOs have the capacity to effectively monitor places of entry as well as misdemeanor proceedings in the Basic Courts instigated against aliens for unlawful stay in the country.

Like in 2005, in 2006, there were no known instances of refoulement of registered asylum seekers or persons granted asylum since the LATP took effect.

Detention

There are no detention centers for illegal migrants yet. The aliens who are detained were detained following the crimes that they committed. As soon as the last victims of trafficking have left Gazi Baba, the MOI intends to turn the center into a detention centre for illegal migrants.

IV. RECEPTION

Competent authorities

According to the LATP, the MLSP takes care of the accommodation, allocation of financial assistance and health care of asylum seekers, persons under temporary protection and recognised refugees. Within the MLSP, the Section for Protection and Care of Persons with Disabilities, Refugees and Asylum Seekers is responsible for the provision of material assistance, reception of asylum seekers and social welfare assistance to recognised refugees as well as their integration. Social welfare assistance is provided through the Centres for Social Work.⁴⁶

Capacity

MLSP

According to UNHCR's information, there have been no changes in the staffing of the Section for Protection and Care of Persons with Disabilities, Refugees and Asylum Seekers: three staff, two of whom are financed by UNHCR. Another issue according to UNHCR is that the MLSP budget which officially should be used for both refugees and IDPs in reality is only spent on IDPs and not on refugees, unless they are minors. Furthermore, the lack of money is being given as a reason why the MLSP does not take responsibility in refugee matters. In this context, the Ministry does not fully exercise its responsibility and UNHCR, the Skopje City Red Cross and the Legal NGO Network do the bulk of the work instead: UNHCR provides those who have a status with accommodation or with subsistence allowance to cover minimum rental and utility charges as well as other food and personal needs; the Red Cross offers basic health care and refers to hospitals in cases where more advanced health care is needed.

The exception to the above is the involvement of the Centre for Social Work in case of minors. Still, art.55 of the LATP stipulates that the funds for accommodation, financial assistance and health care should be provided from the Budget of the Republic of Macedonia. A separate budgetary provision for asylum seekers, recognised refugees and persons under Humanitarian Protection status, as recommended by UNHCR in its Country Progress Report, would be a good solution.

⁴⁶ UNHCR Progress Report.

According to the MLSP information, the Ministry formed a new department called Unit for Provision of Care for Asylum Seekers, Refugees, Migrants and Returnees from the Readmission Agreements. The Unit currently employs only one person (contracted by the Ministry) and the second staff member is paid by UNHCR. The number of staff is not sufficient to cover the workload, and for 2007 it is planned to enlarge the Unit for at least two more staff members. In 2006, the budget of the MLSP included the finances for provision of the secondary health care for refugees (the primary health care was covered by UNHCR), but the funds were not used. In 2006 there were not special trainings organized for the staff, except for the participation at the various regional workshops.

Reception Centre

The construction of the Visbegovo Reception Centre is about to be finished. As of 1 January 2007, the financing of the running of the centre by UNHCR will end and the MLSP is to take over its management. UNHCR has offered support in the identification of staff needed (definition of roles and number of staff, etc). During the interviews held, neither UNHCR nor the SfA had information about plans regarding the staff that will be appointed by the MLSP at the Reception Centre. The SfA stated that the MLSP has requested for the necessary budget. When the staff is in place, it will have to be trained and provided with the recently written Handbook on Asylum.

The Ministry of the Interior will have seven rooms at its disposal in the Reception Centre for purposes of conducting interviews, taking fingerprints and pictures. The necessary equipment is not yet in place, but the SfA plans to ask for funding through the European Agency for Reconstruction (EAR).

The head of SfA had a meeting with CSW Skopje on the organisation's activities in the Reception Centre.

The Mol intends to turn Gazi Baba Transit Centre for Foreigners, which used to be the reception centre for asylum seekers and victims of trafficking, into a centre for illegal migrants as soon as the centre is abandoned by the victims of trafficking. In addition, UNHCR has been informed by the Minister of the Interior to look for another place for the asylum seekers who have been accommodated there by UNHCR. UNHCR has its doubts with regard to the new purpose of Gazi Baba: it was never constructed for such purposes (it used to be a school), it is located in the centre and relatively far from the airport.

MLSP informed that for 2007 it is planned to finalise the interior (furniture, equipment) of the Reception Centre and to employ the staff to work at the Reception Centre. Revising and updating of the Law on Social Protection is ongoing, to include the Reception Centre as a separate institution in the framework of MLSP. The Manual for standard reception procedures has been developed with the European Agency for Reconstruction.

Inter-agency co-operation

There is automatic referral from the MOI to the MLSP, although UNHCR has stated that the referral system in cases of vulnerable cases should be enhanced. The capacity of MLSP is limited and so far, UNHCR took over responsibility in most cases (accommodation, subsistence allowance, education, etc). Usually, UNHCR undertakes action if MLSP has not reacted within 10 days. Except in those situations when minors are involved and the CSW is mobilised, this

happens in most cases, says UNHCR. UNHCR has stated that a proper referral system should be established to refer vulnerable cases from the SfA to the MLSP.

In the National Action Plan on Asylum and Migration of 2002, one of the actions mentioned is the establishing of the Inter-Ministerial Working Group in order to clarify and establish respective responsibilities among the Ministries concerned. This Working Group was called for by MLSP in the end of 2006 and is to convene in the first half of January 2007. This might form a basis to co-ordinate the responsibilities and activities of different Ministries such the MLSP, the Ministries of Health, Education, Local Self-Government and Finance.

MLSP noted that besides regular cooperation with MOI and UNHCR, in order to improve general cooperation and coordination and include other relevant Ministries, there is now newly established inter-ministerial coordination group: Inter-ministerial Group for Integration of Refugees and Foreigners. Regarding referral mechanisms for vulnerable groups of asylum seekers, besides regular cooperation of MLSP and UNHCR in visiting the vulnerable cases, MLSP also included representatives from Centres for Social Work in order to have an expert personnel present to provide professional assistance when necessary. However, sometimes it is happening that the assistance is asked from the institutions/staff that is not familiar with the legislation that defines the rights of the asylum seekers in which cases MLSP provides relevant assistance.

Registration

There is no comprehensive data base of beneficiaries of accommodation and financial assistance including any individual social needs. As mentioned before, the MOI has stated that it does not intend to share its data of registered asylum seekers with MLSP.

Asylum-seekers with Special Needs

So far, no special provisions have been made by the government for asylum seekers with special needs. According to UNHCR, the CSW does it work well when it comes to assigning a guardian to unaccompanied minors, but does not undertake enough action when mentally retarded people are involved. When it comes to victims of trafficking, UNHCR has stated that a lot has been achieved; on the other hand, no victim of trafficking has requested for asylum yet. The Standard Operating Procedures of the Transit Shelter for Victims of Trafficking have been elaborated by IOM, but no clause on the right to apply for asylum has been included, says UNHCR.

Education and vocational training

The Ministry of Education has found the means to provide children of asylum seekers and children of people with a status with primary education. UNHCR has stopped financing education; the organisation states that, unless financed by NGOs or international organisations, there is no secondary education for asylum seekers.

Employment

Not all persons under international protection are entitled to work after 1 year. In practice, refugees who turn to the Employment Agency of the State, once helped, are told that the agency does not have instructions (there are no directives) on how to register refugees and therefore are not helped. Furthermore, the criteria that are to be fulfilled are rather complicated and no regulations have been made publicly available.

According to the LATP, refugees without an income are entitled to special financial assistance by the state for a maximum period of two years. After the expiry of those two years, the recognised refugee is entitled to the same permanent financial assistance and other social welfare rights as Macedonian nationals. According to UNHCR, there are no examples of refugees who receive social welfare from the state after two years. UNHCR continues to finance the refugees.

Integration

There is no integration policy in place yet and no plans or preparations have been made known yet. Nevertheless, some people have integrated well through obtaining a permanent residence permit. The mayor of Suto Orizari, an area where many Kosovar Roma have been accommodated, is in favour of integration, but does not have the means.

V. ACTION PLANS

The UNHCR Country Progress Report of 2005 was adopted by the Macedonian Parliament as an Action Plan. UNHCR intends to convene a meeting with the Macedonian authorities in order to evaluate which actions have been undertaken so far.

In December 2002, the Government of Macedonia adopted the `National Action Plan on Asylum and Migration` (NAP) of the Stability Pact MAI Country Team for Macedonia. Some of the achievements under the NAP were the handover of tasks in the field of border management from the Ministry of Defence to the Ministry of the Interior, the adoption of the LATP, the creation of a Handbook to state officials on the reception and identification of asylum seekers, the conclusion of readmission agreements and the increase of asylum case workers at the MOI. Also, late 2006, members of the Inter-Ministerial Working Group have been appointed and its first meeting is to take place in the beginning of 2007. Despite efforts from both UNHCR and Sweden, the Country Team did not meet after December 2003 in order to review progress under the NAP and define further steps that will be taken.

For 2007, MLSP plans to conduct the trainings for the staff of the Reception Centre and the training for the senior staff at the Centres of Social Work responsible for the provision of assistance for asylum seekers. In March 2007, the Plan for mass influx of refugees should be completed. Finalisation of the Strategy for Integration of Refugees by the new Inter-Ministerial group is planned for 2007, as well as the adoption of the Strategy by the Macedonian Government.

VI. SUMMARY

In 2005, several things have been achieved in the field of asylum.

The MOI has found financial means to finance its entire SfA staff. Now the SfA can focus on the training of caseworkers on interviewing techniques and drafting decisions. The SfA is organising training courses for police officers and the border police on asylum and a Handbook on Asylum for all officials involved was written. Although co-operation between the SfA and the border police is good, the fact that in 2006 up to mid-December no asylum request was forwarded from the border police to the SfA is an issue that might need attention. Furthermore, The SfA is planning to draft a by-law on vulnerable groups and to define a return policy in 2007.

Another issue which will need action is the second instance, which, according to UNHCR and the NGO is not the independent and competent body that it should be yet. Also, judges from the Supreme Court will have to be trained on asylum issues. The Academy of Judges of Macedonia has taken the first steps to that end.

A Reception Centre for asylum seekers was finished in 2006. Now attention will have to be given to its staffing (recruitment, definition of work and responsibilities of personnel) and management of the centre. Also, the MLSP will have to take up its responsibility and take care of social welfare issues, accommodation, etc. as defined in the LATP. To that end, financial means will have to be made available either from either the MLSP or the state budget. In addition, in that context, late 2006, the MLSP called for a meeting of the so-called Inter Ministerial Working Group that is supposed to clarify and establish responsibilities among the Ministries that are dealing with asylum issues.



REPUBLIC OF MONTENEGRO

I. INTRODUCTION

In Montenegro, interviews were held with:

- The Ministry of the Interior, Directorate for legal affairs: Ms Natalija Simonovic, Head of the Unit; Ms Zora Cizmovic; Senior Adviser, Ms Vesna Gogic, Senior Adviser
- The UNHCR: Mr Aleksandar Cadjenovic, Legal Adviser; Mr John Palmer, Legal Adviser
- *NGO Humanitarian Legal Office (HLO) Podgorica*: Ms Rajka Culjic, Director; Ms Sanja Cadjenovic, Deputy Director; Mr Milan Racic, Senior Policy Advisor

II. LEGISLATION

Asylum law

Asylum legislation in the Republic of Montenegro is laid down in the Framework Law on Asylum which was adopted in April 2005. This law was created and came into force in the period before the referendum and independency of Republic of Montenegro. This law sets up the basic principles of refugee protection, rights and obligations of asylum seekers, identification, tasks and responsibilities of competent authorities, as well as minimum asylum procedural safeguards. After the adoption of the Framework law, both countries of the State Union of Serbia and Montenegro were to draft separate law, based on the Framework law, but in the line with their own asylum policy and needs.

After the secession of Republic of Montenegro from the State Union with Republic of Serbia, mid 2006, there was no need anymore to have two laws on asylum in Montenegro.

The authorities of Montenegro have decided to work on new Law on Asylum, parallel to the process of independency of the Republic of Montenegro during first half of 2006. The working group was formed, in which different ministries involved were represented. Furthermore, there was (and still is) a frequent and fruitful contact between the working group and the UNHCR, as well as with the HLO Podgorica.

Due to this fact, the authorities managed to draft the Law on Asylum that meets the goals of the government of Montenegro, and, at the same time, is in line with all relevant Conventions⁴⁷.

The (new) Law on Asylum was adopted on July 10th 2006 and it came into force on January 25th 2007.⁴⁸

This law is generally in line with international and European standards in the field of asylum. The law contains provisions regarding: the principle of non-refoulement, non-punishment of illegal entry or stay of asylum seekers, subsidiary protection, the principle of the best interests for the child and family unity, access to the asylum procedure for unaccompanied or separated minors and other persons with special needs, the obligation to inform asylum seekers about the procedure, the right to legal aid, confidentiality of data and the right to an interpreter and interviewing officer of the same sex.

Adoption of by-laws

The following by-laws and guidelines are currently being drafted by the authorities responsible:

- a) By-law on registration of fingerprints and photographs
- b) By-law on the asylum procedure (introduction of several standard forms)
- c) Regulation on registration (of asylum seekers)⁴⁹
- d) Guideline on the issuing of travel and identification documents (including specimen)
- e) Regulation on the rights of asylum seekers and persons with refugee status.

The adoption of the by-laws mentioned forms part of the programme of the Montenegrin government for 2007.

The by-law on the storage of data in the central database is also to be drafted in 2007.

Furthermore, the Ministry of Interior and HLO signed a Protocol on free legal assistance. This Protocol covers the rights of the asylum seekers, recognised refugees and persons with temporary status, such as: free legal assistance provided by HLO, free interpreter, free access for HLO officials to the reception centre or other facilities, easier access for HLO officials to the airport and border facilities.⁵⁰

At the moment, the HLO is mainly financed by the UNHCR.

III. IMPLEMENTATION OF LEGISLATION

The asylum procedure

Competent authorities

In Montenegro, asylum requests are administered and processed by the UNHCR. With the adoption of the Law on Asylum that came into force on January 25th 2007, the government

⁴⁷ This is the opinion of all the officials interviewed.

⁴⁸ The adoption of the Law on Asylum was one of the short-term recommendations of UNHCR (Asylum Country Progress Report 2005).

⁴⁹ Adoption of by-laws is one of the mid-term recommendations of UNHCR.

⁵⁰ Free legal assistance for persons without resources in first instance was one of the recommendations of UNHCR.

authorities (Office on Asylum and Readmission within the Ministry of Interior) will take over the tasks and responsibilities of the UNHCR. An Asylum Appeals Commission (five members) will be established to deal with the appeals.⁵¹

The UNHCR is also responsible for the provision of material assistance and reception of asylum seekers as well as social welfare assistance to recognised refugees and their integration. In 2007, the reception of asylum seekers will be the responsibility of the Office for the Reception. However, there is still no (draft) by-law on the reception of asylum seekers.

Influx

Up to mid December, in 2006, the UNHCR received six applications.

This number of persons seeking protection is very low and should not be considered as a problem for the responsible authorities in Montenegro. However, the Republic of Montenegro still has to deal with about 7000 cases of displaced persons from other parts of the former Yugoslavia, in particular people who fled Croatia, Bosnia and Herzegovina and Kosovo and who have been living in the Republic of Montenegro for a long period now (in some cases for more than 15 years).

The status of these persons is not defined in the new Law on Asylum, which means that it will have to be clarified separately according to the new legislation. Due to the long period of stay in Montenegro, the HLO expects and hopes that the status of these people will be finally defined and legalised after the Law on Asylum comes in to force in January 2007. According to HLO and UNHCR, the 'legalisation procedure' or the determination of about 7000 old cases in accordance with the new legislation will be a great challenge for the new Office on Asylum and Readmission of the Ministry of Interior which is to be established in 2007.

Capacity

Staff and recruitment

Currently there are no employees within the Department for Foreigners who are only dealing with asylum matters.

The Directorate for legal affairs deals with asylum matters, as well as with legal immigration, naturalisation, readmission and issuance of documents.

The Office on Asylum and Readmission which is planned to be established in 2007 will include six positions: a head of section, three (senior) inspectors who will conduct interviews, take and supervise decisions, one officer responsible for collecting and storing country of origin information and 1 administrator.⁵²

With a view to the influx of asylum seekers in 2006, the staffing of the Section will be sufficient. However, the determination of 7000 old cases will obviously be a quite huge caseload for this young and small unit. Therefore, the Montenegrin Government should create clear policy regarding the status of these people. This will allow the Ministry of Interior to implement the policy and decide in all the cases in a smooth way and a relatively short period of time.

⁵¹ Decision on the relevant institutions and internal systematisation for asylum sectors within the appropriate Ministry was one of the short-term recommendations of UNHCR.

⁵² Source: Ministry of Interior. Identification of qualified staff was one of short-term recommendations of UNHCR, as well as setting up of a country of origin information system (mid-term).

Training of staff

UNHCR has provided several training courses, seminars and study visits in 2005 and 2006. The activities took place in the framework of the EC-funded Project "Co-operation with Third Countries in the Area of Migration (B7-667): Building an Asylum System in Serbia and Montenegro" and were meant for border police officers and members of foreigners' police departments.

The participants became familiar with the basics of the international protection of refugees. These seminars were based on the 'train the trainers' principle in order to enable participants to transfer their new knowledge to other staff in their departments. Furthermore, in 2006 study visits were organised to, Slovenia and Romania.⁵³

No curriculum of training activities of the staff has been developed yet, as the section that is to deal with asylum cases has not been created yet.⁵⁴

The development of a curriculum of training activities has a high priority of the Assistant of the Minister and is planned to be done in co-operation with the UNHCR.

After the establishment of the Office for Asylum, the education of the staff will continue in 2007.

The education of the reception center staff which was planned for 2006, has been postponed.

Registration

There is no national database on all matters pertaining to the reception and integration of asylum seekers and refugees. According to UNHCR, the lack of legal and institutional framework with clearly defined responsibilities was the main reason why the provision of the technical assistance had to be postponed. However, a registration system, financed by UNHCR, is planned for 2007.

Information

The HLO published a brochure with relevant information on asylum for the asylum seekers, in Serbian and English.

The UNHCR published a Compendium of relevant asylum documents for government officials and civil servants involved in the asylum building process, civil society representatives, academics and other interested actors.⁵⁵

Accelerated procedure

The Law on Asylum foresees in an accelerated procedure for manifestly unfounded claims.

Non-refoulement

Presently, neither UNHCR nor the NGOs have the capacity to effectively monitor places of entry as well as misdemeanor proceedings in the Basic Courts instigated against aliens for unlawful stay in the country.

⁵³ Information provided by UNHCR Belgrade (Final Report of B7-667 project).

⁵⁴ This was also one of the short-term recommendations of UNHCR.

⁵⁵ Information provided by UNHCR (Final Report on the EC-funded Project mentioned above).

Like in 2005, in 2006, there were no known instances of refoulement of registered asylum seekers or persons who have been granted asylum.

So far, the UNHCR is quite satisfied with the education of border control officers regarding the recognition of possible asylum requests of persons whose entry has been rejected.

Detention

There are no detention centres for illegal migrants yet. The aliens who are detained are in one part of the regular prison for sentenced persons in Spuz.

IV. Reception

Competent authorities

At the moment, UNHCR is responsible for the reception of asylum seekers, as well as for the financial assistance and health care of asylum seekers, persons under temporary protection and recognised refugees.

UNHCR provides those who have a status with accommodation or with subsistence allowance to cover minimum rental and utility charges as well as other personal needs

The authorities are in the process of recruiting and assigning personnel and taking over all the tasks related to the reception of asylum seekers, after the adoption of the Law on Asylum. The Office for the Reception of persons has already been established.

Reception Centre

The Montenegrin government purchased ground in Spuz (8 km from Podgorica) and started with the construction of an Asylum Centre.

At the time of visit the finalizing construction works were still ongoing.

The centre will have the capacity to host 110 people. The UNHCR co-financed this project, i.e. the project development, soil research, basic ground works and construction of the first pavilion.⁵⁶

The new facility will be run by the Office for the Reception of persons.

During the interviews held, neither UNHCR nor the Ministry officials had information about plans regarding the staff that will be appointed by the Government at the Reception Centre.

Social and economic rights

The Law on Asylum foresees in the right for asylum seekers on free primary and secondary education, accommodation, health care, social protection and work within the Centre.

Recognised refugees have the right to post-secondary and higher education (financed by the state) and the right to work.

⁵⁶ Information provided by UNHCR Belgrade (Final Report of B7-667 project).

ACTION PLANS

For 2006, the UNHCR applied for an Aeneas project of the EC to continue the support of the establishment of an asylum system, capacity building activities and the establishment of an asylum centre. This application has been granted recently.

Furthermore, the Ministry will continue the further process of the implementation of the Law on asylum and the drafting of several by-laws and guidelines. The appointment of staff needed for the Section of Asylum will continue in 2007.

VI. SUMMARY

The most important result achieved in 2006 is the adoption of the Law on Asylum. This law gives a good starting point for the Montenegrin authorities in the process of full takeover of the responsibilities from the UNHCR. Furthermore, the law is in line with relevant international and European provisions and will give the opportunity to the Asylum section which is to be established, to exercise all their tasks. The law has been drafted in good co-operation with the UNHCR, HLO, and relevant Ministries which provides for a good basis for its implementation in practice.

The allocation of the reception center in Spuz (still under construction) is also a very important step which will enable Montenegro to accommodate asylum seekers according to European standards.

The most important goals and challenges for the Republic of Montenegro in 2007 will be to recruit all the staff needed and to define their work and responsibilities, to establish a new Section for Asylum as planned, to continue the education of the staff involved in asylum matters and officials at the borders, to be ready for the full handover of the several tasks from UNHCR regarding the processing of asylum requests, to assign staff and define their tasks and responsibilities in the reception center in Spuz and to draft several by-laws on the asylum procedure and reception.

Several of the activities mentioned could be developed or at least begun with parallel to each other. Most important in this matter would be the allocation of financial means and recruitment staff which will enable further proper implementation of the Law on Asylum.



REPUBLIC OF SERBIA

I. INTRODUCTION

In Serbia, interviews were held with:

- The Border Police Directorate of the Ministry of the Interior: Mr Predrag Zlatic, Senior Police Adviser for Developing Foreigners Affairs and Mr Nenad Banovic, Head of Department for Foreigners;
- The UNHCR: Mr Dusan Aralica, National Officer;
- NGO "Group 484": Mr Vladimir Petronijevic, Legal Analyst, and Mr. Danilo Rakic, Policy Officer.

II. LEGISLATION

Asylum law

Asylum legislation in the Republic of Serbia is laid down in the Framework Law on Asylum which was adopted in April 2005. This law was created and came into force in the period before the referendum and independency of Republic of Montenegro from the State Union with Republic of Serbia.

This law sets up the basic principles of refugee protection, rights and obligations of asylum seekers, identification, tasks and responsibilities of competent authorities, as well as minimum asylum procedural safeguards. After the adoption of the Framework law, both countries were to draft separate law, based on the Framework law, but in the line with their own asylum policy and needs.

After the secession of Republic of Montenegro from the State Union with Republic of Serbia, mid 2006, there was no need anymore to have two laws on asylum in Serbia. The working group had to change its approach and draft one comprehensive document in which the provisions already existing in the Framework law on asylum, were combined with the provisions which still are to be adopted, especially regarding the asylum procedure and

providing an Asylum Section within the Ministry of Interior which would take over the responsibilities for the processing of asylum requests from the UNHCR.

The Ministry of the Interior has stated that in the period November 2005 – March 2006 drafting sessions were held with the UNHCR. Hereafter, the draft law was sent to other relevant ministries for comments. Most of them answered and agreed on the text.

The Ministry of Interior stated that the draft law is finalised in September 2006 and has been sent to the Minister of the Interior. Hereafter the draft law will be submitted to the Government and eventually the parliamentary procedure will follow.

The law on asylum is expected to be adopted in the second half of 2007 at soonest, due to the referendum in Serbia, in autumn of 2006 and parliamentary elections of January 2007.⁵⁷

Adoption of by-laws

Due to the fact that the Law on Asylum has not been adopted yet and the fact that there is no Asylum Section responsible for the asylum matters, no by-laws or guidelines have been drafted in 2006.

According to the Ministry of Interior, the adoption of the Law on Asylum and the establishment of an Asylum Section within the Ministry are to take place in (the second half of) 2007. After this, the drafting of relevant by-laws can take place.

III. IMPLEMENTATION OF LEGISLATION

The asylum procedure

Competent authorities

In Serbia, asylum requests are administered and processed by the UNHCR. Although there are plans to handover the determination of the requests and the reception of the asylum seekers to the government authorities, this has not been done yet due to several reasons. The most important are the fact that the Law on Asylum has not been adopted yet and there is no Asylum Section within the Ministry to take over all the tasks and responsibilities. According to the UNHCR another reason could be the lack of willingness of the authorities to take over the tasks currently fulfilled by the UNHCR.⁵⁸

Appeals against negative decisions on asylum requests can be lodged with UNHCR. The draft law foresees in a Governmental Commission for Deciding in an Administrative Procedure in the second instance.

The UNHCR is also responsible for the provision of material assistance and reception of asylum seekers as well as for social welfare assistance to recognised refugees and their integration.

⁵⁷ The adoption of law(s) on Asylum at member state level was one of the short-term recommendations of UNHCR (Asylum Country Progress Report 2005).

⁵⁸ The Plan for full handover was one of the medium-term recommendations of UNHCR.

Influx

Up to mid December, in 2006, the UNHCR received 35 applications. In 2005 there were 50 persons seeking asylum.

Capacity

Staff and recruitment

Currently, 3 employees of the Department for Foreigners are responsible for asylum matters. The Section for Asylum which is to be established after the adoption of Law on Asylum is to include eight positions: a head of section and five (senior) inspectors who will conduct interviews, take and supervise decisions. Furthermore, two officers will be responsible for collecting and storing of country of origin information.⁵⁹

With a view to the influx of asylum seekers in 2006, the staffing of the Section will be sufficient. There are no administrative criteria established for the recruitment of this section. These are expected to be adopted by the new government of Serbia after the elections of January 2007.

Training of staff

UNHCR has provided several training courses, seminars and study visits in 2005 and 2006. The activities took place in the framework of EC-funded Project "Co-operation with Third Countries in the Area of Migration (B7-667): Building an Asylum System in Serbia and Montenegro" and were meant for border police officers and members of foreigners' police departments. The participants became familiar with the basics of the international protection of refugees. These seminars were based on 'training for trainers' principle in order to enable participants to transfer their new knowledge to other staff in their departments and institutions. Furthermore, in 2006 study visits have been organised to Slovenia and Romania (in 2005 study visit was organised to Hungary).⁶⁰

The Ministry of the Interior has mentioned the need of training on interviewing techniques, working with asylum seekers with special needs, such as (unaccompanied) minors and victims of human trafficking.

Together with TAIEX, the Ministry of Interior will organise a two days-workshop on these matters to be held in the end of January 2007.

However, no curriculum of training activities for the staff has been developed yet.⁶¹

According to UNHCR, not all activities planned could take place, due to the fact that the asylum system in Serbia has not reached that level yet in order to ensure proper impact of the planned activities (workshops on asylum procedure, the principle of non-refoulement, minimum standards of reception and the refugee status determination process).

The education of the reception center staff in 2006 has been postponed.

⁵⁹ Identification of qualified staff was one of short-term recommendations of UNHCR, as well as setting up of a country of origin information system (mid-term).

⁶⁰ Information provided by UNHCR Belgrade (Final Report of B7-667 project).

⁶¹ This was also one of the short-term recommendations of UNHCR.

Registration

There is no national data base on all matters pertaining to the asylum procedure, reception and integration of asylum seekers and refugees. According to UNHCR, the lack of legal and institutional framework with clearly defined responsibilities was the main reason why the provision of the technical assistance had to be postponed.

Information

The UNHCR published a Compendium of relevant asylum documents for government officials and civil servants involved in the asylum building process, for civil society representatives, academics and other interested actors.⁶²

Accelerated procedure

The draft Law on Asylum foresees in an accelerated procedure for manifestly unfounded claims. According to UNHCR, the current low number of requests for asylum in Serbia does not show any need for this kind of procedure at this stage.

Non-refoulement

Presently, neither UNHCR nor the NGO's have the capacity to effectively monitor places of entry as well as misdemeanor proceedings in the Basic Courts instigated against aliens for unlawful stay in the country.

Like in 2005, in 2006, there were no known instances of refoulement of registered asylum seekers or persons granted asylum. However, the UNHCR is concerned about the large number of persons rejected entry into Serbia in 2006 (about 25.000 according to UNHCR), in relation to low number of asylum requests. Some additional training on relevant Conventions for the border guards could be useful to recognise possible asylum seekers, according to UNHCR.

Detention

There are no detention centres for illegal migrants yet. The aliens, who are detained, are placed in one part of the regular prison for sentenced persons.

IV. Reception

Competent authorities

At the moment, UNHCR is responsible for the reception of asylum seekers, as well as for the financial assistance and health care of asylum seekers, persons under temporary protection and recognised refugees. UNHCR provides persons with granted staying permits with accommodation or with subsistence allowance to cover minimum rental and utility charges as well as other personal needs; the Red Cross offers basic health care and refers to hospitals in cases where more advanced health care is needed. The authorities are planning to recruit personnel and take over all the tasks related to the reception of asylum seekers, after the adoption of the Law on Asylum.

⁶² Information provided by UNHCR (Final Report on the EC-funded Project mentioned above).

Reception Centre

In 2006, one building in Banja Koviljaca (150 km from Belgrade) was reconstructed and transformed into the Asylum Centre. The reconstruction was finished in November 2006, and financed by the EC in cooperation with UNHCR. The centre is fully furnished and has the capacity to host 85 people, but it is not opened yet.⁶³ UNHCR is willing to accommodate the asylum seekers in the new facility and handover all the responsibilities to the relevant authorities. During the interviews held, neither UNHCR nor the Ministry officials had information about plans for the near future regarding the assigning the staff that will be appointed at the Reception Centre by the Government.

The authorities are planning to recruit personnel and take over all the tasks related to the reception of asylum seekers, after the adoption of the Law on Asylum at latest.

Social and economic rights

The Framework Law on Asylum foresees in the right to primary and secondary education as well as the right to basic health care. According to Mol, the (other) rights and responsibilities of asylum seekers have been (re)defined in the draft Law on Asylum and are to be defined in by-laws yet.

ACTION PLANS

For 2006, the UNHCR applied for an Aeneas project of the EC to continue the support for the establishment of an asylum system, capacity building activities and the establishment of an asylum centre. This application has been granted recently. The Asylum Law is in the process of adoption and the Ministry will start drafting several by-laws and guidelines. The appointment of staff needed for the Section of Asylum will continue in 2007.

V. SUMMARY

Obviously, in 2006 the situation in Serbia did not change a lot in comparison to the situation in 2005. The several developments at the level of the state, such as the secession of Montenegro from the State Union mid 2006, the referendum in Serbia at the end of 2006 and the elections of January 2007 are the most important reasons for this stagnation. Due to these reasons, the process of the adoption of legislation has suffered most.

However, several other results have been achieved. A new facility for asylum seekers in Banja Koviljaca was finished in autumn of 2006 which will enable Serbia to accommodate asylum seekers according to European standards.

In 2005 and 2006 the UNHCR organised several seminars, workshops and study visits for the staff of the Serbian Ministry of Interior as well as for other organisations involved in asylum matters. The Ministry of Interior will organise a workshop together with TAIEX in January 2007; this cooperation is to be continued in the future.

⁶³ The allocation of funds for the Construction of Asylum Centre and the identification of suitable site was one of the recommendations of UNHCR.

Given all the circumstances, the most important goals and challenges for Republic of Serbia in 2007 will be: to recruit the staff needed and define their tasks and responsibilities as well as to establish a new Section for Furthermore, the authorities will continue education needed for the staff involved in asylum matters, as well as for the officials at the borders.

Hereafter, the Ministry of Interior will be ready for the full take over of the several tasks from UNHCR regarding the processing of asylum requests and regarding the tasks in the reception center in Banja Koviljaca. Furthermore, several by-laws on Asylum procedure and reception are to be drafted.

Although all these goals are directly related to the adoption of the Law on Asylum, which is still in the procedure within the Ministry of Interior, several of the activities mentioned could be developed or begun with parallel to the procedure of the adoption of legislation.

Should the authorities choose to continue with all their efforts made so far in several fields at the same time, much of the time that was lost in 2006, could be regained. Most important in this matter would be the allocation of financial means and recruitment of necessary staff in order to be able to implement the Law on Asylum once this is adopted in 2007.



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