Serbia's role in dealing with the migration crisis

SUMMARY

In 2015, the Western Balkans experienced an unprecedented movement of migrants and refugees headed towards the EU. This created a wider European challenge affecting both EU Member States and candidate countries located along their route, particularly Serbia and the former Yugoslav Republic of Macedonia. Serbia’s role has mainly been that of transit country; nevertheless, the migration flows have placed a humanitarian and financial strain on its asylum system. In a dynamic situation, lacking a coordinated EU approach countries have resorted to unilateral actions (such as introducing border controls and erecting fences) and tensions with neighbours have spiked. Serbia has thus had to adopt short-term measures to respond as best as it can. Following the EU-Turkey deal in March 2016, asylum applications in Serbia increased, creating an additional burden. Despite Serbia's less advanced asylum system, limited institutional and accommodation capacity and reported cases of human rights abuses, its open borders policy, political discourse and overall handling of the crisis have largely been considered positive.

In the context of this crisis, Serbia, an EU candidate country since 2012, has acted as an EU partner committed to cooperation and regional stability. The EU has been providing it with technical, humanitarian and financial support, and has commended its positive approach. In July 2016, negotiations on Chapter 24 (which includes asylum and migration) were opened. In the common negotiating position, the EU defined Serbia as a key partner in finding a sustainable solution to the migrant crisis. To meet EU standards in the context of its accession talks and prepare adequately for future challenges, Serbia has to carry out migration and asylum-related reforms and increase its reception capacity. The challenge for the EU is to forge a coordinated approach focused on longer-term goals, taking into account the strategic importance of the region’s stability and security, crucial for the EU’s own.

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This briefing has been produced at the request of a member of the European Economic and Social Committee in the framework of the Cooperation Agreement between the Parliament and the Committee.
Serbia in the context of the migration crisis
Since the breakup of former Yugoslavia in the 1990s, Serbia has hosted Europe's largest displaced population. In 2015, it was among the most affected transit countries on the 'Western Balkan route', sharing the burden of the migration crisis with the EU. Its role and actions in this context have depended on a variety of factors: the dynamics of the migrant flows, its neighbouring countries’ policies towards them, the changing of routes and border regimes, and the EU's and Member States' steps to solve the crisis. Providing humanitarian care and meeting basic needs have come to the fore; longer-term efforts, such as asylum and migration reforms, while not completely halted, have slowed down.

Dynamics along the Western Balkan route
Figure 1 – The Western Balkan route

The Western Balkan route has seen an unprecedented wave of migration, which peaked in the second half of 2015. In 2015 and 2016, the route experienced changes and a high degree of unpredictability due to modifications in the entry criteria. First a fast transit route, initially affording passage through Serbia to Hungary and later deviating towards Croatia and Slovenia (September 2015), it was finally closed in March 2016, leaving migrants trapped in Serbia and FYR Macedonia. New alternative routes appeared, such as the land route between Serbia and Bulgaria. Individual countries' decisions to build fences, reinstate border checks and change policies triggered a 'cascade effect', which in turn sparked tensions between Serbia and Hungary, and later Serbia and Croatia, resolved relatively quickly. In early 2016, the Western Balkan route was closed to persons of other than Afghan, Syrian and Iraqi origin, as they were viewed as ‘economic migrants’. In February, Afghans too were removed from that list, leaving a growing number of them stranded along the route. In March, a 19-point plan led to new restrictions: Slovenia and Croatia started applying new Schengen zone entry rules, under which only migrants with valid passports and visas were allowed to enter. Serbia followed suit, reciprocally applying these rules on its southern and eastern borders. On 20 March, the EU-Turkey joint action plan came into effect, resulting in the official closure of the Western Balkan route. People who remained in transit sites in the region had limited legal options for moving on, which led to more migrants applying for asylum in both Serbia and FYR Macedonia, in order to extend their legal stay (beyond 72 hours) and receive shelter and assistance. Nevertheless, Serbia remained mainly a transit country where migrants spent two days on average. Although no exact data are available, Serbian NGO Grupa 484 says that over
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650,000 migrants and refugees, mostly from Syria, Afghanistan and Iraq, were registered in Serbia between June 2015 and June 2016. There are no reliable estimates as to the number of unregistered asylum-seekers and migrants.

Asylum system: an overview

Since 2008, progress in the area of asylum has been significant, but against the backdrop of the migration crisis and the opening of EU negotiating Chapter 24 (justice, freedom and security), more work lies ahead. In its 2016 overview of the Serbian asylum system, the Belgrade Centre for Human Rights concluded that legislation, although generally in line with international standards, has not been adequately implemented.

Legal framework

Serbia is party to numerous international treaties on asylum, including the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol. It has key strategic documents in place defining the main objectives and measures related to managing irregular migration and illegal stay. Apart from having a readmission agreement with the EU and with 10 third countries, it plans to sign further such agreements with Turkey and Ukraine, among others, and has a strategy for the reintegration of returnees.

Article 57 of the Constitution guarantees the right to asylum, mainly regulated in legislation such as the Law on Asylum, the Law on Foreigners, the Law on Migration Management, the General Administrative Procedure Act and the Administrative Disputes Act. In 2013, the Ministry of Interior started drafting a new asylum law.

Institutional framework

Several state authorities have competences regarding migration and asylum, the primary ones being the Ministry of Interior’s Asylum Office, the Asylum Commission, the Administrative Court, and the Commissariat for Refugees and Migration. Civil society and international organisations are also stakeholders in this domain.

The Asylum Office is in charge of applying the asylum procedure, while the primary task of the Commissariat for Refugees and Migration, under the Migration Management Law, is the accommodation and integration of people granted asylum or subsidiary protection.

Figure 2 – Authorities involved in the asylum procedure

<table>
<thead>
<tr>
<th>Authority</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asylum Office (MoI)</td>
<td>First instance: processes initial and subsequent asylum requests, conducts interviews and takes decisions on refugee status</td>
</tr>
<tr>
<td>Asylum Commission</td>
<td>Second instance: an independent government body, reviews appeals against first instance decisions, files complaints before the Administrative Court</td>
</tr>
<tr>
<td>Administrative Court</td>
<td>Third instance</td>
</tr>
<tr>
<td>Commissariat for Refugees and Migration</td>
<td>Accommodation and integration of people granted international protection</td>
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Asylum procedure

The asylum procedure consists of four stages: regular, first appeal, second appeal, and then subsequent application. There is no accelerated or border procedure (for border or transit zones, or for vulnerable groups). Proceedings are administrative (Asylum Office, Asylum Commission) and judicial (Administrative Court and Supreme Court of Cassation). After stating orally their intention to seek asylum in Serbia, asylum-seekers receive a certificate which has to be ‘recorded’ in writing within 72 hours. While it does not start the asylum procedure, it affords mobility and accommodation within the country. Asylum-seekers go to a designated asylum centre (or private accommodation), where the Asylum
Office registers their application and issues them personal identity papers. The Asylum Office has to decide on applications within two months of their submission, but in practice it may take longer before a hearing is scheduled. Appeals against first instance decisions can be lodged within 15 days of the decision, and are reviewed by the Asylum Commission. The law does not specify the duration of the second-instance procedure. Depending on its outcome, the final decision can be challenged before the Administrative Court.

Figure 3 – Asylum applications in Serbia in the first half of 2016

Rights of asylum-seekers and people granted asylum
Asylum-seekers and people granted asylum are entitled to rights such as the right to residence, accommodation, basic living conditions, health care, education, social assistance, and labour-market access. The Asylum Law provides that refugees are equal to permanently resident foreigners with respect to the right to work and rights arising from employment and entrepreneurship. Until recently, however, asylum-seekers and people granted other forms of international protection were not allowed to work. December 2014 saw the adoption of a new Aliens Employment Act, which was largely in line with relevant EU standards and recognised refugees' as well as asylum-seekers' right to work. It extended the scope of aliens entitled to work permits to include asylum-seekers, persons granted temporary protection, victims of human trafficking, persons granted subsidiary protection, and refugees. Under the new act, work permits are issued by the National Employment Service and their validity is linked to the duration of the alien's status. If the competent authorities fail to review an asylum application within nine months of its submission, the affected asylum-seeker is entitled to a six-month work permit, extendable while they remain in the asylum procedure. To further align with the EU, Serbia has to develop special vocational and training programmes to support asylum-seekers in entering its labour market. Despite the legal provisions in place, practical access to employment is difficult, not least because of the language barrier.

Access to free primary and secondary education is also ensured, but the lack of state-organised language courses hinders this in practice. There is no procedure for the recognition of refugees' foreign diplomas, either. Asylum-seekers have the right to housing in asylum centres and to financial aid, but they can choose to be accommodated privately if they can afford it. No provisions are in place for expedited naturalisation unless the persons granted asylum are from the former Yugoslav republics.

Asylum-seekers have 'relatively unimpeded access' to the national healthcare system. Healthcare costs are covered by the Ministry of Health, while the UNHCR and the Danish Refugee Council cover medication costs. While the Asylum Law provides the right to
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information and free legal aid, it is mainly NGOs that offer such services in practice. Special care for vulnerable groups (children, persons with a disability, survivors of torture, and others), while also ensured by the law, has not been administered adequately, either.

Reception conditions and capacities in Serbia
In 2012, Serbia had two reception centres; in 2016 there are now six. The latest, a ‘one-stop centre’, was opened in Preševo in 2015. Additional centres offering humanitarian assistance and limited accommodation have been set up in Miratovac, Subotica, Kanjiža, Sombor, Šid, Adaševci and Principovac. They are situated in border areas near FYR Macedonia, Hungary and Croatia, where the refugee and migrant flow has been most intense, and have a total capacity of 3,680 places. However, capacity continues to be insufficient and people often end up in 'jungles' surrounding the camps or the border areas. At the Western Balkan Summit in October 2015, Serbia committed to creating 6,000 reception places and is still working on meeting this commitment.

Ongoing and future work in the area of asylum and migration
Outlining existing challenges
Serbia has attracted criticism for inadequately implementing its asylum legislation, in particular with regard to some recurrent issues that it needs to address as part of its EU accession process. First, this involves the practice of rejecting asylum applications not on their merits but based on the 'safe third country' concept. According to this, if asylum-seekers have passed through a safe country in which they could have applied for asylum, their application may not be given due consideration. Serbia’s list of safe countries of origin and safe third countries has not been amended since its approval in 2009. All countries on its borders, plus Turkey but excluding Albania, are on the list, mostly because they are parties to the 1951 Geneva Convention, without taking into account recent reports by human rights organisations which point to a different reality.

A Belgrade Centre for Human Rights’ 2016 report lists yet another shortcoming: the lack of efficient integration of refugees, provided for in the law but limited in scope in practice. The lack of an appropriate integration strategy might pose a potential problem in view of the growing number of approved asylum applications. In that respect, an IMF study and a 2016 study commissioned by the European Parliament, point out that labour market participation is one of the most relevant durable solutions for long-term integration.

Human rights violations are a further point of concern. The Human Rights Watch 2016 World Report and the 2015 Amnesty International Report point out the substantial difficulties asylum-seekers and migrants faced in the Western Balkans in 2015. Serbia was assessed as having made limited progress toward closing the gap between human rights obligations and practice. Slow registration procedures, poor reception conditions, and a lack of state-funded psychological aid are some of the issues highlighted in the reports.

Actions taken so far
Despite the above-mentioned and other shortcomings, Serbia has been regarded as a positive actor in the migration crisis, with its open borders policy, political discourse and public attitudes assessed as refugee-friendly. The Serbian government, supported by the EU and the international community, has sought to ensure the 'safe and humane transit of refugees and migrants' through Serbia. According to Grupa 484’s 'Challenges of the migrant-refugee crisis from the perspective of CSOs’, the fact that the reform process has not stopped completely, that a growing number of actors are participating in the debate, and that CSOs have come to the fore as reliable partners to the state, are all positive
developments. The paper points out that, due to the urgency of the situation, both state and non-state actors have shifted their focus from the broader reform process to short-term measures, in order to adapt to the fluctuating situation.

In 2015, the government took a series of steps to address urgent needs; in 2016, it has reshuffled its agenda partly due to the route’s closure and the elections brought forward and held in April. In June 2015, a working group for solving problems related to mixed migration flows, was set up to coordinate the institutional response. In July, the Preševo centre was opened, and in August the government allocated funds from the state budget to local governments affected by the migrant influx.

In September 2015, the government adopted a plan for addressing the issues related to the mass influx of migrants, aimed at defining the human, financial and other measures, activities and resources needed to ensure migrants with accommodation and access to their rights. In November, Serbia and Croatia agreed on a new regime involving the transfer of migrants from Serbia to Croatia by train. In February 2016, a joint declaration was signed with FYR Macedonia, Croatia, Slovenia and Austria on improving cooperation in migration flow management which involved, inter alia, timely information exchange and the use of a unified refugee registration form, to be issued in FYR Macedonia and stamped during transit by all signatory countries. Since then, a larger number of migrants have been denied entry in Croatia and have remained in Serbia with an unregulated status. Overall, but especially in the short term, the government has made efforts to ease the transit of people by issuing travel permits, providing public transport and delivering organised humanitarian aid around entry and exit points. However, capacities have remained strained and accommodation centres frequently over-crowded. Border protection has also been stepped up and the number of personnel administrating the asylum procedure increased.

Last but not least, in May 2015 the Ministry of the Interior started a €1 million 'Support to National Asylum system in Serbia' twinning project with the EU, aimed at amending the Asylum Law and strengthening capacities for implementing it. The project, now ended, yielded a bill which is pending adoption in Serbia's Parliament. The aim is to simplify the asylum procedure and lengthen the period for migrants to seek asylum in the hope of helping to alleviate the burden on the asylum system.

The government has shown readiness to follow a common EU approach and take part in the EU quota system for refugees, and has emphasised the need for a uniform regional approach to the definition, rights and benefits of refugees.

The opening of Chapter 24 and further envisaged steps
By opening Chapter 24 in July 2016, Serbia committed itself to aligning its practices with the EU’s in the area of justice, freedom and security. In this framework it will also address issues related to compliance as regards asylum and migration. Unsatisfactory progress on Chapter 24, along with Chapter 23 (judiciary and fundamental rights) and Chapter 35 (on Kosovo), could lead to complete suspension of negotiations at any point in time.

The action plan for Chapter 24 notes that asylum legislation is partly compliant with the EU acquis, and outlines areas for reforms, to be addressed gradually. Its recommendations have been confirmed in the EU-Serbia common negotiating position on Chapter 24, adopted in July 2016. The latter is legally binding and contains interim benchmarks to be met before further steps can be taken, and to be used for assessing Serbia’s progress. Serbia is expected to develop a mechanism for early warning, preparedness and crisis
management, to adopt the new asylum law, to increase the Asylum Office's capacity to handle requests, and to increase the national accommodation capacity, among others. Particular issues to be addressed in the new law include: treating the expression of one's intention to apply for asylum as a request for asylum; ensuring access to asylum for rejected asylum-seekers who cannot return to a safe third country; respecting deadlines; reviewing the 'safe third country' concept, and ensuring labour market access, among others. Serbia is to start preparations for eventually applying the Eurodac system and the Dublin Regulation. As regards migration, measures planned include a gap analysis of Serbia's legal, institutional, technical and training needs, amending the Criminal Code and other relevant laws, concluding readmission agreements with additional countries, reaching an arrangement with Kosovo and tackling migrant smuggling. The provision of information, free legal aid and psychological and language support is also to be improved.

These measures represent just a fraction of the planned reforms. Their implementation is expected to be very costly and requires external support. The EU, Serbia's main donor, has been providing funding through its instrument for pre-accession assistance (IPA).

The role of the EU

The EU continues to look for a fitting solution to the migration flow-induced crisis, which has affected both candidate countries and EU Member States. The crisis has exposed flaws in the asylum policies in the transit countries and at EU level, and has highlighted the need for joint actions. In its Chapter 24 negotiating position the EU acknowledged Serbia as a key partner for finding a sustainable solution to managing the migration flows.

In its 2015 progress report, the European Commission admitted that the migrant influx had posed 'a substantial burden' on the 'generally weak' Serbian asylum and migration framework, but also commended Serbia's efforts and overall constructive approach. The Parliament, in its 2016 resolution on Serbia, also commended its constructive approach, and noted that Serbia was 'an essential and helpful partner of the EU in the Balkans', making it all the more necessary for the EU to offer it resources and adequate financial help. It also pointed out the need for comprehensive reforms to rationalise the asylum system and to bring it in line with the EU acquis and international standards.

In September 2015, the Commission proposed to include all Western Balkan countries in the EU common list of safe countries of origin. In October 2015, the EU convened the region's leaders in a 'Balkan summit', which resulted in a 17-point action plan. One of the main outcomes was the decision to increase reception capacity in the Western Balkans to 100 000 places, and to appoint national contact points for managing the exchange of information. Serbia committed to providing 6 000 places.

Throughout the crisis, the EU has supported Serbia financially, including for expanding its reception capacity, for drafting a new asylum law and for developing its border surveillance systems. Cooperation is under way with financing from the IPA and the new Madad fund. In his September 2016 State of the Union speech, the Commission President underlined the formal cooperation established among the countries along the Western Balkans route. The Commission's Humanitarian Aid and Civil Protection department (ECHO) has been funding emergency humanitarian interventions in the Western Balkans. In early 2015, the EU Delegation to Serbia and ECHO mobilised over €800 000 for emergency assistance. As part of a special measure, a new aid package of €7 million, including direct grants for the Commissariat for Refugees and Migration and NGOs, in support of the Serbian authorities was made available in October 2015. In addition, ECHO
provided a first tranche of €8.5 million for emergency humanitarian aid for Serbia and FYR Macedonia in October, and another of €13 million in December 2015. In March 2016, Frontex and the International Organization for Migration launched an €8 million regional multi-country programme for migration management in the Western Balkans and Turkey. Serbia has also received assistance through the EU civil protection mechanism and the migrants and refugee fund, set up by the Council of Europe Development Bank.

Challenges ahead
Both the EU and Serbia need to remain vigilant to the ongoing trends, considering that migration flows have not ceased completely, that new routes have emerged, and that the migration crisis, currently subdued, could flare up anew. How the EU-Turkey deal will develop is also a factor. Serbia needs to continue guaranteeing secure and legal passage to transiting migrants and augment its reception capacities by opening new centres. At the same time, to fulfil the criteria set out in Chapter 24, its agenda requires stepping up planned reform activities in parallel with addressing more imminent needs. Serbia continues to officially oppose building fences, while at the same time refusing to become 'a parking lot' for migrants, and continues to seek a joint approach with the EU and its neighbours. The EU, while acknowledging the importance of the region for its own stability, faces the challenge of drawing up a longer-term cooperation strategy affording a quick coordination of responses and a swift information exchange.

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