



Note on Dublin transfers to Hungary of people who have transited through Serbia

UNHCR observations on Hungary and Serbia as countries of asylum

In April 2012, UNHCR issued a report entitled '*Hungary as a country of asylum: observations on the situation of asylum-seekers and refugees in Hungary*'.¹ A report entitled '*Serbia as a country of asylum: observation on the situation of asylum-seekers and protection beneficiaries in Serbia*' was also issued by UNHCR in September 2012.² Both documents described the situation regarding access to asylum procedures, standards of reception conditions, quality of asylum decision-making, detention, people with special needs and other issues in the relevant countries. UNHCR acknowledged progress made and ongoing efforts in both countries to improve the asylum systems and situation of those seeking protection, as well as highlighting areas where further improvement is needed.

Current situation

Hungary

UNHCR observes that Hungary continues to remove asylum-seekers to countries it deems safe countries of asylum or 'safe third countries' - a practice which creates the risk of indirect *refoulement*. Such people are denied an examination of the merits of their asylum claims in Hungary before their removal. As recorded in the April 2012 paper, Hungary considers Serbia to be a 'safe third country', and systematically returns asylum-seekers who have transited through Serbia to that country without examination of their claims on the merits. UNHCR has documented many such removals to Serbia, and in some cases, onward removal from Serbia to other countries without any guarantee that their asylum claims will be examined in a fair and effective procedure.³ According to new information from official sources, as of recently, children younger than 14 years of age should no longer be returned to Serbia pursuant to the 'safe third country' principle. This change still requires confirmation through monitoring of actual administrative practice, to ensure that these children are not systematically denied protection in

¹ UN High Commissioner for Refugees, *Hungary as a country of asylum. Observations on the situation of asylum-seekers and refugees in Hungary* (hereafter 'UNHCR Hungary report'), 24 April 2012, available at: <http://www.unhcr.org/refworld/docid/4f9167db2.html>.

² UNHCR, *Serbia as a country of asylum. Observations on the situation of asylum-seekers and beneficiaries of international protection in Serbia* (hereafter 'UNHCR Serbia report'), August 2012, available at: <http://www.unhcr.org/refworld/docid/50471f7e2.html>.

³ UNHCR Hungary report, para 6.

Hungary in practice, based on the application of the safe-third country principle.

In addition, access to asylum procedures in Hungary also remains problematic for asylum-seekers in detention; and for asylum-seekers returned to Hungary under the Dublin II system from other Dublin participating States. Asylum-seekers returned to Hungary under the Dublin arrangement are not automatically considered by the Hungarian authorities as asylum-seekers, and must therefore re-apply for asylum once they have been returned to Hungary. This is the case even if they had previously sought protection in another European state, and irrespective of the fact that they have been transferred in accordance with the Dublin II Regulation.

These applications are considered to be subsequent applications, except in those few cases of applicants who do return to Hungary before the decisions on their claims (involving rejection or termination of the procedure after absconding) have become final. In all other cases applicants are required to show new elements in support of their claims, that were not present at the time of the first application. Most applicants are issued an expulsion order and are detained. Suspensive effect does not automatically apply in case of subsequent applications. Consequently, asylum-seekers transferred to Hungary under the Dublin II Regulation are in most cases not protected against expulsion to third countries, even if the merits of their asylum claims have not been examined prior to their departure from Hungary and the closure of their files in their absence.⁴

Serbia

In its September 2012 paper on Serbia, UNHCR observed that the Serbian Asylum Office has not granted refugee status since assuming responsibility for the asylum procedure in 2008 and has granted subsidiary protection in only five cases. Virtually all cases are rejected on the basis that the applicants come to Serbia from a safe third country, without an evaluation of the merits. This broad application of the 'safe third country' concept has been confirmed at the second and third instance levels, including in a 2011 Administrative Court decision which confirmed that the list of safe third countries established by the Government should be applied automatically and without examination, namely without consideration of whether the listed country is in fact safe for the person in a specific case. The list of safe third countries adopted by the Government of Serbia is, in UNHCR's view, excessively inclusive and broadly applied, including all countries neighboring Serbia. UNHCR has also documented significant concerns relating to access to the asylum procedure and to a substantive and effective claim determination for asylum-seekers seeking to enter at the borders.

⁴ Op cit., paras 13-14

Conclusion

UNHCR maintains its previously-expressed concerns regarding Hungary's ongoing practice of treating the asylum claims of most Dublin transferees as subsequent applications, without guaranteed protection from removal to third countries before an examination of the merits of asylum claims. The organization is also particularly concerned about Hungary's continuing policy and practice of considering Serbia as a safe third country, and returning asylum-seekers to that country without an in-merit examination of their claims.

UNHCR has now also documented the many important areas in which improvement is needed in the Serbian asylum system. The significant obstacles to a fair and effective claim examination for asylum-seekers in Serbia, and the documented practice of onward removal of asylum-seekers to Serbia's neighboring countries, creates a significant risk of *refoulement* for asylum-seekers returned to Serbia from Hungary. On this basis, UNHCR recommends that Dublin participating States refrain from transferring asylum-seekers under the Dublin II Regulation to Hungary, in cases where those asylum-seekers have or may have been in Serbia prior to entering Hungary.

UNHCR will continue its work with these states to improve the asylum systems and address gaps. It will periodically review its position in the light of developments, and update its reports and documentation as required.

UNHCR

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