

# ON THE SITUATION OF REFUGEES IN SERBIA

*Legal Analysis and Field Report*

**Witnessing Border Violence & Providing Legal Aid in Sid, Subotica & Belgrade**

**July – December 2019**



**klikAktiv**

center for development of social policies

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## **I. INTRODUCTION**

### **1. About 'Klikaktiv - Center for Development of Social Policies'**

'Klikaktiv - Center for Development of Social Policies' was founded in 2014 as an independent organization with the aim of providing assistance and help to people in need. The organization was founded by professionals with broad knowledge in delivering crisis response projects, psychological and social support, legal assistance and other community-based services.

Over the past six years Klikaktiv focused mostly on providing assistance to homeless people, the Roma population and refugees in Serbia. Klikaktiv was the first organization in Serbia to conduct a thorough research about homelessness in Belgrade and subsequently first to provide outreach support to them. In 2015, with the beginning of the so called 'refugee crisis' Klikaktiv partnered with other relevant NGOs and international organizations and opened the 'Asylum Info Center' in Belgrade - a hub in which medical, psychological, legal and humanitarian aid was provided for refugees. In the first 6 months, more than 17,000 interventions were provided to refugees in the 'Asylum Info Center' in Belgrade.

After the closure of the Balkan Route and the decreased interest about refugees in Serbia Klikaktiv today only runs very limited operations. Its main activity last year was the assessment project about the current situation of refugees leading to this report. However, the same team also continues to provide social and legal support to all people in need, not only refugees but also homeless people, Roma and returnees of Serbian descent. Although the main focus of the project last year was on refugees and their situation in Serbia, the team always acted non-discriminatory and was committed to support also local people in need.

### **2. Project assessment and this report**

Klikaktiv, with all of its members, is standing in solidarity with people on the move and intends to give people a voice as much as being a support for people securing their rights. Therefore, between July and December 2019, Klikaktiv conducted an independent project assessment with the aim to provide legal and social support for asylum seekers and refugees in Serbia. This report is the outcome of this assessment phase in which Klikaktiv compiled the legal context regarding refugees in Serbia, compared it with daily reality of people on the move in Serbia and on its borders with EU member states.

One of the main aims of the project was to collect testimonies about push-backs and violence inflicted by police or border guards at the EU borders. However, during the initial visits to sites to where testimonies were collected and in interviews with those affected, Klikaktiv's team realised the existence of a huge gap in provision of basic information to refugees and asylum seekers and faced a big demand for legal advice. A vast majority of people had no information about the asylum procedure and/or knowledge of their rights nor ever been provided access to a lawyer. For this reason Klikaktiv also started to provide legal advice sessions to groups of refugees and individual legal counselling for those who wanted or needed it.

The assessment phase of this project was financed by independent donors, mostly individuals and humanitarian groups that are providing aid to refugees and asylum seekers in the region.

### **3. Note on the use of the terminology “asylum seeker” and “refugee”**

Klikaktiv points out that the terms “asylum seeker” and “refugee” which are used in this report do not reflect people’s official status, i.e. it doesn’t mean that persons who are named and mentioned in this report as “asylum seekers” or “refugees” are actually in the asylum procedure nor that they have been granted refugee status in accordance with international and national legislation. On the contrary, almost none of the people that Klikaktiv interacted during this project had an official status of asylum seeker or refugee – none except A.O. On who's behalf Klikaktiv submitted a citizenship request. The terms “asylum seeker” and “refugee” are used in this report due to the lack of a proper wording that would reflect the status of these people.

The term “migrant” was avoided on purpose. In the past three years public discourse stopped calling people refugees and started calling them migrants. But migrant is a very wide term as it includes every person who changes its place of permanent residency – within its country or abroad, voluntarily or because he or she is forced to leave. Nowadays the most used adjectives to relay to this group of people are “illegal”, “irregular” or “economic” migrant. And even when these adjectives are not used, the word 'migrant' is always associated with them and implies that people have no right to move.

Klikaktiv doesn’t support this practise that became common not just in everyday talk, but also in media and is widely spread in official documents and reports written both by public authorities, international organisations and local NGOs. Klikaktiv is strongly against referring to people as “illegal” or “irregular”. Most of the people that Klikaktiv spoke to during this project were forced to flee their homes due to civil wars or prosecution. They did not leave their homes in search for a better “economic” life. Many of them lost their loved ones, some were victims of torture and they were all afraid for their own lives.

Klikaktiv's team believes that every person should be treated as an individual without prejudices related to his or her country of origin, his or her appearance or other personal characteristic, and that each individual should have access to effective international protection, as it is guaranteed with international conventions and national legislations. Only after the individual assessment of each case it can be determined whether the reasons for leaving the country of origin are justified for international protection or not.

Therefore, maybe the best term to use for people in limbo is “person in need of international protection”. But since this is too long to be used in reports like this one, Klikaktiv referred to them as “asylum seekers” and “refugees”.

### **4. Methodology of work**

In this period Klikaktiv's team worked in Sid (a city in Serbia close to the border with Croatia) and Subotica (a city in Serbia close to the border with Hungary) and Belgrade. Klikaktiv's team collected testimonies from people in Sid and Subotica who were pushed-back to Serbia from Croatia and/or Hungary. The same was done in Belgrade, mostly in 'Luke Celovica' park, a park in the city centre also widely known as 'Afghani park', the main gathering point for asylum seekers and refugees in Belgrade.

Klikaktiv visited all these places with its van, which is equipped and used as a mobile office. The team visited Sid on a weekly basis, while Subotica was visited once a month. The biggest scope of work was done in Belgrade, since this is where the highest number of asylum seekers was. 'Afghani park' in Belgrade was visited at least once a week.



The team which was hired for this project fully consisted of professionals who all have significant experience in working within the asylum system and in providing assistance to asylum seekers and refugees. During each outreach visit, a lawyer was present to provide legal counselling, relevant information and to take testimonies from refugees regarding border violence and push-backs. The team was also accompanied by a social worker especially when deemed necessary. All interaction and communication was done in peoples' native language with the assistance interpreters.

To guarantee this Klikaktiv hired asylum seekers who had been residing in Serbia and working as professional interpreters for several years. They acted as cultural mediators and helped Klikaktiv's team to establish better communication with affected people. This made them a great asset to the team, not only for their language skills but also their knowledge of native cultural aspects.

One of them is originally from Afghanistan, which he was forced to leave after he started receiving death threats from the Taliban due to his political and religious beliefs. When asked for his feedback on this project and its results he stated:

*"The counselling I translated for Klikaktiv's group was the most informative. There was a well put strategy behind it. Klikaktiv's group knew what information was necessary for them. Starting by explaining the difference between a refugee and a migrant all the way to what asylum is and the stages of asylum procedures in different countries. Klikaktiv's group would dive deep into the asylum law of different EU countries and made sure everyone knew what to expect in their upcoming journey. They were all very interested in talking to us since the information we provided them with was what they were looking for and no other legal counselling groups had provided them with such information in the way we had. We received a lot of good feedback and questions from the asylum seekers which helped us in providing them with very accurate and helpful information."*

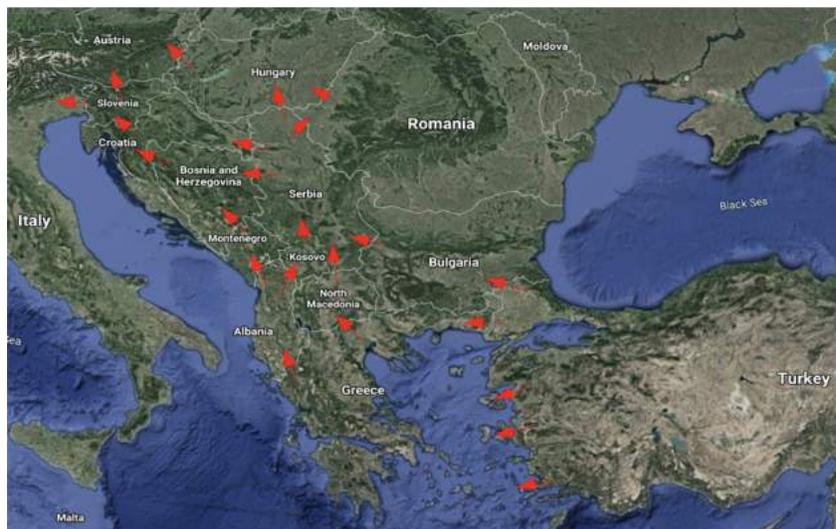
## II. THE BALKAN ROUTE AND SERBIA

### 1. History of the Balkan Route and its changes till today

Migration through the Balkans already exists for decades and many people since then have arrived in Europe. But the Balkan Route attracted wider attention mostly after the war in Syria started in 2011/2012 and later was followed by mass movements of people fleeing from different conflicts in 2015 what is today called the “refugee crisis”. This also was the time in which the highest number of people crossed through the Balkans in search of safety in Europe. At this time most of those crossing were from Syria, Iraq and Afghanistan but there were also people from Somalia, Eritrea and to some smaller extent from Pakistan and Western Africa using the Balkan Route aiming to reach countries in northern Europe.

Till today the Balkan Route remains one of the main routes for refugees aiming to reach northern Europe. The route begins in Turkey where it immediately divides into several sub-routes and ends in Italy and Austria from where people then often move further on towards other northern European countries such as Germany, France and Sweden.

The first sub-route either leads from Turkey first to one of the Aegean Islands and then to mainland or by crossing the river Evros directly into the mainland Greece. From there on the route reunites and continues through Northern Macedonia (in smaller numbers also through Albania and Montenegro) and then mostly through Kosovo into Serbia. The second sub-route leads from Turkey into Bulgaria and then into Serbia.



From Serbia the route again splits into three different sub-routes. Refugees either try directly to enter EU territory from Serbia into Croatia (and then further on to Slovenia, Italy and Austria) or into Hungary (and then further on to Austria) or, since these two routes in the last years have become increasingly difficult and dangerous to cross, a new route opened up in 2018 leading from Serbia into Bosnia, from where people try new ways to cross into Croatia to avoid push-backs and violence from border police on the before mentioned borders. Since 2018 when several thousand of people managed to cross from Bosnia into Croatia also this border has also become a place of push-backs and violence similar to the other two borders before.

Nowadays most of the borders along the Balkan Route are 'protected' with wired fences. The first was built by Greece in 2012 along its land border with Turkey in order to stop people from entering their

territory which until then most people did by crossing the river Evros. However, this fence did not prevent people from trying to reach Europe in search of safety, it only shifted the route towards Bulgaria. The following year, in 2013, Bulgarian authorities followed Greece's example by also building a fence along its border with Turkey. None of these fences actually prevented people from reaching Europe but rather again led to a shift of routes and with it to an increase of fatalities especially due to the dangerous crossing on the Aegean Route.

## **2. Serbia within the Balkan Route**

When in September 2015 Hungary finished building a barbed wire fence along its border with Serbia (and consecutively also along its borders with Croatia and Romania) it meant the closure of the former main route for asylum seekers and refugees out of Serbia and towards northern Europe. This fence again led to a shift of the route, now towards Croatia. At the same time though Germany announced that it would not close its borders but instead would welcome refugees into the country. That led to a situation that until March 2016 the borders from Greece all the way through to Germany were open and hundreds of thousands of asylum seekers and refugees crossed Serbia on the Balkan Route during that period of time.

However this atmosphere of welcoming already started to change throughout the first months of 2016 when within a few days the borders were closed down to people with certain nationalities. While in a first step people from Pakistan and Africa were not allowed to pass borders anymore, in a second step then the closure was also implemented for people from Afghanistan which meant that the borders remain open only to Syrians and Iraqis. On 7th of March 2016 the borders were finally closed for all people trying to reach northern Europe thus leaving thousands of refugees stuck in different countries along the Balkan Route.

Those who got stuck in Serbia were accommodated in camps or stayed in informal accommodation and squats. The route for asylum seekers out of Serbia and towards northern Europe therefore once again required irregular border crossing, usually on foot, and in most cases was accompanied with police violence and push-backs if people got caught. In the following years refugees in their aim to reach northern Europe tried again both former routes crossing into Hungary and Croatia to leave the country.

Most of the people who asked for asylum in Croatia were denied their rights and immediately returned to Serbia often with use of violence. While among the refugee community the name "game" quickly established itself in reminiscence of children's games to be 'played' with European border guards, reports of violent push-backs, like the one 'Doctors without borders' published in 2017<sup>1</sup>, were regularly filed by various national and international organisations since then.

After the closure of the borders in March 2016 Hungary on the other hand established in Röszke and Tompa two 'transit zones' and started accepting refugees from Serbia into these transit zones to assess their asylum applications. Theoretically refugees still can apply for asylum in the "transit zones", but it is important to know that people coming from Serbia due to the fact that Serbia is defined as a safe country in Hungary are therefore seen as ineligible. In the beginning asylum seekers were accepted in on a daily

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<sup>1</sup><https://www.msf.org/sites/msf.org/files/serbia-games-of-violence-3.10.17.pdf>

basis but the number of people accepted inside have decreased since then significantly. The system of the transit zones remains highly disputed in general, not to speak about the conditions in which asylum seekers live. The 'Hungarian Helsinki Committee' has also repeatedly reported about Human Rights violations in those transit zones, including starvation of families with children. Nevertheless, it remained the only legal way to enter Hungary. The minimal access into the transit zones though forced a lot of people to turn to smugglers and try to cross the border into Hungary in other ways.

When crossing into either Croatia or Hungary became more and more difficult the route once again shifted in 2018. This time a new route opened up and people who before got stuck in Serbia started to cross into Bosnia and Herzegovina and from there into Croatia. Other than the border between Serbia and Croatia, which is quite short, lies in flat land and is a long corridor before reaching places from where to leave Croatia again, the border between Bosnia and Croatia is much longer, the border runs through mountain areas and therefore is harder to control for Croatia. In addition, in some places this border is already very close to the border between Croatia and Slovenia and then even to Italy so people would reach Italy after much shorter time after entering Croatia, which decreased the risk of detection and push-backs. Croatian police though quickly increased their border patrols along its border with Bosnia too and the patterns of push-backs, use of force and denying people their right to international protection very fast became practise here too.

As a consequence the situation for refugees in Bosnia and Herzegovina deteriorated very quick. Besides the fact that Bosnia since the Dayton Agreement has not managed to overcome its own past and remains a mainly dysfunctional state which still has its own displaced people from the Yugoslav war, it has neither established a functioning asylum system nor does it have capacity to provide even basic accommodation for all asylum seekers in their territory. As a result conditions for refugees in Bosnia are often even worse than in Serbia. This and the increasingly difficult situation of crossing from Bosnia into Croatia led to a situation in which a high number of people is moving back and forth between Serbia and Bosnia, trying to enter Croatia from both sides while changing camps and squats in both countries, always depending on current assumptions of better possibilities to cross from one place or in a temporary need to recover in camp – especially during winter.

### III. PROTECTION OF REFUGEES IN SERBIA

#### 1. General situation of refugees in Serbia



In March 2016 Serbia had only five asylum camps, which were not enough to accommodate all refugees who were stuck in Serbia. All five camps were overcrowded and had people sleeping on the floor and in corridors due to lack of space. At this time Serbian authorities started opening 'transit camps', where refugees would be accommodated while they were “in transit” through Serbia.

Today there are 19 camps - 5 of them being asylum camps, while the other 14 are considered to be 'transit camps'. These 19 camps are located across Serbia, mostly in cities close to borders with countries along the route. The capacity to accommodate people in those 19 camps is in total 6,140. UNHCR's data for January 2020 shows that 5,313 people are accommodated in camps in Serbia at this point of time.

Besides in camps, a significant number of people are living rough, meaning in informal accommodation, mostly in squats but also in hostels or private apartments, in towns close to the borders with Croatia and Hungary or in Belgrade. There is no official data on the number of people who are sleeping outside official camps but estimates are that there are around 2,000 - 3,000 people in Serbia outside the regular system. The majority of people Klikaktiv spoke to in Belgrade had no access to the camps. Instead, they were living in squats throughout the city, mainly in abandoned buildings, construction sites, river docks and under bridges. Others with more financial resources stayed in hostels or private accommodations run by smugglers. Some people were sleeping in squats because they had no access to camps. They either were turned away from camps upon arrival or would only be allowed to sleep inside the camp for a few days and then forced to leave again without a legitimate reason. Other people reside in squats, mainly in those at the border, on their own choice, because they see it as a more convenient option, especially if they intend to try to cross the border several times in a row until they succeed. Almost none of the people that Klikaktiv spoke to had any information on the legal procedure of registration necessary to get inside the camps.

When it comes to asylum laws in Serbia, UNHCR had until 2007 the authority to conduct asylum interviews and do resettlement procedures for those who qualified for refugee status. In 2007 Serbia adopted a 'Law on Asylum', which came into power on 1<sup>st</sup> January 2008, and which established a national asylum system. This law stayed in effect until June 2018 when Serbia adopted a new 'Law on Asylum and Temporary Protection' which is, for the most part, in line with the EU directives.

## 2. Access to asylum and protection in Serbia

With the new 'Law on Asylum and Temporary Protection' the Serbian government introduced new institutions and procedures that were not regulated before. One of the novelties introduced for the first time are accelerated asylum and border procedures. The law now also gives more specific definitions of relevant terms which are all improvements in comparison to the previous law from 2007.

However, the new law proclaims very strict conditions for starting asylum procedures and keeping the status of asylum seekers. In reality only a very small number of people have access to the asylum system in Serbia and an even smaller number receives the legal status of an asylum seeker. Most of the people who are residing in the territory of Serbia, both in camps and in informal squats, do not have any legal status at all, which means that they could - and some of them do - suffer legal consequences.

According to the law, the asylum procedure starts with the registration of asylum seekers. Asylum seekers are asked to go to the police station - more specifically to the Administration for Foreigners - as soon as possible after entering Serbian territory, where he/she should immediately express his/her intention to seek asylum. Authorised police officers will then register the asylum seeker and refer him/her to a specific asylum centre to which the asylum seeker has to go within 72 hours. If the asylum seeker fails to reach this specific asylum centre to which he/she was referred to within the specific time limit, he/she will lose his/her status as an asylum seeker and therefore his/her legal residency in Serbia.

The Asylum Office, which is part of the Border Police Administration within the Ministry of Interior and the only authorized and competent authority to govern the asylum procedure, should then organize the submission of an asylum application within 15 days of the registration - if the asylum seeker reached the designated asylum centre in time. The submission of an asylum application is done in form of an interview, usually in the premises of the asylum centre, with the presence of an inspector from the Asylum Office, an interpreter and a legal representative for the asylum seeker (the last one is optional). If the Asylum Office fails to organise such an interview within 15 days, the asylum seeker has the right to submit a written asylum application by post to the Asylum Office.

According to official numbers there have been around 4,000 - 4,500 people throughout 2019 in camps at any point in time. However, technically most people residing within camps and accommodation centres in Serbia do not have legal residency and do not have the formal status of asylum seeker. This is mainly because they are not informed about their obligations and rights or about the consequences if they fail to fulfil their obligations. Instead of going to the camp to which they were referred to, most people go to the nearest camp and to the ones where on arrival they are allowed to stay there by CRM<sup>2</sup> staff. CRM though does not have the mandate to give such permission nor can it influence in which camp asylum seekers will stay. These permissions are given only verbally and without informing asylum seekers about their legal obligation to go to the camp to which they were referred to by the police. People still can be allowed

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<sup>2</sup> CRM (or KIRS in Serbian language) is short for Commissariat for Refugees and Migration. CRM is the government's institution responsible for providing material conditions for accommodation of asylum seekers and refugees.

to stay in the camp but this is all based on the goodwill of the camp's staff since people do not have any legal right to accommodation once they've lost their right status as asylum seekers and the Asylum Office does not recognize these people as asylum seekers anymore.

None of the people that Klikaktiv spoke to and who were in this situation was aware that they neither have the legal status of an asylum seeker nor about the potential consequences of their illegal residency. They would always respond that they were ensured by the camp's staff that it was ok for them to stay in this camp despite the fact that police referred them to another camp. Furthermore, a large number of people were not registered at all. After entering Serbia they went straight to the camp and were also told by CRM that they could stay there without being informed that they must be registered first.

Moreover CRM opened in 2019 the 'One Stop Point' in Miksaliste, a hub for refugees in the centre of Belgrade. Miksaliste was opened in 2015, bringing together different NGOs, volunteers and activists who on the one hand distributed clothes, food and other necessary items to refugees but on the other hand also provided psychosocial assistance and other services. In 2019 CRM took over these premises and turned it into its 'One Stop Point', where CRM staff refers refugees to camps that have empty beds without prior registration by the police, despite that the police is the only competent authority to refer asylum seekers to camps. In practise this means that the asylum seekers would come to this 'One Stop Point', would leave their identification information to employees of CRM and would then be referred to a camp, without realizing that they are still not asylum seekers and that their residency in Serbia is still illegal. This practice is highly problematic and has no grounds in legal regulations.

The new 'Law on Asylum and Temporary Protection' proclaims that CRM is responsible for providing material conditions for the accommodation of asylum seekers and refugees. Accommodation is organized in asylum centres and other places suitable for the accommodation of asylum seekers and refugees and it does not regulate this 'One Stop Point' centre. In addition, the law proclaims the competence of CRM in voluntarily return procedures and integration of those who have been granted asylum in Serbia<sup>3</sup>. Therefore, the legality and purpose of the 'One Stop Point' centre in Miksaliste is highly questionable.

On the contrary the number of people who actually do have access to the asylum procedure is very small, as it can be seen in the the official statistics of the Asylum Office. As shown in the following table<sup>4</sup>, from January to July 2019, a total of 6,156 people were registered, but only 161 people actually had access to the asylum procedure and submitted an asylum application, representing only 2,62 % of the people who were registered. This proves that large number of people lost their asylum seeker status when they did not reach the camp to which they were referred in time. As and additional problem the Asylum Office rarely organized the submission of asylum applications in the form of an interview (this only happened for 107 people) and only 54 people submitted an asylum application in writing and without knowledge about legal obligations and procedures even people who resided in the correct camps might have lost their status as asylum seeker and therefore lost their right to legally remain in Serbia.

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<sup>3</sup> 'Law on Asylum and Temporary Protection' (Official Gazette RS No. 24/2018), Article 23., available in English: <http://www.unhcr.rs/media/docs/2018/LawOnAsylumAndTemporaryProtectionRS.pdf>

<sup>4</sup> Source UNHCR: <http://www.unhcr.rs/en/dokumenti/statistike/azil.html>

ASYLUM OFFICE STATISTICS - 2019 - Serbia																	
2019	Intentions/registration (total) in Serbia	Males	Females	Minors	UAMs	Asylum applic. subm.	Written asylum applications-submission	ID cards issued	Interviews conducted	Suspended (Files closed-IC absconded)		Rejected		Refused		Subsidiary protection (persons)	Asylum granted (persons)
										cases	persons	cases	persons	cases	persons		
January	389	360	29	113	30	7	25	24	16	4	4	5	10	1	1	3	1
February	467	433	34	101	51	26	10	21	32	10	13	1	4	4	4	0	6
March	693	664	29	162	43	18	7	20	16	32	34	5	5	3	3	7	4
April	720	690	30	170	62	12	2	29	26	4	9	2	2	1	2	0	1
May	1174	1111	63	244	86	19	3	11	12	8	12	4	6	0	0	4	0
June	1151	1112	39	271	83	14	2	16	3	1	1	2	2	0	0	0	1
July	1562	1505	57	259	82	11	5	36	9	12	14	6	7	1	1	0	0
<b>Total:</b>	<b>6156</b>	<b>5875</b>	<b>281</b>	<b>1320</b>	<b>437</b>	<b>107</b>	<b>54</b>	<b>157</b>	<b>114</b>	<b>71</b>	<b>87</b>	<b>25</b>	<b>36</b>	<b>10</b>	<b>11</b>	<b>14</b>	<b>13</b>

It is important to emphasize that in practice asylum seekers cannot submit an asylum application in writing without legal help. Firstly because they are not informed that they have such a possibility and, secondly, because the application has to be written in Serbian and therefore most asylum seekers cannot do it without help from a Serbian speaker. Taking that into account the total number of only 54 submitted asylum applications in writing, compared to 6,156 registered people, shows that only a very small percentage of asylum seekers have access to legal help in Serbia.

Furthermore it once more should be stressed that the number of 6,156 is the total number of people who went to the police station and were registered and referred to an asylum centre by a competent officer of the Ministry of Interior. However, this is not the total number of refugees who have been residing in Serbia during this period. As mentioned before, the vast majority of people are not registered at all. Some because they did not want to but many because they were not informed that they should go to the police station at all. Instead, they were referred by unauthorized institutions and people directly to transit camps. There is no official data on how many people have resided in Serbia in this period but estimates are that the number is at least 4-5 times higher than the number of registered asylum seekers<sup>5</sup>.

Another worrying practice is the "Hungarian list". Newcomers in camps are asked if they want to stay in Serbia or if they want their names to be added to the 'Hungarian list'. If people opt for being included on the "Hungarian list" they forfeit their access to the Serbian asylum system and instead wait for their turn on the list and their time to be allowed into one of the Hungarian transit zones.

### 3. Planned forced returns & new cooperation agreement with Frontex

The fact that there is such a big number of people in Serbia who do not have access to the asylum procedure or have lost their status of asylum seekers is especially worrying when keeping in mind that the

<sup>5</sup> CRM keeps records of all people who are residing in transit and asylum camps, despite the fact if they have been officially registered by the police or not. However, there is a significant number of people who sleep outside of transit/asylum camps, in squats along the borders, in hostels, private accommodation and squats in Belgrade and other cities. There is no official data on the number of these people, only rough estimations of authorities and NGOs.

official *Plan of the Government Work for 2020*<sup>6</sup>, issued by the Government of the Republic of Serbia in January 2020, states that by the end of 2020 the Ministry of Interior will submit the following law proposals to the national Parliament for adoption:

- Proposal of the Law on the ratification of the Readmission Agreement and Protocol with Iraq;
- Proposal of the Law on the ratification of the Readmission Agreement and Protocol with the Kingdom of Morocco;
- Proposal of the Law on the ratification of the Readmission Agreement and Protocol with the Islamic Republic of Pakistan and
- Proposal of the Law on the ratification of the Readmission Agreement and Protocol with the Islamic Republic of Afghanistan.

The plan states that these agreements will regulate the return of citizens who are illegally residing within the territory of Serbia or within the territory of the other contracting party. These Agreements would allow Serbia to return all people who do not have legal residency in Serbia back to their countries of origin. As a reminder, in the first half of 2019 only 161 people applied for asylum and therefore had legal residency, while all others might face deportation when these agreements come into force. The same document also announces changes for both the 'Law on Asylum' and the 'Law on Foreigners' in 2020.

It is of great concern that the Republic of Serbia will soon have the possibility to deport people back to Afghanistan, Pakistan and Iraq even though these countries still face widespread violence and most importantly, people could face the same persecution from which they fled, given that their individual cases for asylum in most cases have not been properly studied.

Also worrying is Serbia's new 'Law on Foreigners', which will be complementary to these return agreements and will enable very short procedures without proper procedural guarantees. The 'Law on Foreigners' was adopted at the same time as the 'Law on Asylum and Temporary Protection' and it was adopted with the purpose of harmonization with EU directives. However, it does not seem that this law provides procedural guarantees and fair procedure to those that are facing forced return. The previous 'Law on Foreigners', which was in effect until 2018, provided general and vague regulation on the forced removal procedure, while this procedure is now regulated to details both with the law and its bylaws.

One of the bylaws is the 'Rulebook on the Terms and Procedures of Forced Removal of Foreigners from the Republic of Serbia' (Official Gazette RS No. 69/2018). This rulebook regulates that the forced removal procedure will be conducted based on the 'Decision on Return' or based on the 'Decision on the Cancellation of Stay', both issued by the Ministry of Interior (technically the same kind of decision with the only difference that the term "Decision on Return" is used in the current 'Law on Foreigners' and the term "Decision on the Cancellation of Stay" was used in the former 'Law on Foreigners' from 2008).

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<sup>6</sup> Available in Serbian: [https://www.srbija.gov.rs/extfile/sr/370541/plan-rada-vlade-srbije-za-2020\\_cyr.pdf](https://www.srbija.gov.rs/extfile/sr/370541/plan-rada-vlade-srbije-za-2020_cyr.pdf)

The procedure of removal is very short and simple, without proper procedural guarantees. According to the regulations, during the forced removal procedure, the foreigner should have a valid national passport. If the foreigner does not possess a valid passport then he/she should be issued a travel document ('travel paper') by the embassy of the country of origin. If this too is not possible (for example if there is no embassy of that country in Serbia) then the Ministry of Interior of the Republic of Serbia shall issue him/her a travel document and the foreigner will be forcibly removed from the territory of Serbia with this document. The costs of the forced removal will be charged upon the foreigner but if he/she does not have financial means, then the costs will be covered from the Serbian national budget.

The provision of the 'Law on Foreigners' and its bylaws that regulate the forced return procedure are not in compliance with international legal standards nor with the EU directives. People who are facing forced removal from Serbia are not entitled to free legal aid nor do they have access to effective legal remedy. The Ministry of Interior both issues the decision on forced removal as a first instance authority and it decides on the appeals on these decisions as a second instance authority. The third instance (court instance) in the appeal process is to the Administrative Court. It is questionable if the judges from this court have the professional knowledge to assess and decide in such cases. Additionally, there is a high number of cases pending before this court already so it takes 10 to 12 months, on average, for the Administrative Court to finalise each case. Furthermore, according to Serbian law there is no review of detention nor an effective legal remedy. Against the decision on detention, the person can only submit a lawsuit to the Administrative Court. The deadline for a lawsuit in detention cases is only 8 days. This is a much shorter deadline than the one which is proclaimed by Serbian law as a general deadline for a lawsuit in administrative matters (30 days). For more information and comparison of Serbian laws and EU laws, please see the Annex 1 of this report.

Both the Serbian government and other local actors constantly proclaim Serbia as a 'transit country', but Serbian legislation does not provide any possibility that would allow people to legally 'be in transit'. On the contrary, as it has been previously stated, access to the asylum system in Serbia is very limited and most people do not have legal residency, which means that they could be very easily deported if the listed readmission agreements are ratified.

At the moment, the Republic of Serbia does not conduct forced removals of third country nationals, at least not on a large scale. The main reason for this is a lack of financial funds for the organization of flights to the countries of origin. But this might change if financial funds for this purpose are secured from elsewhere.

On the 19th of November 2019, the European Union signed the Status agreement with Serbia on border management cooperation between Serbia and the European Border and Coast Guard Agency (Frontex)<sup>7</sup>. This agreement has been in negotiations since 2018.

This Agreement regulates the joint operation conducted by Serbia and Frontex which the aim of "tackling illegal immigration or cross-border crime or aimed at providing increased technical and operational

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<sup>7</sup> Text of the agreement: <https://data.consilium.europa.eu/doc/document/ST-15579-2018-REV-1/en/pdf>

assistance at the external borders of a Member State neighbouring the Republic of Serbia and deployed on the territory of the Republic of Serbia". Frontex will deploy its teams in the territory of Serbia in regions next to the borders with EU Member States. It is left to see what this agreement will mean in practise and how it will affect the rights of people on the move.

But, in relation to the Frontex Agreement, within the Fact Sheet of the Ministry of Interior it is stated that "Police officers have participated in different activities in cooperation with different international organizations, but the most significant ones are Frontex, IOM, UNHCR, DCAF, EUROPOL and CEPOL (...) Through international mechanisms, joint patrols on the Serbian - Croatian and Serbian - Hungarian border have been established. (...) [Serbia] participated in several international conferences. The main topic of these conferences was the migration crisis and its problems. Participation in these conferences made Serbia the partner, on which EU countries could count in dealing with the problem of irregular migration. (...) A large number of donations was received in the form of IT equipment, vehicles and other equipment which is necessary for the protection of borders"<sup>8</sup>.

Klikaktiv requested official statistics from the Ministry of Interior of the Republic of Serbia for the number of third country nationals that had been readmitted back into Serbia based on international agreements. This information was requested for each country that Serbia shares a border with separately.

However, the Ministry of Interior responded with the Memo number 26-464/19 dated 6<sup>th</sup> of August stating that the Ministry does not keep such data. It is extremely unlikely for the Ministry of Interior not to keep such data, taking into account its obligations under the Readmission Agreement with the EU and their protocols as well as its obligation under the 'Law on Foreigners' to keep data on foreigners who have entered the Republic of Serbia in a legal way, such as being readmitted officially from other countries.

However, despite claiming that the Ministry does not keep this data, in the Ministry's Fact Sheet dated from October 2019<sup>9</sup>, within the part referring to the Readmission Agreement with the EU it is stated that "when it comes to third country nationals, a total of 1,673 requests for readmission have been received [from EU countries], after which the consent was given to take back 695 people - 200 from Iran, 132 from Afghanistan, 123 from Pakistan, etc."

#### **4. Increase of misdemeanour detention for illegal residency and illegal entry into Serbia**

Other novelties proclaimed by the new 'Law on Foreigners' are much higher maximum fines for illegal entry and illegal residency in Serbia than in the previous law. According to the new law, illegal entry into the territory and illegal residency in Serbia are proclaimed as misdemeanour acts.

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<sup>8</sup> Fact Sheet on the work of the Ministry of Interior, dated from October 2019, page 139, available in Serbian: <http://www.mup.gov.rs/wps/wcm/connect/9dde06e0-175c-4cd6-957b-03ecbf2cd088/IOR%2Bjanuar%2Bcirilica2020..pdf?MOD=AJPERES&CVID=m-PM.H>.

<sup>9</sup> Fact Sheet on the work of the Ministry of Interior, dated from October 2019, page 139, available in Serbian: <http://www.mup.gov.rs/wps/wcm/connect/9dde06e0-175c-4cd6-957b-03ecbf2cd088/IOR%2Bjanuar%2Bcirilica2020..pdf?MOD=AJPERES&CVID=m-PM.H>.

Misdemeanour act	Law on Foreigners 2008	Law on Foreigners 2018
Illegal entry into the territory of R. of Serbia	10,000.00 - 50,000.00 RSD (Around 85 to 430 EUR)	5,000.00 - 150,000.00 RSD (Around 45 to 1,300 EUR)
Illegal residency on the territory of R. of Serbia	6,000.00 - 30,000.00 RSD (Around 50 to 255 EUR)	5,000.00 - 150,000.00 RSD (Around 45 to 1,300 EUR)

There has been an increase in detention cases for misdemeanour acts, especially in areas close to borders - both borders used to enter (especially from Macedonia) and those used to exit (especially into Croatia).

In a media statement published on 19th November 2019<sup>10</sup> the State Secretary of the Ministry of Interior stated that "from the beginning of this year, misdemeanour charges were filed against a total of 1,125 people". The State Secretary also stated that in the same period "17,050 people were prevented from an illegal border crossing, out of which 4,461 people were apprehended while illegally crossing the state border and the other 12,590 people gave up in their intent to illegally cross the border after they spotted the border police guards". She further stated that "Serbia will be a credible partner of the EU when it comes to dealing with the problem of migration. Migration management is the Ministry's and Government's top priority. By taking care of our own borders our country also defends external EU borders and places special focus on prevention of migrant smuggling and their labour exploitation."

Klikaktiv interviewed four people who were jailed for illegal border crossing and illegal residency in Serbia. All of them were sentenced to 10 days in jail, two of them by the misdemeanour court in Sremska Mitrovica and two of them by the misdemeanour court in Nis (a city in the south of Serbia, close to the border with Macedonia). Both men who were sentenced by the court in Sremska Mitrovica were caught by the Serbian border police at the official border crossing point while they were trying to irregularly cross the border and enter the territory of Croatia. None of them had access to legal aid and they were not able to appeal this decision. The other two men who were sentenced to jail by the court in Nis were arrested by the police deep in the territory of Serbia, far away from the border line. Both of them had previously expressed their intention to seek asylum in Serbia and were still within the 72 hours limit to reach the assigned camp when they were arrested. These 72 hours expired while they were in police custody and they were immediately sentenced to jail for illegal residency. It is clear that with this act their right to seek asylum was heavily breached. Both the Geneva Convention and national regulation proclaim that a person will not be punished for illegal entry into the territory if he/she applies for asylum without any delay. These two men went to the police station as soon as they entered Serbia, where they applied for asylum. They then had 72 hours to reach the assigned camp but instead were arrested by the police and sentenced to jail.

For more information on these cases, please see the Annex 2 of this report.

<sup>10</sup> Article "From the beginning of the year a total of 12,374 migrants have been discovered", published on N1 website, available in Serbian: <http://rs.n1info.com/Vesti/a545245/MUP-Od-pocetka-godine-u-Srbiji-otkriveno-12.374-migranta.html>

## 5. Planned future developments in Serbia

When it comes to future plans of the government of Serbia, in the *National programme for the adoption of the acquis - third revision*, issued by the Ministry of European Integration in February 2018, pages 1016-1022, it is stated that Serbia will implement Dublin and EURODAC regulations in its legislation two years prior to joining the EU. It is also stated that the 'Law on Asylum and Temporary Protection' is due to be changed this year (2020) so it is still to be seen if Serbia will sign the Dublin regulation or in what way it will implement its provisions. It would be a unique case of a country signing the Dublin and EURODAC regulations before becoming an EU Member State.

Finally, in the new *Development Strategy of the Ministry of Interior for the period 2018-2023*<sup>11</sup> it is stated that in this period the Ministry of Interior will start to use the EURODAC database and therefore it should urgently improve its IT system. This is another indicator that the Serbian government will sign the Dublin and EURODAC regulations in the next 4 years or even sooner. The same Development Strategy states that the Ministry of Interior will soon adopt a Strategy on combating irregular migration but there are no plans to adopt any strategy or other act that would promote protection of asylum seekers and refugees.

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<sup>11</sup> Development Strategy of the Ministry of Interior for the period 2018-2023, p. 3; available in Serbian: [http://www.mup.gov.rs/wps/wcm/connect/bd1c8991-471c-46a0-abc4-e92cd98e25a8/PDF\\_LAT\\_Strategija+razvoja+MUP-a+2018-2023.pdf?MOD=AJPERES&CVID=mtlzHRw](http://www.mup.gov.rs/wps/wcm/connect/bd1c8991-471c-46a0-abc4-e92cd98e25a8/PDF_LAT_Strategija+razvoja+MUP-a+2018-2023.pdf?MOD=AJPERES&CVID=mtlzHRw)

## **IV. BORDER VIOLENCE AND PUSH-BACKS AT EU BORDERS**

### **1. Violent push-backs – a common practice along the Balkan Route**

In 2007 Serbia and the EU signed an 'Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation' which regulates the procedure under which EU countries could return Serbian nationals and third country nationals back to the territory of Serbia. According to this Agreement, the EU countries are entitled to readmit third country nationals back to Serbia if these persons hold a valid visa or residence permit issued by Serbia or if they illegally and directly entered the territory of the Member State after having stayed on or transited through the territory of Serbia. Serbia also signed individual Protocols with almost all EU countries that would regulate readmission agreements in more details. The readmission procedure is a very formal, administrative and relatively slow procedure. In practise, very few people are being readmitted from EU countries back to Serbia through the official readmission procedure.

Instead, EU countries that share a land border with Serbia much more often use 'push-backs' to return third nationals back to the territory of Serbia. Push-backs are illegal and done outside of any formal and legal procedure. The term push-back is used for situations in which Croatian or Hungarian police catch one or more asylum seekers on their territory and then forcibly return them back to the territory of Serbia. These returns are done along the 'green' border, away from the official border crossing point and without the presence of Serbian police officers or other witnesses. During push-backs, border police almost always uses force to scare people and ensure that they actually will go back to the territory of Serbia. People often get beaten, humiliated, threatened and/or their belongings stolen or destroyed. Police often uses firearms, usually by firing in the air, as another way of intimidation. In addition, during push-backs, people have no access to asylum and international protection. Even if they try to ask for asylum, their request is almost in all cases completely ignored and they still get pushed-back to the territory of Serbia.



Violent push-backs are very common on the Balkan route and happen both on land and at sea. The highest numbers of push-backs are happening at EU borders - from Greece/Bulgaria back to Turkey and from Croatia/Hungary back to Serbia and Bosnia. The vast majority of asylum seekers try and fail several times before they manage to cross the border and continue their journey to a safe destination. This is why refugees throughout the Balkans call this crossing of borders the 'game'. As mentioned before, numerous NGOs,

volunteer groups and international organisations have reported over the last years about this practice of violence and push-backs at the EU borders, especially from Croatia and from Hungary.

The main focus of Klikaktiv's work in the past months was to document and report on cases of violent push-backs, breaches of law and disrespect of basic human rights at the EU border. Klikaktiv therefore

decided to also visit for its work the border areas, especially the cities of Sid and Subotica, two cities close to the borders with Croatia and Hungary. In both of these cities there are refugee squats that accommodate several dozen people at all times. These squats are the place where asylum seekers sleep and live before they try to cross and where they come back to after have been caught and pushed-back.

## **2. Methodology used by Klikaktiv in conducting the monitoring of push-backs**

Klikaktiv collected testimonies on the push-backs and police violence through a questionnaire which was drafted in a way to monitor if all relevant international and national legislations are respected. This questionnaire should guide the interview and help collect relevant data about push-backs at the EU borders. It contains open and closed questions divided into several parts, to compare the compliance of Croatian / Hungarian authorities with international legislation, mainly with the Geneva convention relating to the status of refugees and EU directives. All questions are impartial and objective.

The first set of questions are identification questions, followed by a vulnerability assessment. This vulnerability assessment is performed by Klikaktiv's team, usually based on simple visualisation and a first impression. This is done in this way on purpose - if the vulnerability is visible to Klikaktiv's team based on their first impression, it would have also been visible to the police officers and other authorities who conduct illegal push-backs of refugees. The second part of the questionnaire relates to access to the territory and access to asylum. It also includes questions related to potential detention in Croatia/Hungary and fulfilment of procedural guarantees (access to UNHCR, whether an interpreter was provided, access to legal help and legal remedies). The last set of questions is designed to collect data and present the status of interviewed people in Serbia.

## **3. Situation at the Croatian - Serbian border & summary of push-backs**

The main point where refugees stay and sleep before they try to cross the border with Croatia and where they come back after they have been pushed-back from Croatia is the abandoned 'Grafosrem' factory in Sid. People residing on this site are single men, including minors, mostly from Afghanistan. Usually there are around 70-100 people staying at the same time. People who reside there do not receive any support from public authorities - they sleep in tents and are provided with one meal per day by the volunteers. Besides volunteers from 'No Name Kitchen' none of the other local NGOs provides any kind of assistance or support at this site regularly.



There is a government run 'transit centre' in Sid, however, this centre usually accommodates only families. There are two more 'transit centres' near Sid, one in the village of Adasevci (in the building of an empty motel at the Belgrade-Zagreb highway) and one in the village of Principovci (in the building of a

closed children's hospital at the very border line with Croatia). These two camps accommodate both families and single men but they are usually full. Adasevci camp is located on the highway and is easy to reach, which is why every day dozens of refugees come here trying to get a place inside the camp. However, most of them are not allowed in and are forced to sleep in front of the camp.



End of October and during November, when the weather was cold, a lot of refugees were complaining about the fact that there is no place inside the camp and about the treatment of the staff who work there. They complained that when they would go to the camp, the staff would tell them that they would be allowed to stay in the camp but would have to wait until after lunch. After lunch they would then be told to wait until after dinner and after dinner that there is no space in the camp. At that time it is already

too late for them to go to Belgrade or to other camps and they are forced to sleep in front of the camp, out in the open or in the squat in the old 'Grafosrem' factory.

Klikaktiv's team was also approached by a young man in November, who wanted to talk to a lawyer privately. Many refugees requested to speak to a lawyer privately, especially after the group legal counselling when they wanted to ask questions regarding their asylum case and discuss their private reasons for leaving their country of origin. But this was different. He waited in front of the 'Grafosrem' squat and asked to speak somewhere privately, where nobody would hear the conversation and see him talking to a lawyer. He told the team that he fears for his life in the squat. He was afraid that one of the smugglers in the squat might hurt him in order to get money or extract favours from his father. He explained that his father holds a very high position in the Afghan police department in charge of fighting drugs and smuggling. His father already received threats that his son might be killed on the route if he does not pay up and if he continues his fight against crime in Afghanistan. The young man was terrified throughout the whole conversation and repeated several times that his life is in danger in the squat, that he is extremely scared that smugglers might hurt him and that he sees no way out. He told the lawyer that he is not sure about his precise age but he thinks he is around 19. He looked much younger than 19, he had a teenage, light beard and he still had a child-like face. Based on the team's estimate, he could not have been older than 16, 17 at the most. It seemed like there were some other reasons why he was so scared of smugglers but that he was not willing to talk about them. He was hoping that there would be a way for him to legally go to Western Europe. He tried to cross into Croatia once, with a smuggler and three more men but they were pushed-back by the Croatian police. After that, those three men went for two more 'games' but Hussein was told by the smuggler that he is not allowed to go.

Since legal border crossing was not an option, Klikaktiv's team proposed a set of protective measures and solutions. First to apply for asylum and legalise his residency. The lawyer offered to accompany him to the police station and to explain his situation to the police officers in charge of registration. Furthermore

to then contact the Asylum Office and discuss the possibility of him being referred to the most convenient camp, subsequently to involve the Centre for Social Welfare in order to get him a guardian and/or to request accommodation in one of the centres of the social welfare system and to inform UNHCR and/or other organizations about his case, if necessary. He was also offered assistance in requesting police protection by submitting criminal charges against anyone who might have threatened or hurt him. At the end of the conversation he said that he would need some time to consider what would be the best option for him. He said that he does not have a mobile phone, so Klikaktiv left him a contact phone number and encouraged him to get in touch if he decided to proceed with any of the proposed actions or if he wants to discuss more or has some additional questions. He never called back nor did the team ever see him again.

However, this case showed just how invisible and deprived of basic human rights refugees who stay at the EU's borders are. They cannot fulfil some of their basic needs and they have no access to any of the public services. Local hospitals refuse to treat them even after they have suffered serious injuries and they cannot count on protection from the police - even when their lives are in danger - as they are too scared to go to the police station to report and seek protection. They have no knowledge and no information on the asylum system. They do not know that they can start an asylum procedure in Serbia, that they can legalise their residency and get ID documents. The Centre for Social Welfare in Sid, as well as in Subotica and other cities, is not engaged at all. There are a lot of unaccompanied minors residing in the Grafosrem squat but none of them has been appointed a guardian. Klikaktiv met several young boys ages between 9 and 12, sleeping inside the Grafosrem squat, in a tent, with no access to basic living needs, no access to school and education. None of them was in Serbia with their parent(s) and are considered as unaccompanied minors in accordance with the law, and yet, they were not appointed a guardian and were not put under any kind of protection. Social workers and other professional staff from the Centre for Social Welfare never visited this site. The squat is occasionally visited only by the police patrols who usually just drive around it and by the staff from the Commissariat for Refugees and Migrations who also usually do not leave their vehicle. Support for people is provided only by No Name Kitchen, whose volunteers bring food on a daily basis and sometimes by MSF who provide medical assistance.

The situation got even worse in November 2019, a time which was marked by the evictions of the refugees from the informal squats in Sid. On the 15<sup>th</sup> of November Serbian police officers first evicted a group of refugees who resided in a squat near the city's cemetery. A group of around 30 people, mostly from Algeria and Morocco stayed here. The police destroyed all of their personal belongings, including mobile phones, clothes, tents, blankets etc. Refugees were taken first to the police station and then to different transit camps in the area. The same thing happened on the 22<sup>nd</sup> of November with the squat in Grafosrem. The deputy mayor of Sid came to Grafosrem, accompanied by the police and claimed that he now owned the property. The police started to clear the site, taking and destroying all of the people's belongings. No Name Kitchen volunteers were also onsite and filmed the whole incident and tried to save at least some part of the things that were donated to refugees as humanitarian aid.

In the first months of 2020 the situation has become even worse for volunteers in the area. No Name Kitchen's volunteers have been constantly harassed, both by the local police and local far-right groups. The volunteer's house and van have been vandalised and have been spray painted with graffiti showing

swastikas and with anti-refugee slogans. Additionally the volunteers reported that the police constantly arrests volunteers and cancels their stay in Serbia. Similar things were also reported by volunteers in Subotica. The method of criminalising people on the move and those being in solidarity with them are not new at all but the intensity of it has increased significantly in the last years. Shrinking of humanitarian spaces on the Balkan Route can be observed more and more and this trend is highly worrying.

#### Push-back case summary:

Klikaktiv's team collected testimonies on push-backs from Croatia to Serbia in the informal squat in the old 'Grafosrem' factory. Between June and November the team conducted in-depth interviews with 52 people who provided first-hand information about a total of 65 refugees being pushed-back from Croatia.

#### *Vulnerability assessment:*

- 26 of the 65 people pushed-back were unaccompanied minors. None of them had been assigned a legal guardian by the competent authorities. The Croatian police also breached its own national laws (article 126 of the 'Law on Foreigners') which forbids authorities to deport and return minors to another country if they do not have previous guarantees that the minor will be handed to a family member or competent social facility.

#### *Access to territory and to asylum:*

- They had all tried to cross the border at least once before, some of them stated they had tried to cross the border up to 30 times before and repeatedly had been pushed-back.
- Three of them reported having been victims of a 'chain push-back' before - from Slovenia to Croatia and then to Serbia. Most of them had tried to enter the EU from Serbia both through Croatia and through Hungary and were pushed-back by the police.
- They all stated that they were returned by the police officers at the 'green border' - with the exception of 15 people who were caught by police officers at the Serbian official border crossing point and 4 men who have been caught in a train at the official border crossing point.
- They all stated they suffered physical violence: police officers beat them with their hands, kicked them with their feet and used police batons. Some reported that police officers used electric tasers as well as firearms.
- They all reported suffering psychological violence by police officers and locals, including threats and insults.
- None of them had access to the asylum procedure or to UNHCR.

### *Detention:*

- None of the interviewed were detained per se, but almost all of them were kept locked inside a police van for several hours, which is a serious violation of their rights and of legal procedures.

### *Procedural guarantees and basic rights:*

- None of the interviewed received any written notice regarding their expulsion from the competent authorities, despite the fact that Articles 112 and 122 of the Croatian 'Law on Foreigners' proclaims that both the decision on expulsion and the decision on forced removal have to be made in writing.
- None of them was provided with an interpreter, despite the fact that Article 115 of the 'Law on Foreigners' guarantees that all third country nationals will have access to interpretation into a language they understand before being removed from Croatia.
- None of them received legal help nor were they informed by the police officer that they have a right to free legal help, despite the fact that the Croatian 'Law on Foreigners' proclaims it to persons illegally residing in the territory of Croatia.
- By denying all 65 people legal assistance, interpretation and decisions in writing, the Croatian authorities denied them the right to effective legal remedies and fair procedures.
- None of them was provided with medical help, despite the fact that they suffered serious injuries, including a broken arm, an eye injury, bruises, cuts and abscesses.

It is needless to say that by pushing people back to Serbia, Croatian authorities breached international conventions, EU directives and its own national laws.

For more details on push-backs and Klikaktiv's findings please see the Annex 3 of this report.

## **4. Situation at the Hungarian - Serbian border & summary of push-backs**

Once a month Klikaktiv also visited Subotica, a city in the north of Serbia, very close to the border with Hungary. There is one transit centre located on the outskirts of Subotica which accommodates families who are on the so-called 'Hungarian list'. This list was created when the Hungarian government built the fence on its border and opened 'transit zones' in which all asylum requests are processed. In the beginning a few dozen people were allowed into the 'transit zones' daily. But the number of people getting access decreased since then. In the period from July to November 2019 only one family was allowed to enter a "transit zone" and to apply for asylum in Hungary per week. Since the beginning, this 'list' has been followed by controversy. It is unclear who decides and is in charge of the list, whether it is the competence of the Hungarian or Serbian authorities and which criteria is taken into account to decide who gets priority. In fact, the actual list was never made available for asylum seekers or the public. Some

people waited for only a few weeks to enter Hungary while others waited for more than three years. In practice, refugees on the list have to wait in one of the transit or asylum camps. After some time they then get transported to the camp in Subotica, where they spend a few more days or weeks until they finally can enter Hungary. Serbian authorities never disclosed details on the functioning of the 'Hungarian list'.

Apart from this transit camp, there are two more informal squats in Subotica where refugees reside. One squat is located on an abandoned farm outside of Subotica. During Klikaktiv's visits only single men from Iran, Afghanistan and Pakistan were residing there. Interviewed people stated that they tried to cross into Hungary by hiding inside trucks, which are parked somewhere along the highway, or on foot at places where there are holes in the fence.



The other squat is located in the old train station which has been abandoned for years now. Refugees are staying in abandoned buildings around the station which formerly were used by the national railway company. During Klikaktiv's visit in July this squat accommodated both single men and families (including women and babies). Single men were mostly from Afghanistan and Pakistan while families were from Iraq and Iran. In September and October this squat accommodated only single men from Afghanistan and Pakistan. Despite the fact that the train station is closed there is still a railway that functions and is used mostly by trains transporting goods in large containers. Most refugees that Klikaktiv spoke to on this site tried to cross into Hungary by jumping from buildings on top of a train or tried to hide inside containers, while others would try to hide inside trucks parked at a gas station or the highway nearby.

#### Push-back case summary:

Between July and October Klikaktiv conducted in-depth interviews with 27 people who provided first-hand information about being pushed-back from Hungary into Serbia. In addition, Klikaktiv had group conversations with another 20-25 people about these push-backs.

#### *Vulnerability assessment:*

- There were 4 unaccompanied minors amongst those being pushed-back.

#### *Access to territory and to asylum:*

- All of the people pushed-back had tried to cross the border at least twice before with some of them stated they had tried to cross the border up to 50 times before and repeatedly had been pushed-back.
- One of them reported having been the victim of a 'chain push-back' before - on one occasion from Slovenia to Croatia and then to Serbia and once from Austria to Hungary and then back to Serbia.

- The majority of people stated that they were returned by police officers, at the 'green border'. Only three men reported that they were returned through the official border crossing point and handed over to Serbian authorities.
- The majority of them stated that they had suffered physical violence: police officers mostly beat them with their hands and/or kicked them. In September people reported a 'new method' - forcibly sinking heads in water. They also reported that the police released dogs on them as a way of intimidation.
- They all reported having suffered psychological violence by being threatened by police officers who told them they would be put in jail if they were caught again. Police officers also took their pictures with mobile phones saying that they would be sent to all police patrols along the border.
- None of them had access to the asylum procedure or to UNHCR.

*Procedural guarantees and basic rights:*

- The majority of people did not receive any written notice from the competent authorities. Only three men who were sent back through the official border crossing point received some written notice from the Hungarian police. But the notice was in Hungarian so they did not understand it.
- None of them was provided an interpreter.
- None of them received legal help nor were they informed by police officers that they have a right to free legal assistance.
- None of them was provided with medical help while in Hungary.

For more details on the push-backs and Klikaktiv's finding please see Annex 4 of this report.

## **V. GROUP AND INDIVIDUAL LEGAL COUNSELLING**

### **1. General information about free legal aid in Serbia**

As mentioned at the beginning of this report, Klikaktiv's team has seen a great need for legal counselling and provision of basic information about the asylum system and people's rights. Therefore, legal counselling became an integral part of the project.

In October 2019 Serbia's first ever 'Law on Free Legal Help' came into force and started to apply. According to this law only asylum seekers and people who have been granted asylum have a right to free legal help which is funded by the state. The idea of securing free legal help to asylum seekers and refugees is a good idea, however, by how it is currently regulated by the law and in reality it is not likely that many people will be able to benefit from it.

First of all, free legal aid is guaranteed only to asylum seekers, which formally applies only to those who have submitted an asylum application. As previously explained, this is a very small percentage of people compared to the number of refugees residing in Serbia.

Furthermore all people who are not officially asylum seekers are not entitled to free legal help in accordance with this law. All people that Klikaktiv spoke to, who have been interviewed about border violence and those who have been informed and advised over the past few months about their legal situation are not entitled to free legal aid in accordance with this law. Not even if they are in detention or in jail for illegal residency/illegal entry into the territory of Serbia.

Additionally, the procedure of applying for free legal help is not easily accessible for asylum seekers since a person in need for free legal help should go to the municipality's administration in order to submit a request for free legal help (in Serbian language) together with all proof that he/she is entitled to free legal help. That request will then be forwarded to the Ministry of Justice who will appoint one of the free legal providers from the 'Registry of Free Legal Providers'. It is also not likely that asylum seekers will have access to free legal aid, because they probably will not be informed about such a possibility. But even if they are - they cannot fill the request in Serbian language without assistance.

Klikaktiv has registered in the 'Registry of Free Legal Providers' within the Ministry of Justice but so far has not been appointed with any cases regarding asylum seekers and refugees. Therefore it seems to be clear that legal advising of asylum seekers and refugees will still be done by NGOs on their own expense.

### **2. Free legal aid provided by Klikaktiv**

In July, Klikaktiv provided two legal counselling group sessions for people residing in the camp of Obrenovac. Both of these group counselling sessions were provided inside the community centre run by the NGO 'CollectiveAid' and both times were attended by 15 to 20 people.

During these sessions Klikaktiv's lawyer explained to the participants each step of the asylum procedure and the different types of international protection, as well as their rights and obligations when in the asylum procedure. Special focus was placed on questions regarding the asylum application and what kind of questions people need to expect during the asylum hearing. The lawyer explained the groups what is actually important regarding the presentation of their cases to the authorities.

The same type of group advising was provided to people who were visiting or staying in 'Afghani park'. In the period from September to November up to 150 people were present every day in the the park in Belgrade's city centre. Besides newcomers some of the people are accommodated in the camps in Krnjaca or Obrenovac on the outskirts of Belgrade while others are sleeping in construction sites next to the park. Klikaktiv visited this park on a weekly basis. During each visit there would be between 20 and 30 people that would gather to get information from the lawyer. Most of the people were single men, including a lot of unaccompanied minors. But there were also a few families with children, most of them newcomers.



The same group counselling was provided during Klikaktiv's visits to people residing in Sid and Subotica and after conducting in-depth interviews about push-backs.

All of these group sessions had positive feedback. It was noted that none of the people (and especially those who were not in Belgrade) has had access to legal counselling before. They were completely unaware of their rights and obligations and had mostly wrong information of how the asylum procedure works and what it means to be a refugee.

All of the participants were interested and had many questions for the lawyer. Most questions were about



the risk of deportation due to fingerprints they had given in Bulgaria or Greece and what people could do to prevent deportations.

The lawyer also provided individual legal counselling on request. Most people wanted to talk about their personal problems and reasons why they left their country of origin. They needed help in preparing for their asylum interviews and guidance on what is relevant in their stories when it comes to asylum applications.

## **VI. LEGAL REPRESENTATION**

Besides legal counselling Klikaktiv's lawyer also took on the legal representation of two individuals and their cases.

### **1. Citizenship case**

Klikaktiv's first strategic litigation case is filing for citizenship status on behalf of a person who has refugee status in Serbia. This is the first citizenship request ever made by a refugee in Serbia.

A.O. has lived in Serbia for 10 years and was granted refugee status six years ago. He came to Serbia on a student visa and became a “sur place” refugee when the war in his country of origin started.

During his asylum procedure he was represented by one of the two NGOs that provide free legal help in Serbia, but this NGO refused to represent him in the procedure for citizenship. He then asked for help from the second NGO where his request was also rejected with the explanation that they had already asked the Ministry of Interior for their official opinion on whether or not citizenship requests would be granted for refugees in the future and had received a negative answer.

Despite the fact that the Geneva convention proclaims the obligation of contracting parties to enable the naturalization of refugees, Serbian laws do not proclaim this right to refugees nor to the people who were granted subsidiary protection. The stance taken by Serbian authorities indicates that refugees would be bound to live as refugees for as long as they are in the country, therefore denying them the right to fully integrate into Serbian society. The only document refugees possess in Serbia is an ID card for refugees which is a small piece of white paper, with their personal information written by hand, a glued picture and a stamp from the Ministry of Interior. Many refugees have problems when they presenting this ID card in public institutions or other places as this card looks completely different than the ID cards of Serbian citizens have and often are dismissed by public representatives which often prevents them from exercising their rights. Serbian authorities are not issuing passports to refugees, so unless they have their national passports, refugees are not able to travel outside of Serbia. This had happened to A.O. in the past and on several occasions he was dismissed and told that he does not have "proper documents" so that in the last six years he has been unable to travel outside of Serbia.

Klikaktiv's lawyer submitted the citizenship request on behalf of A.O., with all the reasoning and proof as to why A.O. should be granted Serbian citizenship, including a UNHCR recommendation and an official opinion from Council of Europe, both stating that refugees should be granted citizenship five years after they have been granted refugee status.

This citizenship request was submitted in July and it has not been decided upon it to this day. However, the Ministry of Interior was not silent on this case. The lawyer received a memo and went to the police station twice upon summoning and police's request for additional documents to be submitted. It was clear that the Ministry of Interior never dealt with such a case before and that it has neither knowledge on the

asylum regulations nor international conventions. Each time, the Ministry requested documents that are normally asked from foreigners who are residing in Serbia in accordance with the 'Law on Foreigners'. The Ministry requested proof that A.O. has permanent residency in Serbia, requested him to get a birth certificate and citizenship certificate from his country of origin and did not accept his ID card for refugees but instead they requested him to submit an ID card for foreigners. At each of their requests, the lawyer from Klikaktiv had to write statements and explanations why these documents could not be obtained - especially those to be obtained from the country of origin in which there is still an ongoing civil war.

Taking into account that the Ministry of Interior did not decide in the timeframe defined by the law, Klikaktiv's lawyer also submitted an urgency statement, but has not received an official decision yet.

In the meantime, Klikaktiv was contacted by two more people who were granted refugee status almost 5 years ago and who wanted to get more information on the citizenship procedure. They intended to apply for citizenship but were rejected by other free legal aid providers. For one of them, it will be 5 years since she was granted asylum in June 2020 and for the other in July 2020.

As previously stated, this is the first citizenship request ever made by a refugee in Serbia so there is no previous practice that could be relied on. Based on the communication and requests from the Ministry so far, Klikaktiv expects to receive a negative first instance decision but is willing to use all of the available legal remedies in this case.

## **2. Humanitarian residency case**

Klikaktiv assisted Z.H. in applying for humanitarian residency in Serbia. Z.H. is from Afghanistan and applied for asylum in Serbia. His case was found inadmissible by according to the safe third country concept. He was represented by lawyer of an NGO in the second instance and before the Administrative court but who rejected to take his case to the constitutional court and to the ECHR, despite the fact that Z.H. has well-founded fear from prosecution based on his political and religious beliefs in his country of origin. So for more than a year he lived in Serbia without a legal status. Klikaktiv filed the request for humanitarian residency on his behalf but it was rejected. There was no explanation with the decision as to why he was rejected (not a single word of explanation). There was only one sentence in the decision which stated that he "does not fulfil the condition from Article 42 (2) of the 'Law on Foreigners'".

This article states that the Ministry of Interior, when deciding on the temporary residency, obtains an assessment from the government authority in charge for the security of Serbia on whether the residency of a foreigner would present an unacceptable security risk for Serbia. So this basically means that if his humanitarian residency would be approved this would be an "unacceptable risk for the security of Serbia". But there was not a single word of explanation provided on why. Z.H. has never been charged for any criminal or misdemeanour act while residing in Serbia, nor did he have any other problems with the authorities. Klikaktiv prepared an appeal on this decision and the case is currently pending before the second instance - which is again the Ministry of Interior.

## **VII. CLOSING NOTE**

### **1. Future of the project**

While international agencies and international NGOs due to lack of funding either close or scale down their operations in the Balkans or shift their attention and resources once again back towards the never ending catastrophe in Greece, the situation for refugees along the Balkan Route and in Serbia remains highly difficult. Different than in many European countries there are only a handful local NGOs who work with refugees in the Balkans and hardly any are independent from international donors. The retreat of bigger organisations leaves the responsibility to monitor the situation, developments and human rights violations to handful of civil society organisations and activists and volunteers, local and international, who compared to other contexts such as in Greece and in the Mediterranean have much more limited financial resources. Moreover their work often gets hindered and criminalized in various ways similar to other contexts and supporting people on the move throughout the Balkans gets more and more difficult. Taking the planned common actions by the EU and Serbia into account it is highly important though to continue monitoring and reporting about the situation and to report about the upcoming developments.

As previously mentioned in the report there is almost no legal aid provided to people residing or crossing through Serbia. Support to people on the move covers mainly if at all essential basic needs. When it comes to legal support there is also the problem that proper legal aid can only be given by local lawyers. This project was always supposed to support local activists and aid workers as we believe that substantial change can only be achieved from within a society and through local people. While being in need of international support when it comes to financing the project we aim to base the future of the project on locals and refugees. The assessment phase of the project showed how important both independent monitoring and research as much as legal and social advice for people in the field is. Klikaktiv aims to continue this work in the field, to report about cross-border violence and to changes in the Serbian Asylum System with the aim to inform other national and international stakeholders in Serbia, the Balkans and in Europe. Klikaktiv's team aims to continue to denounce human right violations and exclusive practices on Europe's external borders and to continue its work in solidarity with those stripped of their human rights and violated in their aim to seek protection and a life with dignity.

To achieve this after assessment phase Klikaktiv will need donations to continue its independent work. If you are interested to support us please get in touch via email or get more information on our website. Last but not least we want to thank all those who supported this project and its team!

### **2. Contact**

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## ANNEXES

### Annex 1

#### **Comparison of EU Directive on Common Standards and Procedures in Member States for Returning Illegally staying Third-Country Nationals and Serbian 'Law on Foreigners'**

The following table shall serve as a comparison between EU Directive on Return and Serbian national legislation.

<b>DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals</b>	<b>Serbian legislation ('Law on Foreigners' and its bylaws)</b>
(Article 8) Where Member States use—as a last resort—coercive measures to carry out the removal of a third-country national who resists removal, such measures shall be proportionate and shall not exceed reasonable force. They shall be implemented as provided for in national legislation in accordance with fundamental rights and with due respect for the dignity and physical integrity of the third-country national concerned	There is no such/similar procedural guarantee in Serbian legislation.
(Article 10) Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.  Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall <b>be satisfied</b> that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.	Unaccompanied minors shall not be forcibly returned to their country of origin unless the Ministry of Interior of the R. of Serbia <b>believes</b> that the minor will be returned to his parents, a guardian or a proper social institution in the country of origin.
(Article 13) The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of the decisions related to their return, before a competent judicial or administrative authority or a competent body composed of members who are impartial and who	An appeal on the Decision on Return can be submitted in the period of 15 days. The Decision on Return is issued by the Ministry of Interior and the appeal is also submitted to the Ministry of Interior so there is no impartiality or independence between the first and second

<p>enjoy safeguards of independence. The authority or body shall have the power to review decisions related to return, including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.</p>	<p>instance. An appeal has no suspending effect and therefore it cannot be considered as an effective legal remedy.</p> <p>If the decision on the appeal is negative, the third country national can submit a lawsuit to the Administrative court. However, the Administrative court is the court with the highest number of cases pending and it takes, on average, 10 to 12 months for this court to bring its verdict in all cases.</p>
<p>(Article 13) The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance. Member States shall ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding legal aid.</p>	<p>Foreigners who are subject to forced removal do not have a right to free legal advice nor to free legal representation financed by the government at any point in time during the procedure, not even if they are in detention.</p>
<p>Detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority.</p>	<p>There is no review of detention in the procedure of forced return. Foreigners have no right to request such a review. There is no appeal on the decision on detention. Foreigners can only submit a lawsuit to the Administrative Court within 8 days, which is a much shorter time than the one proclaimed by the 'Law on Administrative Court Procedures' (30 days). This lawsuit also has no suspending effect. The Ministry of Interior decides on the period of initial detention as well as on the prolongation of detention. It should be mentioned that this is the first time that the Administrative court decides on detention (the previous law regulated that the criminal department of the Higher court shall decide as a second instance) and it is questionable if judges of the Administrative court have professional knowledge to decide in such cases. Additionally, the problem of the time period in which this court decides (10 to 12 months) makes this legal remedy completely ineffective.</p>

## **Annex 2**

### **Cases of people sentenced to jail on the grounds of illegal residency**

Klikaktiv interviewed four people who have been jailed for illegal border crossing and illegal residency in Serbia. All of them were sentenced to 10 days in jail, two of them by the misdemeanour court in Sremska Mitrovica and two of them by the misdemeanour court in Nis (city in the south of Serbia, close to the border with Macedonia).

The first man was an 18 year old Afghan who spent 10 days in jail in Sremska Mitrovica in September 2019. He was interviewed in a squat in Sid. He had tried to cross the border between Serbia and Croatia hiding inside a truck. He was caught by the Serbian police at the official border crossing point and immediately taken to the misdemeanour court in Sremska Mitrovica. He said that he was not physically abused by the police officers. He was provided with a Farsi interpreter during the court procedure, but he did not have access to legal aid. According to the Serbian 'Law on Free Legal Help', people who are facing misdemeanour procedures are not entitled to free legal aid. He was sentenced to a financial fine of 10,000 RSD (around 85 EUR) which he was not able to pay immediately so the fine was changed for 10 days in jail instead. He had the possibility to appeal within 8 days, which was not possible since he did not have a lawyer, he did not have any contact with anyone who would provide legal aid for him and most importantly - he received the court's decision in Serbian language and he could not understand anything that was written on it. After he spent 10 days in jail, the Ministry of Interior issued him a decision on return with order to leave the country within 30 days otherwise he will be subjected to a forced return. He kept all these decisions and Klikaktiv's team had the possibility to see them.

The second man was also interviewed in the squat in Sid. He was also from Afghanistan but he was in his 20s. The same thing happened to him - he was caught by the Serbian police at the official border crossing point while trying to enter Croatia. He was also taken to the court in Sremska Mitrovica and sentenced to pay a fine of 10,000 RSD which was immediately changed to 10 days in jail since he was not able to pay the fine on the spot. He was also provided with an interpreter but not with a lawyer. When he was released he also received a decision on return leaving him 30 days to leave the territory of Serbia.

The two men who were sentenced to jail by the court in Nis were travelling together. Klikaktiv's team spoke to them in Belgrade. One of them was 19 years old and the other one was 17. They said that they went voluntarily to the police station in Nis to apply for asylum. They were registered and referred to the camp in Pirot (a small city 70 km away from Nis) in which they had to arrive within 72 hours otherwise they would lose the status of asylum seeker. They spent the next 48+ hours in a motel in Nis. On the third day, but still within 72 hours, they entered a truck in Nis, which was stopped by the police only a few minutes after driving and they were taken to the police station. They showed their asylum papers to the police officer and pointed at the time when the papers were issued - they still had 3 hours to arrive at the camp in Pirot and therefore their residency in Serbia was still legal. But they said that the police officer took their papers and ripped them up. Then the police officer kept them in the police station for a little more than 3 hours and then took them to a misdemeanour court where they were given a financial fine of

10,000 RSD which was then changed to 10 days in jail. They said that, unlike in the cases in the north, they were not provided with an interpreter. They communicated with the judge in English, even though they know only a few words of English. They did not have any of the documents with them when they were interviewed by Klikaktiv. They said they destroyed all documents because they were afraid that police might stop them and put them in jail again if they found these documents on them. However, their statement was credible. They described all details of the registration procedure and misdemeanour procedure. They gave a detailed description of the jail in Nis. They also accurately described all papers that they received, so the Klikaktiv team found no reason to doubt their story. It is needless to say that this action by the police is a huge violation of both international and national laws. Police in Nis kept them in the police station with no legal grounds for more than 3 hours only to make it impossible for them to reach the asylum camp in Pirot to which they were referred. When they were caught in the truck in Nis, they were still within the 72 hours stipulated to reach the camp which means that their residency in Serbia was not yet illegal and they should not have been taken to the police station in the first place. Another serious violation of the law is the fact that the minor was sentenced to jail. He spent 10 days in jail with the general population and where all prisoners are adults. Serbian law strictly prohibits that the financial fine is changed to a jail term in the case of minors.

## **Annex 3**

### **Individual cases and testimonies of border violence and push-backs from Croatia to Serbia**

#### **July 2019**

On the 5<sup>th</sup> of July 2019, Klikaktiv's team interviewed a group of 13 Afghans who were pushed-back two days before, on the 3<sup>rd</sup> of July around 6 am, from Croatia to Serbia. They reported that their group had consisted of 15 people in total but two of them, both unaccompanied minors, had headed to Belgrade since they had suffered injuries - a broken arm and an eye injury - that needed urgent medical assistance. In the group of 15 men who were pushed-back, 13 of them were minors, aged between 14 and 17, and only two adults, aged 19 and 23. They all gave the same testimony, with the same details. They crossed the border with Croatia close to Sid as a group and they walked for three days, mainly during the night, and slept in the forest during the day. Eventually on the 3<sup>rd</sup> of July around 6 am they saw the light from the high-way and walked towards it, looking for a shop where they could find food and water. While walking close to the high-way, near Zagreb, they were intercepted by the Croatian police.

K.G.T., 23, said: "They were hitting us all over our bodies. Pushing us by force into the police van. They were hitting the brakes really hard while driving so we were hitting the inside of the van and falling on top of each other".

According to their description, they were placed in a dark blue van, with capacity for six people. On the sides of the van it was only written 'Police'. Police officers who intercepted them used force - beating them with batons and hands and kicking them randomly. Even the youngest minor in the group, aged 14, was beaten by the police. Police officers took their mobile phones and money and drove them to the police station. They kept them locked in the police car for more than one hour. After more than one hour, new police officers came out of the police station and drove them to the 'green border' (the border between two countries but not at an official border crossing point) with Serbia where they opened the van and threatened them so they would go back to the territory of Serbia. A total of seven or eight police officers participated in this event.

They stated that they wanted to apply for asylum but were not allowed to do so. Police officers refused to communicate with them. They immediately started to beat them and forced them in the van. They were not provided with an interpreter or legal help. They did not receive any written notice or decision. They were not provided with medical help, despite the fact that some of them suffered serious injuries, including the boy with the broken arm and another one with an eye injury.

All of the 13 people interviewed on this occasion already tried several times before to cross the border with Croatia but each time were caught by the Croatian police and pushed-back. M.S.K., 16, said that on one occasion during the last winter the police officers forced him and a group of men he was travelling with to cross the border back to Serbia by swimming through the river Sava, despite the fact that the temperature was close to zero.

Despite the fact that all men in this group were from the eastern part of Afghanistan, a part which is well-known to be under the control of the Taliban, and whose inhabitants often face persecution, they were not allowed to apply for asylum in Croatia.

Similar events were reported by other people interviewed by Klikaktiv's team as well.

On the 12<sup>th</sup> of July, Klikaktiv's team interviewed several groups of people who were also pushed-back by the Croatian police.

Two single men, both from Afghanistan, said that they were pushed-back from Croatia the night before. They were part of a larger group, consisting of seven to eight men, but the two of them were the only ones who stayed in Sid, while others headed to Belgrade in search of medical assistance or trying to go back to the 'transit centre' in Obrenovac. They reported a similar incident with Croatian police officers. They entered the Croatian territory irregularly through the 'green border' and walked for three days, mainly during the night, through the forest. They were caught close to Zagreb by Croatian police officers who forced them into a police van, immediately drove them to the border with Serbia and pushed them back with the use of force. These two men reported that they also had tried to cross the border two nights before but they were intercepted in the city of Tovarnik, located in the territory of Croatia on the other side of the border close to Sid, by a group of locals, aged between 20-30 and mostly males, who attacked them verbally and threatened them so that they would go back to Serbia. Out of fear, they came back to Serbia and crossed the border again the next night. They said that they heard from other refugees that they were also intercepted by locals who threatened them to go back to Serbia or they would call the police.

On the same day, 12<sup>th</sup> of July, Klikaktiv's team interviewed another group of Afghans who were caught by the Croatian police at the official border crossing point.

This group consisted of three unaccompanied minors, aged 17, 15 and 12, who were pushed-back by the Croatian police three days before. They were hiding inside a truck and tried to cross the border inside it. However, they were caught by the scanner at the Croatian border crossing point. Police officers then took them off the truck, beat them and placed them inside a police van where they kept them for 2-3 hours. Then police officers took them to the 'green border' with Serbia and forced them to return to Serbia. Klikaktiv's team interviewed the two older boys, while the youngest went to Belgrade in search for medical help since he had a big abscess and scratches on his arm due to the police violence. The other two boys had bruises from the police beatings. They were neither provided with medical help, a legal guardian, nor an interpreter or legal advice. They did not have access to UNHCR and they were not allowed to apply for asylum.

Another group of Afghans was interviewed by Klikaktiv in Belgrade, in 'Afghan park', about their push-back. The group consisted of four males, one adult, aged 19 and three minors - two of them aged 16 and one aged 12. They had been in Serbia for about three months. Three of them were staying in the Krnjaca asylum centre, in the outskirts of Belgrade, while one of them, aged 16, slept under a bridge in Belgrade since he was not allowed to enter the camp. They had tried to cross the both borders with Croatia and

Hungary. When they once tried to cross the border with Croatia they were caught and beaten by Croatian police officers. They said that each of them, including the 12 year old boy, was severely beaten and injured. They tried to cross the border with Hungary several times, but each time they were intercepted by the Hungarian police and pushed-back. They said they would continue to try to cross the border with Hungary instead of the border with Croatia, because "the police in Hungary beat them less than the police in Croatia".

### **September and October 2019**

On the 6<sup>th</sup> of September Klikaktiv spoke in Sid to a group of four men, aged 19,19,18 and 16, all from Afghanistan who said they were pushed-back on the night between the 22<sup>nd</sup> and 23<sup>rd</sup> of August. This was the third time that they were pushed-back from Croatia and previously they were once pushed-back from Hungary. They entered Croatia on foot and, since they could not afford a smuggler, they went on their own. They were walking for three nights while sleeping in the forest during the day. They followed the lights from a highway and when they were around 20km from Zagreb the police caught them.

Mohammad, 19, said: "First they took our things, then pushed us in a small van, took us to a forest with Serbia, waited for darkness, then beat us with sticks and kicked us with boots before pushing us back". Mohammad still had bruises on the upper part of his right thigh as well as on his left shoulder and the right part of his back. He said that he asked the Croatian police for medical help but did not get it. Instead, the Croatian police hit him even more.

They said that police held them in the van for six hours. They were not allowed to leave the van at any time. They did not receive any water or food. They also said that there were another two men from Pakistan together in the van with them. When the police officers shoved them into the van there were already two men from Pakistan inside. Police officers pushed all six of them together back to Serbia. They said that the two men from Pakistan went back to Belgrade on the same day they were pushed-back, so Klikaktiv was not able to take their testimony. They tried to ask for asylum in Croatia but their asylum request was ignored. They did not have access to UNHCR, to legal help or to an interpreter.

Javad, 17, from Kandahar, Afghanistan, was pushed-back from Croatia to Bosnia roughly at the same time. He entered Croatia from Serbia together with five more people, all men from Afghanistan. This was his third time to try to cross into Croatia and he also was pushed-back once from Hungary in the last four months. Croatian police caught them in the forest during the night. He was not sure about their precise location and where exactly it happened. He said that they were with a smuggler who led the way. Police immediately started to beat them. He said there were four police officers and they all used batons. He said: "Our phones were all taken, some broken [by the Croatian police]. All our money was taken too."

Police kept them in the police van for more than five hours, without any water or food. He suffered heavy injuries but he said he was too afraid to ask for a doctor. He thought that if he asked the Croatian police to take him to hospital, that they would beat him even more. He had bruises on his chin, right shoulder and

right arm and two scars on his left leg - one on the knee and one close to his ankle, on the back side of his leg.

When asked if he tried to apply for asylum in Croatia he simply replied "There is no asylum in Croatia". Same as all other people interviewed, he did not receive any written notice, had no access to UNHCR, was not informed that he had a right to free legal help and had no interpreter.

Other refugees reported similar treatment by the Croatian police. Klikaktiv interviewed another group of three men who were pushed-back from Croatia to Serbia on the 15<sup>th</sup> of September. All three men were from Afghanistan. They crossed the border on foot and walked for about 30km when they were stopped by the Croatian police. They said it was early morning when the police caught them. In the same way as in other cases, they described the similar small police van in which they spent 3-4 hours before they were pushed-back to Serbia. When asked to describe this van, one of them said "I think that they use this van to transport police dogs in them". They said that the police officer who was driving the van was driving very fast and he was hitting the brakes often so they would get hurt. When they got close to the border one police officer took them outside the van and handed them over to another police patrol. They believed this second patrol to be part of the border police. The border police then told them to get in line, one behind another, and when they did - all three police officers started to beat them with batons and yelled at them "Go!Go!Serbia!Go!!". They started running towards the direction in which police officers pointed. For them this was the 4<sup>th</sup> or 5<sup>th</sup> time that they were pushed-back from Croatia in the last four months. Each time they were pushed-back in a similar manner. One of them said that he tried to ask for asylum only the first time when he was pushed-back but the police officers ignored his request. After that, he never tried to ask for asylum in Croatia again. None of them ever had access to UNHCR, never received a written notice on return, had no access to legal help or an interpreter.

However in the interviews that Klikaktiv performed at the end of September and beginning of October, the narrative of refugees changed.

Until then almost all of the refugees were trying to cross into Croatia on foot, they were caught by the Croatian police on the Croatian territory and the police would usually beat them and pushed them back to Serbia on the green border with Serbia. But at the end of September and beginning of October Klikaktiv noticed that during every visit the majority of people were the same ones who had been residing in the squat for a longer time and that there were very few newcomers.

Until then, none of the refugees had complained about the Serbian police. They said that if Serbian police was present at the border during push-backs they would just take them in the police station at the border crossing point and keep them there for 15-20 minutes. Then they would just tell them to go away. But at the end of September the refugees started complaining about the treatment of Serbian police. Klikaktiv interviewed around 15 people who have reported police violence at the Serbian border. They all had the same story even though they were interviewed by Klikaktiv's team on different occasions and separately.

All of them tried to cross the border between Serbia and Croatia hiding inside the truck. They would sneak inside the trucks parked on the gas stations or resting places next to the highway, without the knowledge of the driver. All of the refugees also said that they were caught 'by a scanner' at the official border crossing point on the Serbian side. Police officers would then open the back of the truck, take them out and lock them in a separate room inside the police station where they would beat them. One of them said "the Serbian police beat us even worse than the Croatian police".

What is significant though is that they all said that Serbian police officers were beating them but when asked to describe the uniform of police officers they all described uniforms that do not look like the uniform of Serbian border police. They all said that the uniforms were black, while the uniform of Serbian border police is blue, and that it does not say 'border police / granična policija' on it, as it normally does. Also, they said that none of these police officers had tabs with their last name on their uniform, which all police officers are obligated to have in accordance to the Serbian 'Law on Police' and its bylaws. What is also noticeable is that they all said that when they were caught, one police officer would open the truck and find them. He would then shout out to other officers, those who were described in black uniforms, who would then take them to a separate room and beat them. Some of them were then taken to court in Sremska Mitrovica and sentenced to 10 days in jail for an illegal border crossing or illegal residency and others were thrown out of the police car somewhere on the road between the border crossing point and city Sid. Refugees described these cars as "large/big cars", that looked like a jeep. They say that these cars looked "better/more expensive" than the vans in which the Croatian police pushed them back to Serbia. They said that the cars were also dark and described them as black and/or dark blue with the word 'Police' on the side. All of them were specifically asked if on the side of these cars was written 'border police / granična policija' or just 'police' and they all claimed it stated just 'police'.

According to these testimonies it is questionable if the officers who were beating refugees are actually officers of the Serbian border police or if they are in fact officers of international organisations and agencies who are hired to protect the EU borders. Only three weeks later it was announced that the Republic of Serbia and European Border and Coast Guard Agency (Frontex) had signed an Agreement on border management cooperation.

One of the asylum seekers who claimed that he and his two friends were beaten at the Serbian border crossing point agreed to share the pictures which he claimed were taken at the police station on the Serbian official border crossing point after they were caught at the back of a truck. He said that one of his friends went to Belgrade to seek medical help and therefore Klikaktiv's team did not speak to him. Klikaktiv spoke to the man who took these pictures on the 27<sup>th</sup> of September and he claimed that these pictures were taken two days before. He said that he and his two friends sneaked inside the truck that was transporting goods. They managed to hide inside it while the truck was parked next to the highway. They were caught at the Serbian official border crossing point by the scanner. He said that two police officers took them to a separate room in the police station that had no windows. They started yelling at them and hitting them with their fists. He said that he could not understand what the police officer was saying but he thinks that they spoke Serbian language and that they were cursing them. They kept them in this room for about 2 hours. After those 2 hours, police officers came back and told them to get into the car which

was parked in front the police station. They drove them for a few minutes and then kicked them out of the car on a roadside close to the highway.

What is also symptomatic is that this practice at the Serbian border lasted only for around three weeks. At the end of October, refugees stopped complaining about the bad treatment of the Serbian police.

On the 18th of October Klikaktiv interviewed another two men from Afghanistan, aged 23, who were pushed-back from Croatia. They entered Croatia from Serbia on foot, but soon were caught by the Croatian police patrol. The Croatian police took their phones and their belongings but the officers did not beat them. They took them back to the border and just told them to go back. When they started walking back towards Sid, they were caught by the Serbian police as well. Serbian police officers did not beat them but threatened them that if they caught them again they would jail them for 10 days.

Klikaktiv interviewed one man, aged 25, from Afghanistan who was also pushed-back from Croatia in the second half of October. He tried to enter Croatia hiding in a train. He, together with four other men from Afghanistan, managed to climb into the cargo train as the train was passing through Sid. They hid inside one of the containers but the Croatian police caught them at the border. Police officers took them off the train and started to kick them and beat them with batons. Police also broke their phones on the spot. This was the 5<sup>th</sup> time that the man was pushed-back during his journey. He said that he was first pushed-back from Bulgaria to Turkey, then twice from Croatia to Serbia and once from Hungary to Serbia. He said that the most traumatic push-back had been the one from Hungary to Serbia. It happened in August 2019. He was with a group of refugees and they were stopped by the Hungarian police about 100km from Budapest. They were walking on the regional road when police cars appeared in front of them. They think that someone from the locals called the police. He said: "Hungary police is not good. They took all of our money and good mobile phones. They made us unlock the phones before they took them. They took the good phones and broke other phones that are not so expensive. Then they kicked us and beat us with fists. Than they placed us in cars and pushed us back to Serbia through the door in the fence".

## **November 2019**

Violence at this EU border continued in November. On the 15<sup>th</sup> of November Klikaktiv interviewed a young man named Khan, aged 19, from Afghanistan who was pushed-back by the Croatian police three days before. He entered Croatia on foot but soon was caught by a Croatian police patrol. He was in a group with seven more men and there were three police officers. He said that the police officers pulled out their guns. First they fired in the air to scare them. They told them to take out all their belonging from their bags and lay them down on the grass. Police officers then took their money. He said: "Then one of them [police officer] told me to pick up the phone and to hold it above my head. He then said that my phone is his target and he started shooting from his gun. I think he fired two bullets but he missed my phone. I was so scared, I thought he would kill me. They just laughed. Then another police officer approached me and he kicked me in the stomach. I fell on the ground and then he stepped on my hand. He broke the phone that I was holding and he injured my hand. That's why I have this [points to the bandage on his hand]". After this, the police officers started to yell at them to go back to Serbia so they all started

running towards the Serbian territory and came back to Sid. He went to MSF's (Doctors without borders) clinic in Belgrade for medical treatment. He allowed us to take the picture of his injured hand.

When asked why he would not go to the hospital in Sid or Sremska Mitrovica, which is much closer than Belgrade, he said that doctors in the local hospital refuse to receive them and to give them any medical treatment. This was also confirmed by other refugees that Klikaktiv spoke to over the past months.

All of the refugees who have reported suffering any injury had to go to Belgrade to receive medical treatment, mostly by MSF. When they went to the local hospital in Sid or in Sremska Mitrovica, they all were denied medical treatment, even in the cases of emergencies. According to Serbian law, asylum seekers who have started the asylum procedure have the same right and access to medical treatment as Serbian citizens and the cost of such treatment is covered from the state budget. Others who are not in the asylum procedure, are not entitled to free medical treatment, except in the case of medical emergencies. Cases like broken bones, injured eyes, hands, legs and other injuries that are consequences of beatings are most definitely medical emergencies and should be treated in the local hospital. However, despite the fact that they are legally obligated to provide medical assistance to refugees, doctors from local hospitals refuse to do so.

## **Annex 4**

### **Individual cases and testimonies of border violence and push-backs from Hungary to Serbia**

#### **July 2019**

Klikaktiv visited Subotica on the 20<sup>th</sup> of July and on this occasion visited both sites where people reside - the old train station and the abandoned farm close to Horgos.

People who slept at the old train station were mainly males from Afghanistan, with the exception of a few Iranian and Iraqi families. At this site Klikaktiv talked to around 15 single men from Afghanistan. All except one unaccompanied minor, aged 17, stated they had tried to cross the border at least once before but were pushed-back by Hungarian police. They had tried to cross the border by secretly entering trucks that stop in Subotica before going to the border crossing point with Hungary or by climbing on the train which also heads towards Hungary. They all stated that they were always caught by the controls at the Hungarian border crossing point and removed from the trucks and trains. Hungarian police officers would then force them into a police van and drive them along the border, leaving them in smaller groups of two to three people in different locations at the border and forcing them to go back into Serbia.

Two men said that they were detained in a police station for six hours before they were pushed-back into Serbia. They did not receive any written notice nor were they provided with an interpreter or legal assistance. Police officers took their pictures with their mobile phones and threatened them by saying they would send their pictures to all police patrols along the border and if they were caught again in Hungary they would be accused of smuggling and placed in jail for a long time. The men also stated that the Hungarian police used electric tasers on them before putting them in the police van and pushing them back to Serbia.

Families resided in a separate abandoned building at the station. They were from Iran and Iraq (Kurdish) and were registered by Serbian authorities and referred to an asylum camp in the south of Serbia. They did not receive proper information on their obligations after registration so they decided not to go there but instead went to Krnjaca camp, close to Belgrade. They stayed there for a couple of days but had problems with other residents so they tried to go to the camp in Subotica. They were not allowed to stay inside the camp, so they had been sleeping in the informal settlement at the train station. They had not tried to cross the border with Hungary yet, since they did not have enough money for smugglers and climbing trains or trucks was too dangerous for a family with children, with the youngest boy only three years old.

One of the men from Iran asked for individual legal counselling. He told the lawyer that Serbian police officers came to the train station almost daily and that each time they randomly picked one or two people to take them to the police station. A few days before Klikaktiv's team was there, the police took him and gave him two pieces of paper written in Serbian and told him that he had to leave Serbia. The first piece of paper was a decision on the cancellation of residency issued by the Ministry of Interior and the second

one was a verdict from a misdemeanour court in which he was proclaimed guilty of illegal residency and given an official warning. However, the verdict stated that he had a right to submit an appeal within 48 hours of the issuing of the verdict, which is not in accordance with Serbian law. In addition, the time at which the verdict was issued was not noted and therefore it would not be possible to determine the 48 hours deadline for appeal. He did not appeal any of these two decisions since he did not have access to free legal counselling nor did he receive any of these decisions in a language which he understood.

Another group which was interviewed on the same day, however, seemed to have been readmitted to Serbia in a legal way, instead of being pushed-back. This group consisted of three men from Afghanistan, all adult men. They were the only people interviewed by Klikaktiv's team who seemed to be readmitted back to Serbia through the official legal procedure. They though were not informed about the procedure they were in nor about their status, so they could not confirm that this is true, but it could be concluded based on their answers during the interview. Hungarian police officers caught them hiding inside a truck at the official border crossing point. They drove them to the police station where they kept them for a couple of hours. Then they took their fingerprints and pictures and gave them a piece of paper to sign. The paper was written in Hungarian so they do not know what was stated in it. Afterwards the Hungarian police took them back to the official border crossing point and handed them to the Serbian police officers. They were not provided with an interpreter so they were not aware what was happening or what they could expect. They also had no access to legal help. Serbian police officers took them to the transit camp in Subotica and left them there. The Serbian Commissariat for Refugees and Migration kicked them out of the camp and gave them a paper stating they should go to the camp in Kikinda. One of the men still had this paper with him. It stated that 'this person' is referred and given permission to travel to the camp in Kikinda. However, no identification information was written on the paper so 'this person' could be anyone. Also, at the head of the paper it was written that it had been issued by CRM but the paper was not signed by the authorized person from CRM nor was it stamped with the CRM stamp.

## **September 2019**

Klikaktiv visited both sites again on the 9<sup>th</sup> of September. This time there were only men from Afghanistan and Pakistan in the squat at the old train station, in total around 20 of them. During its last visit in July, Klikaktiv's team met one unaccompanied minor, aged 17, who had just arrived in Subotica and waited for the right time for his first 'game'. Almost two months later, he was still there. In the meantime he had tried to cross the border four times but each time had been pushed-back by the Hungarian police. He immediately asked: "Have you heard about the new Hungarian method?" He explained that the Hungarian police started to forcibly sink their heads into water as a way of intimidation. As he explained, this happens when the Hungarian police catch them hiding in one of the trains during police controls at the border line. Police would then beat them with their fists and kick them. After this, the Hungarian police officers would drag one of them to a big bucket full of water and forcibly push the head, with the person's face towards the water, inside. Police officers would keep the head beneath the water level for a few seconds and would then release the person. The minor said that the same thing had happened to one man who was in his group the last time he tried to cross the border and who was still in the squat. Two more men from Afghanistan, who were in the same group, also confirmed the

same story to Klikaktiv's team. The man who was abused by the Hungarian police listened to the others explaining what happened and he confirmed everything but was not comfortable to talk much nor to give his description on what happened.

People also reported that the Hungarian police started to carry dogs as another way of intimidation. None of the people that Klikaktiv spoke to knew what breed those dogs were. One man, aged 30, said that the last time when he was pushed-back from Hungary, the Hungarian police started to beat him and others who were with him. They also kicked them and used batons. When he fell on the ground one police officer showed up with a dog that was barking the whole time and looked very aggressive. The dog was on a leash the whole time, but the police officer would bring the dog very close to the man, and then would pull the dog away, only to bring the dog closer again. The man said: "I thought that he [Hungarian police officer] would let go of the leash at any time and that the dog would attack me."

Another man, aged 21, from Pakistan said that around 10 days before, he had been caught by the Hungarian police hiding inside a container on a train. He was with five or six other people and said that the police released dogs on them. He said: "I was so scared. I started running and hid inside one of those tubes [he points to the big tube next to the railway, which looks like a sewer pipe with a diameter of around 1,5m]. I was sitting inside, somewhere on the middle and the dog was outside, just few meters away from me, barking the whole time. The police officer repeatedly yelled the same word at the dog, I think he was telling him not to go inside after me. Still, I was very scared." He said that the police officers eventually pulled away dogs and pushed all five or six of them into the police van. They drove them for about 15 minutes and then pushed them back on the green border.

On the same day Klikaktiv visited the squat at the farm near Horgos. There also were only single men at this site, around 20-25 men from Afghanistan including one nine year old child and one man from Iran.

The man from Iran was the only one who had not experienced a push-back by the Hungarian police. He was on the Balkan Route but in the opposite direction - from Austria to Greece. He said that his asylum application was rejected in Austria and he was now on his way back to Greece because he is confident that he would be able to get protection there. He said that he and his two brothers left Iran together after they changed their religion from Islam to Christianity. His brothers reached France and another one was in Belgium and he had stayed in Austria. Both of his brothers had received refugee status and he was the only one rejected.

People in this squat were more interested in getting legal advice and listening about the asylum procedure than talking about push-backs. Some of the people were familiar with Klikaktiv's team from the last visit. During the group talk they said that nothing had changed, that they were still being treated "like animals" by the Hungarian police. All of them had been pushed-back by the Hungarian police at least twice. They particularly complained about one Hungarian police officer. They described him as a tall man, in his 40s, ginger hair, with a beard. He patrols along the fence and catches those refugees who have tried to cross the border on foot. They say that he beats them brutally. He uses his baton but he also kicks them, punches them and some people had serious injuries.

## October 2019

Klikaktiv visited both squats in Subotica again on the 28th of October. The situation had not changed much since the previous month. Both squats accommodated around 30-35 single men from Afghanistan and few from Pakistan.

This time none of the men that Klikaktiv spoke to wanted to talk about push-backs. When Klikaktiv presented their work, they all said that they only wanted to hear about the asylum procedure and their rights. One man, at the old train station, said: "Nobody gives us any information. People just came and ask about push-backs from Hungary. But nobody comes to help. They come, sometimes they come with cameras, take videos and ask questions, questions, question...and that's it! They leave!". In the other squat several men showed the same reaction. One of them, who was familiar with Klikaktiv from before, said: "Please, we do not want to speak about Hungary. Everybody knows what is happening but nothing is changing for us. I feel that the more we report them the more they beat us. Can you just tell us again about the asylum procedure? There are a lot of new people here, they do not have any information."

Klikaktiv respected their desire and did group legal counselling sessions and afterwards also several individual counselling sessions with those who requested it. During the group counselling session the lawyer explained basic terms, such as what it means to be a refugee, types of asylum and differences in rights between them. Also, each step of the asylum procedure was presented to them, it was explained why each step of the procedure is necessary and what they could expect. The lawyer handed them copies of asylum application forms that are used in Serbia so they would have a clearer picture of how asylum interviews look like. Each question on the application was explained to them, together with possible sub-questions that they could expect. They were all interested in hearing this information, since for most of them this was the first time they had access to free legal help since they had left their homes. Each of them asked a lot of questions, mainly about their cases and talked about reasons why they had left their homes. They needed help in preparing their stories for a potential interview and in differentiating relevant from irrelevant information. They wanted to know how and when they could bring their families from Afghanistan through family reunification. And as always, they wanted more information on the Dublin Regulation and EURODAC database, since around a third of them had given their fingerprints in Bulgaria. After the group legal counselling, several men asked for an individual private legal counselling session to discuss their problems back in Afghanistan, which they did not want to share in front of others.

### EDITORIAL NOTES

*All names mentioned in this report have been changed in order to protect the identity of asylum seekers who have been interviewed.*

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