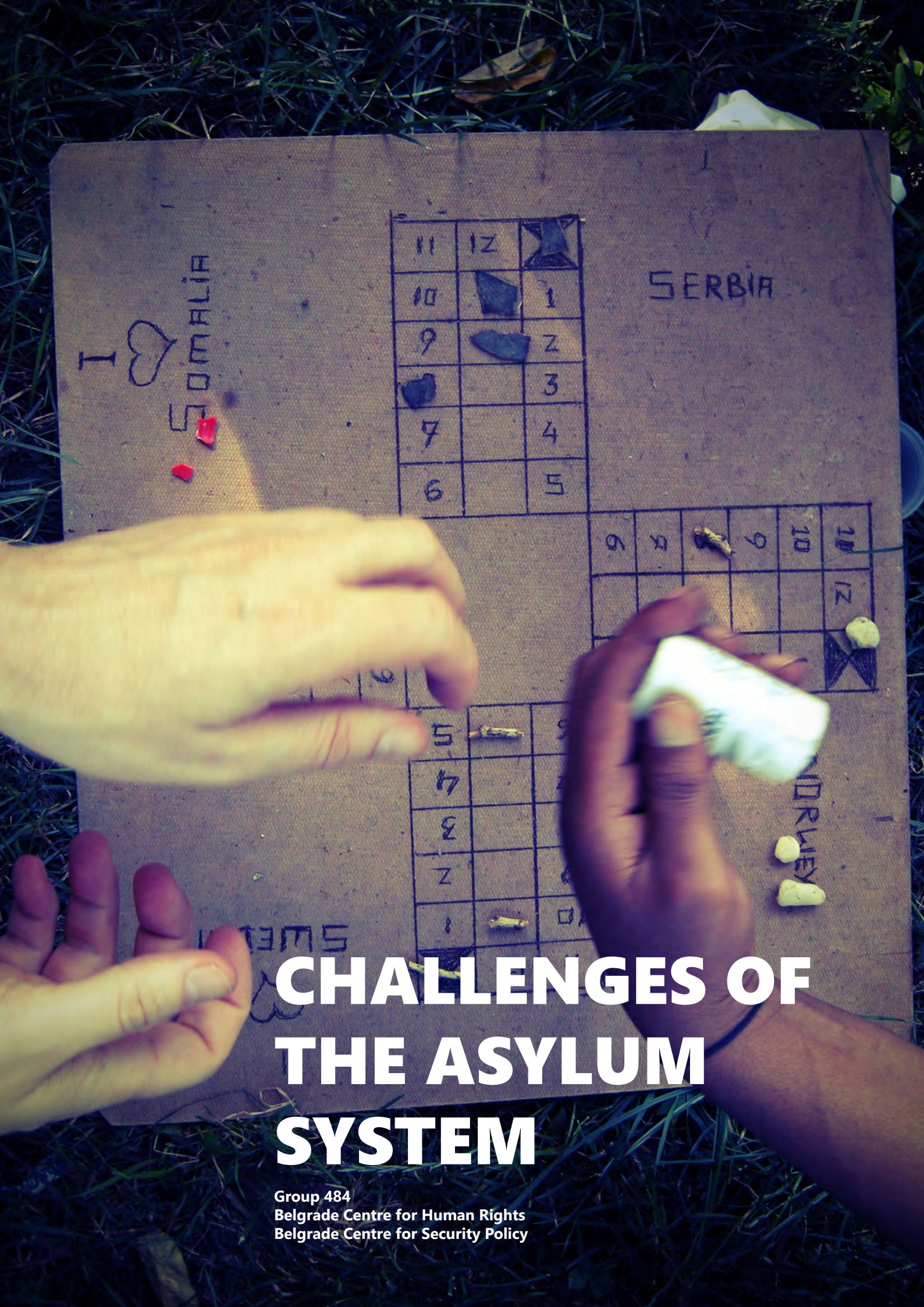


# CHALLENGES OF THE ASYLUM SYSTEM

**Group 484**
**Belgrade Centre for Human Rights**
**Belgrade Centre for Security Policy**

# CHALLENGES OF THE ASYLUM SYSTEM







Belgrade, 2014

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# FOREWORD

As it was the case with the previous three editions, the fourth edition of the "Challenges of Forced Migration in Serbia - the position of asylum seekers" has been prepared through cooperation and genuine commitment of the team, working group for asylum, gathering representatives of seven civil society organisations: ASTRA - Anti Trafficking Action, Balkan Centre for Migration and Humanitarian Activities, Belgrade Centre for Human Rights, Humanitarian Centre for Integration and Tolerance, International Aid network, Initiative for Development and Cooperation, with Group 484 as a coordinator.

Unlike the previous ones, this edition is comprised of two thematic parts: the first one, in which we analyse the impact of mixed migration flows on the asylum system, and the second one, in which we make proposals for amending the Law on Asylum.

The first part is the result of our continuous efforts to use a broader approach in analysing the position of asylum seekers and functioning of the asylum system and therefore, for the purpose of a more comprehensive overview, it would be advantageous to interpret the views presented in this document by taking in consideration the conclusions from the previous editions. In both of the editions we wrote, as visionaries, about mixed migration flows and their impact on the functioning of the asylum system. Now, when we are absolutely sure about the direction we took over three years ago, we analyse, at a somewhat higher level, the features of mixed migration flow, response of the competent authorities to the challenges posed by this migration flow and cause-and-effect relationship that exists with the asylum system - **we believe that the effects of the mixed migration flow are a factor that influences the functioning of the asylum system to almost the same extent as the identified shortcomings of the system itself.**

Therefore, we focus on those segments in which 'there is a line that separates asylum seekers from other categories of migrants - treatment at borders, approach to the territory and to the asylum procedure; punishing irregular migrants and applying the principle of non-punishment to asylum seekers, implementing the Readmission Agreements for the third-country nationals, and finally, protection of rights by respecting all the distinctiveness and limitations related to the rights guaranteed for various categories of migrants. We would like to note that the analysis of the procedure for examining the grounds for an asylum application is omitted, although standards for exercising the rights of asylum seekers cannot be considered separately from the functioning of some procedure phases. The experiences gained from the practice thus far are presented in detail and used as the main arguments for the proposed amendments to the Law.

This document is primarily intended for migration policy-makers so that they could take into consideration the complexity and a great challenge the migrations and protection of migrants' rights present. Furthermore, we would like to make the academic community interested in migration researches in general and in the link between the migrations and asylum. We wish to encourage other civil society organisations to participate in the dialogue with decision-makers and policy-makers and thus contribute to the improvement of migrants' position and among them, the position of even more specific and multiply vulnerable groups such as asylum seekers, unaccompanied minors, foreigners who are victims of trafficking in human beings, women and victims of torture.

Within a wider consultation process, representatives of state authorities, some local governments, and other non-governmental and international organisations also gave their contribution to this publication. For the purpose of this publication, the data gathered during the monitoring and contributions and comments given by the asylum working group members were used, but the final version was developed primarily owing to the project team and the working group coordinator. We attempted to have an objective approach, taking into consideration (sometimes) different points of view on migration taken by the state and those who dedicate their work primarily to the protection of migrants' rights, and to make the proposals for the improvement of the existing system as practical and constructive as possible.

# CONTENTS

## Abbreviations

| | |
|---|---|
| **BCHR** | Belgrade Centre for Human Rights |
| **CEAS** | Common European Asylum System |
| **SWC** | Social Work Centre |
| **ECHRFF** | European Convention for the Protection of Human Rights and Fundamental Freedoms |
| **ECHR** | European Court for Human Rights |
| **ECRE** | European Council for Refugees and Exiles |
| **EU** | European Union |
| **FRONTEX** | The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union |
| **IOM** | International Organisation for Migration |
| **Challenges of Forced Migration (2011)** | Group 484, Challenges of Forced Migration in Serbia, Belgrade |
| **Challenges of Forced Migration (2012)** | Group 484, Challenges of Forced Migration in Serbia: The state of human rights of asylum seekers and returnees based on the readmission agreements, 2012, Belgrade |
| **Challenges of Forced Migration (2013)** | Group 484, Challenges of Forced Migration: Another view of asylum and readmission issues, Belgrade, 2013 |
| **PCI** | Penitentiary - Correctional Institution (Prison) |
| **MoI RS** | The Ministry of Interior of the Republic of Serbia |
| **NPAA** | National Programme for the Adoption of the Acquis |
| **DP** | District Prison |
| **RS** | Republic of Serbia |

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|---|---|
| **RC** | Regional Centre of the Border Police Directorate of the Ministry of Interior of the Republic of Serbia |
| **UNHCR** | United Nations High Commissioner for Refugees |
| **UNCAT** | United Nations Convention against Torture |
| **PBD** | The Border Police Directorate of the Ministry of Interior of the Republic of Serbia |
| **AAD** | Administrative Affairs Department of the Ministry of Interior of the Republic of Serbia |
| **Geneva Convention** | The 1951 UN Convention relating to the Status of Refugees |
| **LoA** | Law on Asylum |
| **LGAP** | Law on general Administrative Procedure |

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The 1951 UN Convention relating to the Status of Refugees, Official Journal of SFRY - International Treaties and other agreements, No. 7/60;

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Official Journal of the SFRY – International treaties and other agreements, No. 9/91);

International Covenant on Civil and Political Rights ("Official Journal of the SFRY", No. 7/71)

Protocol Relating to the Status of Refugees of 1967 ("Official Journal of the SFRY - International treaties and other agreements", No. 15/67);

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Official Journal of the SFRY, International treaties and other agreements", No. 7/71;

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**Council of Europe**

European Convention for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment, "Official Journal of Serbia and Montenegro - International treaties", No. 9/03;

European Convention for the Protection of Human Rights and Fundamental Freedoms, "Official Journal of Serbia and Montenegro - International treaties", No. 9/03;

The Council of Europe Convention on preventing and combating violence against women and domestic violence, "Official Gazette of RS / International Treaties" No. 12/2013.

**European Union**

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. OJ L 212, 07/08/2001 (hereinafter: **Tempo-rary Protection Directive**);

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 31, 6/2/ 2003 (hereinafter**: Reception Directive 2003/9/EC);**

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180/60 (hereinafter: **Reception Directive 2013/33/EU);**

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Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 180/60, (hereinafter: **Procedure Directive 2013/32/EU);**

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# RESPONSE TO MIXED MIGRATION

## 1. INTRODUCTION

Over the past several years, despite clear indicators showing that Serbia has been facing mixed migration flows, the response of some interested parties, primarily the state, has been based on "a clear distinction" between asylum seekers and irregular/economic migrants. Measures taken in this regard have had short-term and partial results, and with time, the challenges posed by migration of third-country nationals have been additionally growing. Strengthening only some components of the asylum system and migration management system without simultaneous development of other components has contributed to abuses and strengthening of push and pull factors that have caused further irregular movements. Moreover, simplified migration flow concept has consequently contributed to the attitude that only refugees and *bona fide* asylum seekers have certain guaranteed rights.

The nature of the migration flow on the territory of the Republic of Serbia has made it almost impossible to make distinctions between various categories of migrants, according to an established mechanism, without further analysis of circumstances for each case individually. It is typical for the majority of migrants not to possess any personal documents, to have their identity established on the basis of statements and to enter the territory of Serbia illegally, most usually by using the services of smugglers. The differences among them are in the reasons for which they have left their countries of origin: fear of persecution, war conflicts, social (custom-based) norms, and poor economic and social conditions in their countries. Regardless of the reasons, they travel together and use the same routes and modes of movements. Among them, there are unaccompanied minors, families, victims of torture, and other particularly vulnerable groups.

Complexity of migration flows, expansion of migrant smuggling, implementation of border control measures by the state with an aim of preventing irregular movements, along with pressures put on the asylum system frequently by migrants in search of better economic conditions, have led Serbia to a situation in which it is necessary to consider the relation

### MIXED MIGRATION

Term used to describe movements in which different people are moving together, motivated by different reasons or circumstances, either within or across international borders. Usually, the attention has been paid to mixed migration movements across international borders, and more specifically, to the irregular movements across borders of VARIOUS categories of migrants such as refugees, asylum seekers, economic migrants, victims of human trafficking, smuggled migrants and other vulnerable categories including women, children and unaccompanied minors, where those moving do not have legal papers or do not meet the requirements to legally enter the country through whose territory they are moving.

between certain aspects of migration policies and asylum system (the so-called 'migration-asylum nexus').

As Serbia is still considered to be the country under the greatest pressure in the region, both regarding the scope and variety of irregular movements of migrants, asylum seekers and refugees, we offer the overview of key aspects of migration policies implementation whose (non)functioning has an impact on the asylum system. Furthermore, based on the premise that it is imperative for all the states to enable every asylum seeker and migrant to exercise his/her fundamental human rights, we will dedicate a considerable segment of the text to exercising the rights of various vulnerable groups in migration flows currently happening in Serbia.

The first part gives a short presentation of a relevant legal framework and its further development. Then, the most important available statistics are represented, where simultaneously, the shortcomings of the current mechanisms for registering migrants and their consequences are indicated. Moreover, border procedures are analysed, both for land borders and for the air traffic, and the treatment of migrants within the territory where, in particular, the effects of implementation of the Readmission Agreements for third-country nationals and stateless persons are emphasised. The fourth part is dedicated to the practice of misdemeanour courts and a stay of migrants and asylum seekers in penal institutions, Shelter for Foreigners and asylum centres, particularly in the context of making distinction between the two categories of persons. The last part is dedicated to the protection of three particularly vulnerable categories of migrants/asylum seekers: unaccompanied minors, victims of human trafficking and victims of torture, through the analysis of the practical implementation of established procedures and their compliance with relevant standards.

## 2. LEGAL FRAMEWORK FOR THE TREATMENT OF MIGRANTS IN THE REPUBLIC OF SERBIA AND DIRECTIONS OF ITS DEVELOPMENT

Besides the relevant Constitutional provisions and specialised universal and regional norms and standards,[1] laws and strategies through which the state defines priority goals, their position and ways to exercise their guaranteed rights, are also applied to every category of migrants. Furthermore, the most important conventions in the field of protection of human rights directly provide protection for the migrants and significantly limit the states, particularly through interpretations provided by their competent bodies.[2]

[1] Concretely, we are referring to the instruments adopted within the Council of Europe and the Organisation for Security and Co-operation in Europe

[2] We hereby only list the most important universal and regional instruments that are relevant for envisaging the contents, quality and reach of the protection of some rights, and the treatment of migrants and asylum seekers in RS: The UN Convention relating to the Status of Refugees with the additional Protocol, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, Protocol against the Smuggling of Migrants by

## GENDER SENSITIVE INTERPRETATION

The Republic of Serbia ratified the *Council of Europe Convention on preventing and combating violence against women and domestic violence* that entered into force on 1 August 2014. The Convention, in its Chapter VII dedicated to migration and asylum issues, envisages several obligations aimed at introducing gender-sensitive understanding of violence against women migrants and women asylum seekers. It introduces a possibility of obtaining independent residence status for migrant women who are victims of gender-based violence, it prescribes the obligation to provide a gender-sensitive interpretation on the occasion of determining a refugee status, gender-sensitive procedures and treatment upon the reception. Finally, this Chapter lays down the obligation of respecting the non-refoulement principle for the victims of violence against women. It is interesting that, although this Convention is specialised, Article 61 (1) contains a provision that generally envisages an obligation for the Member States to take the necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law, whereas in paragraph 2, the application of this principle is concretely required for the victims of violence against women.

International norms and standards are extremely important having in mind that the Constitution of the Republic of Serbia prescribes that the generally-accepted rules of the international law and ratified international treaties are an integral part of the legal system of the Republic of Serbia and shall be directly applied.[3] The Constitution of the RS, as the highest legal act, contains several other relevant provisions.[4]

Moreover, legal framework also complements a significant number of strategic documents, laws and by-laws that in the last ten years the Government of RS has adopted with an aim of defining and managing legal migrations and combat against the illegal ones: Strategy for an Integrated Border Management, Strategy for Combating Trafficking in Human Beings, Strategy

Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, International Convention on the Elimination of all Forms of Racial Discrimination, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, Convention against torture and other cruel, inhuman, and degrading punishment and treatment, UN Convention on the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Council of Europe Convention on Action Against Trafficking in Human Beings; More details at: Protecting the Rights of Migrants in the Republic of Serbia, a Handbook for civil servants and local self-government officials, International Organisation for Migration - Mission to Serbia, Ivana Krstic, PhD, Belgrade 2012

[3] Besides the Article 16(2), integration of international law in the national law is confirmed by Article 18(2), according to which the Constitution guarantees, and as such, directly implements human and minority rights guaranteed by generally-accepted rules of the international law and ratified international treaties and laws, Article 142 (2) envisaging that the courts perform their duties also in accordance with generally accepted rules of international law and ratified international contracts, etc.

[4] More details at: Protecting the Rights of Migrants in the Republic of Serbia, a Handbook for civil servants and local self-government officials, International Organisation for Migration - Mission to Serbia Ivana Krstic, PhD, Belgrade 2012; Challenges of Forced Migration (2013)

for Combating Illegal Migration 2009-2014, Migration Management Strategy, Law on the State Border Protection, Law on Asylum, Law on Foreigners, Migration Management Law, accompanying bylaws, laws ratifying bilateral and multi-lateral readmission agreements, etc.

The European Union has had a pivotal influence on the development and adoption of the above mentioned national legal acts. In the first phase, legally and institutionally regulated field of migration and asylum was important for meeting the requirements for the liberalisation of the visa regime. The new phase in our relations with the EU, acquiring the candidate country status and opening negotiation process, in regard to the legal framework, means incorporation of the "spirit and the letter" of the EU legislation into the legal framework of the candidate country - adopt or amend national legislation, in a manner that will enable a complete transposition of the requirements set by *acquis communautaire* into national legislation.

EU accession negotiations actually involve internal improvements in regard to the adoption of EU *acquis* and its implementation, or in other words some reforms. With an aim of a precise insight into the scope of and monitoring of the process, Serbia has developed a *National Programme for the adoption of the Acquis - NPAA,*[5] establishing a detailed plan for harmonising the legislation and defining human and budget resources necessary for the implementation of the envisaged tasks. Although the revision of most of the legislation regulating migration and asylum issues was supposed to start in 2013, nothing has been done in this regard yet. The Government of the Republic of Serbia is expected to revise NPAA in the forthcoming months and propose new deadlines for the implementation of the envisaged reforms.

The basis for the announced reforms is undoubtedly the European legal framework, but in this process it is necessary to bear in mind the specific features of Serbia, its constitutional and legal order, institutional and administrative capacities, and economic and social factors. It is essential that the newly adopted documents are completely in compliance with each other in order to avoid legal gaps or opposite solutions. Additionally, it should be borne in mind that the EU legislation usually provides a possibility of introducing higher standards than the minimum ones prescribed. Furthermore, experience of other countries also indicates that the EU standards should be adopted gradually.[6] Finally, relevant provisions of international law on the protection of human rights should serve as a standard for reviewing the adopted solutions, having in mind that the primary sources of the EU law declares full respect of them, which gives an opportunity to re-examine the compliance with international standards of not only acts of EU bodies, or the secondary legislation, but of the implementing acts of the Member States, as well.[7]

[5] http://www.seio.gov.rs/upload/documents/nacionalna_dokumenta/npi_usvajanje_pravnih%20tekovina.pdf

[6] Development of the asylum system in Croatia, Goranka Lalic Novak, Faculty of Humanities and Social Sciences of the Zagreb University, Zagreb, 2010, 106.

[7] European Asylum and International Law,Hemme Battjes, Martinus Nijhoff Publishers, Leiden, Boston, 2006,506

## 3. SERBIA AS A TRANSIT COUNTRY AND *DE FACTO* DESTINATION OF MIGRANTS AND ASYLUM SEEKERS - STATISTICAL INDICATORS

Owing to its geopolitical position, as one of the most frequently used transit routes of migrants whose desired destination is the European Union, Serbia is facing a considerable migration pressure. According to Frontex, in the Western Balkans region, the border between Serbia and Hungary was the most burdened border in 2013, mostly owing to the amendments made to the legislation and changes in the treatment of migrants in Hungary.[8] In the period observed, competent authorities from both sides of the border registered about 13,000 'non-regional migrants', which makes 57% of the total number of detected migrants in the region. Together with the border between Serbia and FYRO Macedonia, 8 out of 10 registered illegal crossings of migrants who are third-country nationals occur on these two borders, in the region.[9] This border has in years increasingly become the major 'entry border'.[10] Statistically, the position of RS on the so-called 'Balkan Route' has remained almost unchanged, and it is still the country that is under the largest pressure and where there is a large number of migrants and asylum seekers. The estimates indicate that the number of irregular migrants in 2013 was twice as big as the number of expressed intentions (5,056), so in total this amounts to about 15,000 migrants. Countries of origin are most usually Syria, Afghanistan, Pakistan, Algeria, Somalia, Tunis, Morocco, and there is an increasing number of persons from the Sub-Saharan countries, particularly from Eritrea and Mali. These are mostly men, aged between 18 and 35.

Precise statistical data is almost impossible to establish. The problem is, above all, in the increasing number of migrants who never get revealed and thus remain unregistered and without an institutional support. The estimate is indirectly made on the basis of statistical data on the number of persons who expressed their intention to seek asylum[11] and who have been accommodated in one of the accommodation facilities for asylum seekers,[12] irregular migrants for whom certain measures have been taken,[13] data on the readmission of third-country nationals,[14] etc.

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[8] Namely, in the beginning of 2013, under the international pressure, Hungary stopped detaining persons seeking asylum. Their accommodation in open centres has resulted in an increased number of persons who gave up on the asylum procedure. To stop such a trend, Hungary re-established the practice of detaining migrants as of 1 July 2013.

[9] Western Balkans - Risk Analysis for 2013, Frontex, Warsaw, 2014.

[10] Challenges of Forced Migration (2012)

[11] In 2013, intention to seek asylum in Serbia was expressed by 5,056 persons.

[12] In 2013, 3023 persons were accomodated in some of the accommodation facilities for asylum seekers.

[13] In 2013, there were 8,573 prevented illegal border crossings; 7,736 border crossings in the so-called green areas were prevented; there were 760 minor offense charges for the violation of the Law on Foreigners, for illegal entries; 3,142 charges for the violation of the Law on the Protection of State Border; 4,228 persons were sanctioned for misdemeanor, out of which 2,471 persons got prison sentences. The data on the number of prevented illegal crossings were announced at a Conference of the MoI RS, within a twinning project "Establishment of an eficcient system for prevention and suppression of illegal migrations on the territory of RS", in Belgrade, 4 June 2014.

[14] In 2013, the reception of 885 persons took place under an accelerated procedure, and 2786 under a regular procedure.

The estimate is additionally hindered by the fact that a certain number of migrants have addressed several institutions and that each one of them has registered them separately. Since individual personal files have not been cross-checked and compared and having in mind that it frequently happens that the same persons are beneficiaries of the services of the same institution and/or several institutions for several times, and that migrants use different names, overlapping of the data could be expected. The Ombudsman of Serbia points out in the recommendations for the Ministry of Interior and Commissariat for Refugees and Migration, that migrants' identity has not been regularly determined,[15] and even when this has been the case, it has not been done in the manner ensuring reliability of the gathered data (added by the author).

Taking fingerprints is the most reliable way of determining identity which should be, in the existing circumstances, done in the earliest phase of establishing contacts with migrants and regardless of the status arising from the legislation on foreigners and asylum. This would mean the establishment of the so-called 'internal/procedural identity' of migrants. Competent authorities should, thus, in all procedures/actions taken, identify a migrant on the basis of personal data provided by the migrant upon the first contact when his/her fingerprints would be taken. Sending such a data to a central register, that would contain separate sections by which the data would later be sorted out[16], would result in more precise and accurate statistical data. Introduction of such a system would be significant for several practical reasons: it would reduce the possibility of abusing the asylum system by filing an asylum application for several times, without any legal grounds, by the same person; the possibility that asylum seekers apply for accommodation in several centres without a referral by competent authorities; it would also: enable implementation of the Readmission Agreements with the surrounding countries; enable monitoring of the measures of termination of residence, strengthening protection system for unaccompanied minors, who will be discussed later in the text.

The Rulebook on police powers provides a legal basis for taking fingerprints in the described manner. It is envisaged by the law that a foreigner may prove his/her identity with a foreign travel document, travel document for foreigners, laissez-passer enabling entry into a country, personal identification card for foreigners, or with another public document containing a photograph based on which his/her identity could be checked. With the establishment of the identity, legal, ownership and body features are established, which distinguish a person from another person. The Rulebook prescribes that the identity should be established even in cases when it cannot be established by checking, when there is a doubt in validity of documents or statements or at the request of the court, public prosecutor, or another competent authority.

[15]Recommendations of the Ombudsperson of the Republic of Serbia intended for the MoI RS, Police Directorate and Commissariat for Refugees and Migration.

[16] e.g. a database of asylum seekers, a database of persons returned under a Readmission Agreement, a database of migrants without legal grounds for a stay

It also envisages that the identity should be established by the methods and means of criminalistics techniques and tactics, by applying medical and other appropriate procedures, and particularly, among other things, by taking prints of papillary lines and comparing them to the existing fingerprints.[17]

Despite the provisions of this Rulebook, currently there are some infrastructural, material and technical, and human resource shortcomings that do not make it possible or significantly hinder the establishment of such a mechanism.[18] As the EU accession process continues, competent authorities will be obliged to establish a fingerprint database of asylum seekers and persons found illegally crossing the borders, in order to meet the requirements from the EURODAC Regulation.[19] Moreover, if there are conditions for establishing some of the modes of the previously described identity establishment procedure, the so-called internal /procedural identity, databases will need to be in compliance with the legislation regulating protection of personal data. Furthermore, it is necessary to stipulate an obligation to inform the person, in a language that he/she understands or is reasonably supposed to understand, of activities that will be taken, and of his/her legal status, and his/her rights and obligations during his/her stay on the territory of the Republic of Serbia.

The possibility of improvement is also provided by the Law on Migration Management that envisages the establishment of a single system of gathering, organising, and exchanging the data necessary for migration management. As it is given in the Law's rationale, the unique system would enable exchange of the data between state authorities whose scopes of competences include some migration issues. This unique system is based on cooperation mechanisms that would tackle the problems arising from insufficiently synchronised and coordinated activities of state authorities included in the migration management process. Article 19 stipulates that by-laws on its' implementation will be adopted within 12 months from the date it enters into force, but now, almost two years later, the implementing acts have not been adopted yet.

[17] The Rulebook on Police Powers, Articles 8,9, and 10. Furthermore, the Law on the Protection of State Border, Article 6, prescribes measures and powers of border police officers while performing the duty of protecting the state border. This Article, among other things, envisages that a border police officer should establish the identity of a person and check the stipulated records, and that if there is a doubt about the identity, or validity of travel or other documents necessary for crossing the state border, he/she should take this persons's fingerprints and palm prints, and other biometric data.

[18] A communication, that contains the response of MoI RS, sent to the Ombudsperson related to the his recommendations about asylum issues, available at: http://www.azil.rs/documents/category/odabrane-presude

[19] EURODAC system enables EU Mamber States to identify asylum seekers and persons found illegally crossing outer EU borders. By comparing fingerprints, Member States can get the information on whether a person has already applied for asyum or whether he/she has been found illegally entering/staying in any of the Member States.

## 4. PROTECTION SENSITIVE ENTRY SYSTEM

UNHCR and IOM, in the final conclusions of the conference on the refugee protection and international migration in the Western Balkans, indicate that one of the main challenges is: "Entry officials (first contact officials including border and police officials) face difficulties with differentiating among various groups of persons on the move and with referring them to appropriate response mechanisms. Asylum seekers, persons with specific needs and vulnerable migrants are not always identified and referred to appropriate procedures." They also point out that some efforts have been invested in the establishment of an integrated border management system, but that the systems have been established on the bases of completely different migration flows, as compared to the present situation. [20]

The system's maladjustment results in the following two directions: to prevent illegal migration, an increasing number of restrictive measures are implemented (readmission agreements, cross-border cooperation, and joint patrols on the so-called 'green border', limiting the freedom of movement of foreigners, forbidding entry), and there is no sufficiently developed mechanism and capacity for identification of asylum seekers, which would guarantee an approach to the territory and to the asylum procedure. Consequently, this might lead to the violation of the *non-refoulement principle*. On the other hand, lack of competence to recognise persons who are really in need of international protection, together with some provisions of the LoA and application of measures on other groups of migrants, result in larger pressures on the asylum system.

What could certainly be estimated as positive is that, according to the testimonies of asylum seekers, when border/police officials are not able to provide support through official channels, to persons who have an urgent basic need, they spontaneously provide, through *ad hoc* mechanisms, informal channels, and often using their own resources, food, hygiene items, clothes or urgent medical assistance.[21]Unfortunately, the examples of kindness also indicate the lack of systematic and comprehensive approach of the state to this issue.

### *NON-REFOULEMENT* PRINCIPLE

The *non-refoulement* principle, which precludes states from extraditing a person to another state where this person might be at real risk of persecution or violation of human rights, is one of the cornerstone principles of international law putting strong limitations to the right of a state to control entry of persons to its territory

[20] Roundtable on Refugee Protection and International Migration in the Western Balkans: Suggestions for a Comprehensive Regional Approach (10 - 11 December 2013, Vienna, Austria) Summary Report, 4. http://www.refworld.org/docid/531ec2104.html

[21] Refugee Protection and International Migration in the Western Balkans, Kristina Zitnanova, UNHCR Bureau for Europe Kristina Zitnanova, 2014.

and the right to expel a foreigner, as a part of its sovereignty. Although the *non-refoulement* principle derives from the international refugee law, it is today established as a part of the international human rights law, [22]and it applies to all persons regardless of their status.[23]

As regards the protection of refugees, the obligation to respect the non-refoulement is the basis for exercising all the rights guaranteed by the Geneva Convention. The problem remains more or less the same regardless of whether a state precludes refugees from crossing its border, or returns them after they have managed to cross the border, or even expels them after they have been allowed to stay on its territory. Regardless of what of the abovementioned is the case and of whether they have the refugee status or not, they may not be returned to the country where their lives and freedom might be threatened.[24]

The Constitution of the Republic of Serbia stipulates that a foreign national may be expelled only under decision of the competent body, in a procedure stipulated by the law and if time to appeal has been provided for him/her and only when there is no threat of persecution based on his/her race, sex, religion, national origin, citizenship, association with a social group, political opinions, or when there is no threat of serious violation of rights guaranteed by this Constitution (Article 39(2)).

The Law on Asylum and the Law on Foreigners contain Articles of almost the same contents (Article 6 of the Law on Asylum and Article 47 of the Law on Foreigners) and they stipulate that no person may be expelled or returned against his/her will to a territory where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinions.

Both of the Laws stipulate that no person may be expelled or returned against his/her will to a territory where there is a risk of his/her being subjected to torture, inhumane or degrading treatment or punishment, which makes these Laws in compliance with obligations of states related to the *non-refoulement* principle stemming from the international human rights law, which provides wider protection than the one guaranteed by the Geneva Refugee Convention.

## 4.1. Treatment at Land border crossing and access to the asylum procedure

According to the report by Frontex, most commonly used *modus operandi* for irregular movements is crossing the border within the 'green areas', on foot, and then transport through

[22]In international human rights law, for the states to apply this principle they are obliged to identify, protect and ensure respect of human rights of all the persons under their jurisdiction.

[23] Migration and International Human Rights Law, Practitioner Guide No. 6, International Commission of Jurists, Geneva, 2011, 106.

[24] Access to Asylum: international refugee law and the globalization of migration control, Thomas Gammeltoft- Hansen, Cambridge University Press, 2011

the territory by a car, taxi or regular bus lines. As compared to 2012, there has been a decrease by 29% in the number of migrants' attempts to cross the border by hiding in means of transport.[25] Provisions of the Law on Foreigners or the Law on the Protection of State Borders will be applied to persons who unlawfully cross the state border and illegally enter the RS.[26] In such cases, it is possible to institute misdemeanour proceedings against such a person or their entry to the RS is denied. Furthermore, if the requirements are met, the person may be returned under a readmission agreement, by regular or accelerated procedure, to the country of origin or the country from which he/she directly entered the territory of the RS. Application of the abovementioned provisions is excluded, or suspended for a certain time period, if the person applies for asylum in the RS. In 2013, only 36 cases in which persons expressed their intention to seek asylum at the border crossing were recorded.

Regional centres of BPD MoI RS are directly responsible for the control of the state border crossing and for the state border security. Accordingly, they make first contacts with migrants along the border line. Currently, the work of four out of the total of seven centres is particularly important. Although they are a part of a centralised, hierarchically ordered body, some differences may be distinguished in the procedures they apply. These differences are caused by a migration flow, or the differences in the so-called 'exit or entry borders' migrants use, and also by the lack of infrastructural and/or human capacities and internal rules of procedure.

In 2013, RC for the border with Croatia prevented 914 persons who tried to illegally cross the state border with Croatia (845 foreigners) Not a single foreigner expressed an intention to seek asylum to the representatives of the regional centre. In the same year, there were 167 offense charges for the attempts of illegal crossing of the state border, and **747 persons were not prosecuted because they had a document certifying that they had expressed an intention to seek asylum in the RS.** Namely, persons who have already expressed an intention to seek asylum, regardless of the fact that they have willingly tried to leave the territory of the Republic of Serbia, are not prosecuted for misdemeanour but re-sent to asylum centres.[27] On the other hand, Article 34(1) (4) of the LoA stipulates that the asylum procedure will be suspended if the person leaves the territory of the RS without an approval of the Asylum

[25] Western Balkans - Risk Analysis for 2013 FRONTEX, Warsaw, 2014, 27.

[26] The Law on Foreigners, Article 10, stipulates that an unlawful entry in the Republic of Serbia is considered to be: an entry out of place and time determined for crossing the state border; entry by avoiding border control; entry by use of someone else's invalid, or. false travel or other document; entry by giving false data to border police; entry in the course of duration of a protective measure of expulsion of the foreigner from the territory of the Republic of Serbia, security measures of expelling the foreigner from the country or measures of residence rescinding. According to the Law on the Protection of State Border, a foreigner who crosses or attempts to cross the state border at a border crossing without a valid travel or another document envisaged by the law for crossing the state border(Article 10(2) of this Law); a foreigner who does not possess a document envisaged by the law for crossing a state border or who refuses to show it to a police officer, or refuses to be the subject of the police control or leaves the border crossing area before the control is completed, or in any other way makes an attempt to avoid the control (Article 26(1) of this Law), will be punished for misdemeanor;

[27] Visit to RC of PBD MoI RS for the border with Croatia, Novi Sad, 6 May 2014.

Office.[28] Paragraph 2 also prescribes that, in its decision to suspend the procedure, the Asylum Office will set a time limit within which a foreigner who has no other grounds for residing in the Republic of Serbia must leave its territory, and if he/she fails to do so, he/she will be forcibly expelled, in accordance with the law governing the stay of foreigners. However, the procedure for granting asylum is initiated upon filing an asylum application to an authorised officer of the Asylum Office, so according to a literal interpretation of the LoA, in situations when a person only expresses an intention to seek asylum, *stricto iure* it could not be decided to suspend the procedure.[29] In this segment there is undoubtfully a legal gap and it is questionable what could be considered an adequate practice that would be in line with national legislation and that would also be in compliance with generally accepted standards for the protection of asylum seekers.

Unlike the practice of keeping records of filed misdemeanour charges to RC for the border with Croatia, RC for the border with Hungary, after revealing foreigners, takes them to the regional police directorates, within the shortest period of time possible, where these persons are further prosecuted (in 2013, there were 1,597 attempts of illegal crossing of the state border outside the border crossing point, on the so-called "green line"[30]). Eleven persons filed an asylum application to the officers of the RC for the border with Hungary. They assume that persons express their intention to seek asylum in regional police directorates because they stay for a relatively short time within the "competences" of regional centres.[31] According to the data of these two regional centres, foreigners who are returned within the readmission procedure[32] by Hungarian/Croatian competent authorities may also be charged with a misdemeanour.

On the other side of the country, RC for the border with Bulgaria, in cases when a foreigner is caught illegally crossing the border near the very border line, this person is returned to competent authorities of the Republic of Bulgaria. If, on the other hand, the person is caught inside the territory, misdemeanour proceedings are instituted. In 2013, there were 525 cases recorded, out of which 28 persons were recorded at border crossings, while 497 foreigners were revealed at the 'green border', crossing the border illegally. Not a single person expressed

[28] The Asylum Office has not yet been formally established and the tasks from the Office's scope of work are performed by the Asylum Section that is a special unit within the Department for Foreigners of the Border Police Directorate of the MoI of the RS. When we talk about a state authority responsible for the first-instance decisions on the asylum application, we are most frequently referring to the Asylum Office. For the purpose of getting a better insight in the procedure prescribed by the Law on Asylum, hereinafter we will be referring to the Asylum Office.

[29] Although the Asylum Office used to have this practice established before: "The Asylum Office makes a decision on the suspension of the procedure even in situations when a formal application has not yet been lodged, and if only recording and/or registration activities have been performed and the person in question is no longer available to the comprtent authorities (after being entered into records, the person has not registered with competent authorities within legally prescribed deadline and/or has left one of the asylum centers)." Challenges of Forced Migration (2012), 21.

[30] Out of the total number, 596 of them are citizens of Serbia

[31] Visit to the Regional Centre for the border with Hungary of PBD MoI RS, Subotica, 6 December 2013.

[32] See: Section: Readmission of third-country nationals and stateless persons

an intention to seek asylum.[33] On the opposite side, RC for the border with Macedonia does not implement the procedure of returning migrants to Macedonia, although in 2013, there were 4,682 cases (attempts) of illegal state border crossing. In the same year, 6 persons expressed an intention to seek asylum. A positive practice of this RC is that they communicate with the foreigners who have been found illegally crossing the state border, through forms that exist in English, French, and Arabic languages.[34]

RCs point out that main problems are the lack of coordination between border police, primary health centres and social work centres because these institutions are not sufficiently familiar with the legislation and have no instructions on how to deal with irregular migrants. Another significant problem is the impossibility of communication due to the lack of interpreters.

It is also apparent that operational measures aimed at suppression of smuggling give results and that the regional centres raised a significant number of criminal charges under the Article 350 of the Criminal Code of the Republic of Serbia (illegal crossing of the state border and smuggling of persons): RC for the border with Croatia raised 12 criminal charges against 14 persons; RC for the border with Bulgaria raised 13 against 4 Serbian and 9 Bulgarian citizens for smuggling 91 persons; RC for the border with Macedonia raised 36 criminal charges).

## SMUGGLING OF MIGRANTS

The Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime obliges its signatory states to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, **while protecting the rights of smuggled migrants**. (Article 2). For the protection of refugees, Article 19 is particularly important since it regulates the relations between this Protocol and other international acts: " Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein."

Besides instituting misdemeanour proceedings for an illegal entry or unlawful crossing, state authorities may deny a person entry into the territory of the RS, under the conditions prescribed by the law. A foreigner will be denied entry to the territory if he/she does not have a valid travel document or visa, if required, sufficient financial means of support during the stay; if he/she is in transit and does not meet the conditions for entry into a third country; if

[33] Visit to the Regional Centre for the border with the Republic of Bulgaria of BPD MoI RS, Dimitrovgrad, 14 May 2014.
[34] Visit to the Regional Centre for the border with Macedonia of PBD MoI RS, Presevo, 3 December 2013.

the protective measure of expulsion is in force or his/her residence permit was terminated, or another measure is in force; if he/she does not have a certificate of immunization and he/she arrives from an area infected by epidemic of contagious diseases, if it is requested for the purpose of protection of public order; if he/she is registered in appropriate records as an international transgressor; and if there is a reasonable doubt that he/she will not use his/her stay for an intended purpose (Article 11 of the Law on Foreigners). In 2013, a total of 8,069 persons were denied entry to the RS - 6,737 at the land border crossing, 1,332 at the border crossing at 'Nikola Tesla' Airport.[35]

**TABLE 1: DENIAL OF ENTRY IN 2013 - BY NATIONALITY - LAND BORDER CROSSING WITH**

| Nationality | Bulgaria | BiH | Croatia | Hungary | FYROM | Romania | Montenegro | Total |
|---|---|---|---|---|---|---|---|---|
| **BiH** | | 1.159 | 5 | 15 | 2 | 1 | 6 | 1.188 |
| **Not established** | 93 | 39 | 66 | 432 | | 20 | 39 | 689 |
| **Moldova** | 54 | 7 | 210 | 24 | 7 | 50 | | 352 |
| **Bulgaria** | 217 | 2 | 85 | 43 | | 2 | | 349 |
| **Unfamiliar** | 9 | 2 | 281 | 37 | | 1 | 6 | 336 |
| **Romania** | 22 | 8 | 95 | 6 | 2 | 167 | | 300 |
| **Germany** | 28 | 15 | 140 | 83 | 6 | 3 | | 275 |
| **Brazil** | 33 | 21 | 96 | 54 | 11 | 5 | 6 | 226 |
| **Austria** | 14 | 5 | 57 | 124 | 2 | 2 | | 204 |
| **Georgia** | 27 | | 76 | 48 | 8 | 15 | 2 | 176 |
| **Turkey** | 39 | 20 | 35 | 34 | 5 | | 29 | 162 |
| **Other** | 310 | 149 | 897 | 773 | 154 | 80 | 117 | 2.480 |
| **TOTAL** | 846 | 1.427 | 2.043 | 1.673 | 197 | 346 | 205 | 6.737 |

**TABLE 2: DENIAL OF ENTRY IN 2013 - BY REASONS - LAND BORDER CROSSING**

| Nationality | Not possessing or invalid personal document (visa, personal ID card ID) | Unclear purpose of stay | Illegally prolonged stay | Insufficient financial means of support | An applied measure | Security threat | Not meeting requireme-nts for a third country | Other | Total |
|---|---|---|---|---|---|---|---|---|---|

[35] The Ministry of Interior of the Rs, the Minister's Office, 01 No.10287/13, 9 April 2014. Tables 1 and 2 were also provided by the MoI RS in the previously mentioned communication.

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| BiH | 498 | | | 2 | 10 | 1 | | 677 | 1188 |
| Not established | 678 | | | | | | | 11 | 689 |
| Moldova | 305 | | | | | | | 47 | 352 |
| Bulgaria | 151 | 4 | | 93 | 15 | 5 | | 81 | 349 |
| Unfamiliar | 330 | | | | | | | 6 | 336 |
| Romania | 166 | 32 | | 55 | 3 | | | 44 | 300 |
| Germany | 221 | | | 1 | | | | 53 | 275 |
| Brazil | 199 | | | | | | | 27 | 226 |
| Austria | 164 | | | | | | | 40 | 204 |
| Georgia | 162 | | | | | | | 14 | 176 |
| Turkey | 74 | 27 | | 14 | 3 | 1 | | 43 | 162 |
| Other | 1.990 | 46 | 1 | 32 | 16 | 1 | 0 | 394 | 2.480 |
| TOTAL | 4.938 | 109 | 1 | 197 | 47 | 8 | | 1.437 | 6.737 |

As regards land border crossings, nationality of persons to whom entry was denied mostly does not match the countries from which most of the persons expressing intention to seek asylum originate. However, it is concerning that **almost two thirds of the persons whose entry was denied belong to the category of 'other' when it comes to nationality.** Furthermore, if the data on nationality is compared to the data on the reasons for denial, 1,990 persons under the category 'other' were denied entry for the purpose of not possessing or having invalid travel and personal documents. To avoid ambiguities, statistical data on denial of entry should be kept more precisely, particularly having in mind that there is no independent border monitoring mechanism and that the possibility to file an appeal or review the decision on the denial of entry is almost illusory.[36]

[36] Challenges of Forced Migration (2013)

### 4.2. Treatment at 'Nikola Tesla' airport and access to the asylum procedure

Unlike in some other countries, LoA of the RS does not contain a provision that explicitly regulates the possibility of seeking asylum in the airport transit zone. Article 22 stipulates that a foreigner may, verbally or in writing, express his/her intention to seek asylum to an authorised police officer of the Ministry of the Interior, during a border check in the course of entering the Republic of Serbia, or inside its territory. Although this right is not explicitly envisaged by LoA, it could be concluded by logical and teleological interpretation that the Law enables such a possibility. However, some confusion may be caused by the provisions of the Law on Foreigners. Article 3(4) of the Law on Foreigners stipulates that holding foreigners in the transit area of an airport or in the anchorage of the terminals or ports through which the international traffic is carried out **is not considered, pursuant to this Law, an entry in the Republic of Serbia.** The same paragraph prescribes that the entry in the Republic of Serbia is an arrival of a foreigner at its territory, approved by the competent state authority, by crossing the state border, i.e. border crossing point at which control is carried out. Although these 'international zones', just like the 'international area' between two border crossings, are actually, under international law, still a part of a certain state and not 'nobody's land' (*terra nullius*), for instance, it is considered as a legal fiction that, despite the fact that certain state has jurisdiction in this area, a refugee (foreigner) who stays in this area has not yet entered the host state.[37]

The abovementioned provisions of the Law on Foreigners may serve as a reminder of the opinion of the European Court of Human Rights on the jurisdiction of a state over the transit zones, which undoubtfully should be the basis for the procedures conducted in the transit zone. In the case of Ammur v. France, although the French competent authorities used the argument that if a person has not technically entered the territory of a state, by staying in the transit/international zone he/she is not under the jurisdiction of the state and therefore Article 1 of the European Convention on Human Rights does not apply to them, the Court noted that "despite its name, the international zone does not have extraterritorial status...and that despite national legislation envisaging a different interpretation.... holding them in the international zone made them subject to French law."[38]

In 2013, at 'Nikola Tesla' Airport in Belgrade, only two certificates of the intention to seek asylum were issued.[39] In the first six months of 2014, at 'Nikola Tesla' Airport, 10 certificates of

[37] Protection of Refugees under International law (Međunarodnopravna zaštita izbjeglica), Davorin Lapasa, Croatian Legal Centre, Zagreb, 2008.

[38] Ammur v. France, Application No.19776/92, date of judgement: 25 June 1996, para. 52

[39] Between 2008 and 2010, only one person was allowed to express his/her intention to seek asylum, but only after the intervention of the UNHCR, whereas there are no records of such cases for 2011 and 2012. As compared to other European airports, 'Nikola Tesla' Airport is one of the rare airports at which such a small number of people seek asylum.

the intention to seek asylum were issued.[40] As it is the case at land border crossings, at an airport, as a border crossing for air traffic, there were cases of denying entry into the RS, though much fewer.

**TABLE 3: DENIAL OF ENTRY IN 2013 - BELGRADE AIRPORT - BY REASONS**

| Nationality | Not possessing or invalid personal documents (visa, personal ID card, ID) | Unclear purpose of stay | Illegally prolonged stay | Insufficient financial means of support | An applied measure | Security threat | Not meeting requirements for a third country | Other | Total |
|---|---|---|---|---|---|---|---|---|---|
| Tunisia | 3 | 203 | 42 | 22 | | | 1 | 5 | 276 |
| Philippines | 223 | | | | | | | 1 | 224 |
| Indonesia | 205 | | | | | | | | 205 |
| Turkey | 22 | 78 | 2 | 9 | | | | 15 | 126 |
| Brazil | 66 | | | | | | | | 66 |
| Congo | 33 | 3 | | | | | | | 36 |
| China | 31 | 1 | | | | | | | 32 |
| Germany | 27 | | | | | | | 3 | 30 |
| Ghana | 3 | | | | | | | 23 | 26 |
| Cuba | | 8 | 12 | | | | | | 20 |
| Other | 262 | 11 | 2 | 6 | 1 | 0 | 4 | 5 | 291 |
| TOTAL | 875 | 304 | 58 | 37 | 1 | | 5 | 52 | 1.332 |

From the date the Law on Asylum entered into force until March 2013, lawyers from non-governmental organisations who provide legal assistance to asylum seekers did not have access to the airport. In end 2013, upon the request of BCHR, the European Court of Human Rights issued an interim measure ordering Serbia to deport asylum seekers from Nikola Tesla Airport to Greece or Iran. The interim measure was issued owing to the fact that border police officers at the airport refused to issue a certificate of intention to seek asylum to a foreigner who sought asylum, but they rather tried to return him to Greece without any formal decision against which the foreigner could appeal. The certificate was issued to the foreigner only after a phone call made by BCHR, but its lawyers were not allowed to access the facilities in which he was staying at the airport so that they could provide the legal assistance, and border police

[40] This is not official statistical data of the Ministry of Interior. The information received from BHRC who provided legal aid to those who were issued a certificate of the intention to seek asylum at 'Nikola Tesla' Airport in the first six months of 2014

officers refused to provide further information on where the foreigner was and whether he was allowed to enter Serbia after the certificate had been issued to him.

In May 2014, the Ministry of Interior allowed the Belgrade Centre for Human Rights to put up posters informing on the right to asylum, and a continuous access to the airport facilities where the foreigners who do not fulfil the conditions to enter Serbia stay. This should facilitate the access to the asylum procedure for the foreigners staying in the transit zone of Nikola Tesla Airport, and it would additionally reduce the risk of violating the *non-refoulement* principle. Although the lawyers of the BCHR are officially allowed to access the airport transit zone facilities, under the border police practice it is necessary for them to have an additional temporary permit to move and stay at the border crossing, which is usually valid for the period of two months. However, in practice, it happens that the temporary permit expires and the BCHR's lawyers cannot get this permit on the same day when an asylum seeker staying at Nikola Tesla Airport transit zone addresses them.[41]

Besides the access to the asylum procedure, another frequent subject of analyses are also procedures applied in transit zones, particularly those related to retaining foreigners and conditions in which they stay.[42] Last year, there was one case in which a foreigner was retained in the airport transit zone, which is, according to the BCHR, an unlawful detention of an asylum seeker.[43]

As regards the conditions in which the persons stay, on the basis of recommendations by the CPT given to the Government of the RS, the Ombudsman of Serbia visited the airport border police facilities for retaining foreigners and established that they are not sufficiently lit (neither with natural nor artificial light), that there is an insufficient flow of fresh air, that there is no efficient system that would enable the retained person to call an on-duty police officer, and that there is no video surveillance in these facilities. Acting in line with the given recommendations, the border police remedied the detected shortcomings. Furthermore, the Ombudsperson noted in his report that officers keep records on the retainment, that medical check-ups are provided to persons upon a request, and that food is provided to the retained persons.[44]

The persons staying in the transit zone, besides the guarantees of fundamental human rights (right to life, prevention of torture, inhuman or degrading treatment, right to legal remedy,

[41] In July 2014, upon the request of the BCHR, the European Court of Human Rights issued a new temporary measure aimed at preventing deportation of a foreigner who was staying at the airport transit zone and did not fulfil the conditions to enter Serbia.

[42] More details in: Right to Asylum: International and National Standards, Ivana Krstic (PhD) and Marko Davinic (PhD), Belgrade: Dosije studio, 2013

[43] More details in: Right to Asylum in the Republic of Serbia, 2013, the Belgrade Centre for Human Rights, Belgrade, 2014.

[44] The Report on material conditions of police facilities for retainment at Nikola Tesla Airport, Ombudsperson of RS, Belgrade, March 2014.

etc.), which are envisaged not only by international contract law, but also by customary law, and even by compelling international law, must also be guaranteed the fundamental protection envisaged by the Convention relating to the Status of Refugees.

## 5. PROCEDURES APPLIED WITHIN THE TERRITORY OF THE RS

Judging by the number of the intentions to seek asylum and misdemeanour charges filed for an unlawful entry and illegal crossing of the state border, the most of the migration flow is registered within the territory of the RS. Moreover, this impression was also obtained owing to the practice applied by some RC to delegate the task of filing misdemeanour charges and treatment of migrants to regional police directorates. According to the data of MoI RS, 3,812 misdemeanour charges were filed in 2013 to PD for violation of provisions of the Law on Foreigners and the Law on the Protection of State Border, for an unlawful entry.[45]

**TABLE 4: MISDEMEANOUR CHARGES FILED FOR VIOLATION OF THE LAW ON ASYLUM, RELATED TO UNLAWFUL ENTRY INTO THE REPUBLIC OF SERBIA**

| | |
|---|---|
| PD in Bor | 1 |
| PD in Kikinda | 1 |
| PD in Kragujevac | 1 |
| PD in Nis | 157 |
| PD in Novi Pazar | 3 |
| PD in Novi Sad | 21 |
| PD in Pancevo | 1 |
| PD in Pirot | 5 |
| PD in Prijepolje | 15 |
| PD in Sremska Mitrovica | 5 |
| PD in Subotica | 152 |
| PD in Vranje | 46 |
| PD in Zajecar | 1 |
| PD in Sabac | 1 |
| PD for the City of Belgrade | 260 |
| TOTAL | 670 |

[45] The Ministry of Interior of the Rs, the Minister's Office, 01 No.10287/13, 9 April 2014; Tables 4 and 5 were also provided by the MoI RS in the previously mentioned communication. MoI of the Republic of Serbia has not provided the information on the number of persons included in the abovementioned misdemeanor charges, although this information was requested (communication No. 049/14 of 12 March 2014 sent by Group 484).

**TABLE 5: MISDEMEANOR CHARGES FILED FOR VIOLATION OF THE LAW ON THE PROTECTION OF STATE BORDER, RELATED TO UNLAWFUL ENTRY INTO THE REPUBLIC OF SERBIA**

| | |
|---|---|
| PD in Bor | 4 |
| PD in Kikinda | 1828 |
| PD in Leskovac | 84 |
| PD in Nis | 1 |
| PD in Novi Pazar | 36 |
| PD in Novi Sad | 118 |
| PD in Pancevo | 4 |
| PD in Pirot | 33 |
| PD in Pozarevac | 2 |
| PD in Prijepolje | 75 |
| PD in Sombor | 67 |
| PD in Sremska Mitrovica | 240 |
| PD in Subotica | 374 |
| PD in Uzice | 4 |
| PD in Vranje | 237 |
| PD in Zajecar | 4 |
| PD in Zrenjanin | 18 |
| PD in Sabac | 11 |
| TOTAL | 3142 |

According to the statistical data on the number of misdemeanour charges, impression is that the existing legal measures have not been applied consistently for establishing misdemeanour responsibility in all the cases where foreigners were found unlawfully crossing the state border or illegally entering the country. On the other hand, there is a possibility that the problem arises from inadequately established parameters for statistical analysis of unlawful crossing of the state border and illegal entry of foreigners. For instance, the statistical data on the work of the RC for the border with Croatia also contains the number of "filed misdemeanour charges for illegal border crossing", whereas the MoI RS does not have this data in its unified statistical database. Moreover, this RC has the data that in 2013, 914 persons in 236 cases were prevented from illegally crossing the border (69 citizens of the RS, 845 foreigners), out of which 747 persons were not prosecuted because they expressed their intention to seek asylum, and 167 misdemeanour charges were filed. Also, we should add the number of persons who were returned from the Republic of Croatia under readmission agreements, 885 persons were accepted by an accelerated procedure and 7 by a regular procedure, because in these cases also the persons may be charged with a misdemeanour. Accordingly, it is questionable why there is an unpropotionately small number of misdemeanour charges filed by PDs that 'territorially' cover the area along the border with Croatia (violation of the Law on Foreigners - Novi Sad 21; Sremska Mitrovica 5; violation of the

Law on the Protection of State Border - PD Novi Sad 118; PD Sombor 67; PD Sremska Mitrovica 240).

In the same year, 4,996 persons expressed an intention to seek asylum in regional police directorates. Despite the fact that the majority of intentions to seek asylum is recorded not by the border police, but by regional police directorates, the Belgrade Centre for Human Rights received complaints related to the fact that the certificates of intention to seek asylum were not being issued. LoA does not stipulate that officers from the MoI have discretionary powers to decide on whether they would issue a foreigner a certificate of intention to seek asylum, but they are *ex lege* obliged to issue this certificate ant to enter them in records.

On the other hand, the statistics on the number of asylum seekers from the moment they express the intention to the adoption of the first-instance decision, indicate that the majority of persons who express intention to seek asylum voluntarily abandon the procedure before its completion. Therefore, out of the total of 5,056 persons who expressed an intention to seek asylum, 742 persons were registered, 153 asylum applications were submitted, 19 persons were interviewed, and 193 decisions were made (4 adopted applications, 5 refused applications, 8 rejected applications and 176 procedures suspended). The large disproportion in the number of expressed intentions and decisions made is undoubtfully the consequence of numerous factors. The reasons are, above all, the facts that a significant number of persons do not want to enjoy any form of international protection and that they use the territory of the RS only for transit, but also the fact that asylum system capacities in the RS are not sufficiently developed to provide adequate care and treatment of each person within the asylum system. Sometimes, the very impossibility to get the protection or the lack of access to some rights may be motivating factors for further movement of the persons.

Moreover, it is assumed that some persons have been in the asylum system for several times. It could be reasonably expected that these doubts are reasonable, above all because those participating in the asylum procedure have pointed out that they recognised some faces, and on the other hand, this practice is encouraged, or facilitated by some current legal provisions and the established practice. Namely, persons who express an intention to seek asylum are issued a certificate that does not contain a photo and this enables several persons to apply for the reception at asylum centres using the same certificate of the intention to seek asylum. Also, persons who express an intention to seek asylum are instructed to go to asylum centres, but certain number of them never register in any of the centres or in the Asylum Office. Furthermore, fingerprints are taken only after an asylum seeker is accommodated in an asylum centre. Owing to limited capacities of the Asylum Office, several weeks pass from their accommodation until the fingerprints are taken. Meanwhile, asylum seekers have freedom of movement and they frequently leave asylum centres trying to, above all, cross some of the borders and reach EU Member States. If they fail, it happens that they return to asylum centres on the bases of the previously issued certificate of intention to seek asylum (RC for the border

with Croatia), or that they re-express intention to seek asylum in some of the regional police directorates by providing different personal data. Furthermore, the Ombudsperson, in his recommendations, states that: "On the basis of numerous interviews with police officers, asylum seekers, and irregular migrants, we get an impression that....officers also encourage the revealed foreigners to express an intention to seek asylum in the Republic of Serbia because this will enable them a much more favourable status."[46]

The issue of the lack of precise statistical data has been identified, which could be a consequence of inadequate mechanisms for following and analysing them. On the other hand, this situation enables an interpretation that the 'unreliability' of the data is the consequence of inconsistency of procedure, lack of legal framework, human, material, technical, and organisational capacities. In this regard, there is a large discretionary area for both the acting authorities and for migrants, which altogether leads to legal uncertainty: the possibility of serious legal consequences, violation or even loss of rights, and most frequently also inability to provide protection of fundamental rights, which puts Serbia into the risk of potential violations of generally accepted standards and responsibility before ECHR and other monitoring and treaty bodies.

### 5.1. Principle of non-punishment and procedure of misdemeanour courts

An official procedure envisages that foreigners revealed (in an attempt of) unlawfully crossing the state border or illegally staying on the territory of the Republic of Serbia, if they do not express an intention to seek asylum, without delay and charged with misdemeanour, are taken before the locally competent misdemeanour court. **In 2013, applying the Law on the Protection of State Border, misdemeanour courts imposed 1,845 fines amounting to RSD 13,510,400.00 in total, while 2,471 persons received prison sentences.** In the same year, 440 protective measures of banishing foreigners from the territory of the Republic of Serbia in force for a year, and one protective measure in force for six months. The majority of judgements of conviction for illegal border crossing were delivered by misdemeanour courts in Senta (2,145), Subotica (633), Sremska Mitrovica (490). While a significant number of rulings were also made by misdemeanour courts in Presevo (274), Vranje (91), Leskovac (85), Prijepolje (78), Sombor (54), and Novi Pazar (53). According to BCHR's data, 231 persons were charged with misdemeanour for illegal stay on the territory of the Republic of Serbia[47], while 43 persons

[46] Recommendations of the Ombudsperson of the Republic of Serbia intended for the MoI RS, Police Directorate and Commissariat for Refugees and Migration, 2014.

[47] The Law on Foreigners stipulates that a fine amounting to RSD 6.000 up to 30.000 will be imposed on a foreigner for illegal presence in the Republic of Serbia, and it also envisages a possibility of imposing a protective measure of banishing a foreigner from the territory of the Republic of Serbia (Article 85).

were also charged for illegal crossing of state border and for illegal stay on the territory of the RS.[48]

Article 31 of the Geneva Convention relating to the Status of Refugees forbids imposing penalties on refugees on account of their illegal entry or presence, who are coming directly from a territory where their life or freedom was threatened, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence (Article 31(1)). The Law on Asylum envisages, as a principle, that an asylum seeker will not be punished for illegal entry or stay in the Republic of Serbia, provided that he/she submits an application for asylum without delay and offers a reasonable explanation for his/her illegal entry or stay (Article 8). Therefore, the Law on Asylum, unlike the Article 31, envisages a cumulative fulfilment of the two requirements.

In 2013, no misdemeanour proceedings were suspended before a misdemeanour court on the basis of a foreigner's expression of an intention to seek asylum. In 2014, in five misdemeanour proceedings before the Misdemeanor Court in Pirot, the intention to seek asylum was recognised, which caused the suspension of the proceedings.[49] It is interesting that in only one case, the accused person expressed an intention to seek asylum in Serbia, whereas in other four cases the proceedings were suspended because the accused expressed an intention to seek asylum in other European countries. All the accused in these proceedings stated that they had left Syria because they had not wanted to participate as soldiers in the civil war. In all of the proceedings, the court applied the principle of non-punishment envisaged by the Law on Asylum, but for the proceedings in which the accused expressed an intention to seek asylum in other European countries, the court ordered the inspector for foreigners of the Pirot Police Directorate to take over the asylum procedure and "...to allow him asylum in the Republic of Austria through the responsible embassy, and to act in compliance with the provisions of the Law on Asylum forbidding expulsion or return, against their will, of persons who expressed intentions to seek asylum on the territory of another state."[50] The Misdemeanor Court in Raska acted completely different and in one case, it passed a judgement of conviction against a citizen of Syria, although it is noted in the rationale of the judgement that the accused had left their country because of the war and had come to Serbia in order to "rest in the refugee camp" and then to leave for Germany and seek asylum there.[51]

[48] Right to asylum (2013)

[49] All the proceedings were suspended in line with Article 216(2) of the Law on Misdemeanors becase there are legal reasons for which misdemeanor proceedings may not be instituted under Article 184(2)(6) of the Law on Misdemeanors envisaging that the motion for instituting a misdemeanor proceedins will be dismissed when t*here are other legal reasons due to which the proceedings may not be instituted.*

[50] Decision of Misdemeanor Court in Pirot 1 PR 192/14, of 22/1/2014, Decision of Misdemeanor Court in Pirot 193/14, of 22/1/2014, Decision of Misdemeanor Court in Pirot 194/14, of 22/1/2014,Decision of Misdemeanor Court in Pirot 195/14, of 22/1/2014, Decision of Misdemeanor Court in Pirot 196/14, of 22/1/2014

[51] Judgement of the Misdemeanor Court in Raska Pr. 388/14 of 3/4/2014

Under the Geneva Convention, the principle of non-punishment is conditioned by fulfilment of three cumulative conditions. According to some interpretations of this Article, a refugee, whose presence in the host state is discovered by the state's authorities only after the person is caught, or who, only after being caught, asks to acquire a refugee status or an asylum, will not enjoy the protection provided by Article 31 of the Convention. Despite this, the intention to seek asylum which is expressed in such circumstances would need to be registered without a delay by the host state's competent authority, which will not automatically relieve the person of the responsibility for illegal entry to the host state's territory, nor will this prevent this person from acquiring the asylum if the proceedings are ended in his favour. The exception will be made for the persons who really did not have time, or the possibility to register because they had been arrested before this, at the very border crossing. Furthermore, the Convention does not envisage the deadline for the registration, but requires it to be immediately, i.e. 'without delay'. However, when estimating whether this registration was on time or not, the host state should act reasonably and consider all the circumstances of the concrete case and person. Namely, it is necessary to take into consideration the mental state, particularly traumatisation, and physical abilities and health of the person. Other factors that should equally be taken into consideration are education, literacy, and also cultural differences and customs of the social environment the person comes from, language barriers, and other circumstances that will need to be considered so that the state's discretionary decision is made in good faith. Furthermore, any reference to Article 31 is conditioned under the Convention by a good cause for an illegal entry to the territory of the host state, which must be showed by the person to the host state's competent authority. In this regard, the good cause would be one of the causes included in the very definition of a refugee, but an illegal entry into the host state's territory must also be justified (e.g. urgency or objective impossibility to fulfil the formalities because of e.g. remoteness of the closest border crossing and even the lack of travel and other personal documents). For instance, the Swiss Federal Court, as a good cause for illegal entry of a refugee, accepted even the reasonable fear of being rejected at the border. [52]

Decisions on punishment (non-punishment) resulting from different interpretations of conditions, may not be considered the same as the decisions made within the proceedings in which some of the basic processing principles have not been complied with. What has most frequently been emphasised was the lack of court interpreters who can speak the native language or a language in which the accused can clearly follow the proceedings. Misdemeanor courts are obliged to consistently apply provisions regulating misdemeanour proceedings, above all the provisions related to the use of language, interpretation/ translation into the language the person understands, and the provisions stipulating the obligation to truthfully and completely establish the facts that are important for making decisions. Courts are also

[52] Protection of Refugees under International law (Međunarodnopravna zaštita izbjeglica), Davorin Lapasa, Croatian Legal Centre, Zagreb, 2008.11/12. See: The Rights of Refugees Under International Law, Hathaway, J. C., Cambridge, Cambridge University Press, 2005, str. 393-389.

obliged to ensure that ignorance or lack of education of a party is not a detriment to his rights. "Failure of the authority to provide the party with a possibility to use his/her own language, through an interpreter, is such an important violation of the rules of proceedings that could have influenced the final decision".[53] It is interesting that Article 94, regulating the use of language in misdemeanour proceedings, of the Law on Misdemeanor Offences, which entered into force in March this year, stipulates in item 6 that "interpreting is done by an interpreter designated by the court instituting the misdemeanour proceedings from the list of court interpreters, **and if this is not feasible, the interpretation shall be done by another person, with the consent of the party."**

## 5.2. Shelter for foreigners[54]

The competent authority will determine, by decree, a stay in the Shelter for Foreigners under enhanced police supervision[55], for a foreigner who cannot be immediately expelled forcibly[56] and for a foreigner without established identity or who does not have a travel document, as well as in other cases prescribed by the Law on Foreigners. The Shelter for Foreigners decides on whether the conditions for accommodation in the Shelter are fulfilled, and the condition that must be fulfilled is the establishment of the foreigner's identity. The attempts to establish the foreigner's identity are continued during his/her stay in the Shelter, and in case the foreigner agrees, it is tried to carry out his/her voluntary return to the country of origin, in cooperation with the embassy of this country. In rare cases, this cooperation is established with North African countries - Tunisia and Algeria, and the procedure of voluntary return is implemented. In such cases, the Shelter for Foreigners provides a laissez-passer, and travel expenses are sometimes covered by countries of origin, and sometimes the foreigners contact their families who pay for their plane tickets. The Shelter for foreigners establishes the identity of a foreigner by doing dactyloscopy and by taking a photo. It rarely happens that a foreigner who has already stayed in the Shelter to return here.

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[53] Supreme Court of Serbiae, У.645/67

[54] Visit to the Shelter for Foreigners in Padinska Skela, 26/4/2014; Information provided in this chapter were gathered during the monitoring visit to this institution and on the bases of data from a communication note received from the Ministry of Interior of the RS, the Minister's Office, 01 No.10287/13, 9 April 2014

[55] This is done by the Section for Foreigners, Supression of Illegal Migration, and Human Trafficking of a regional police directorate on whose territory the foreigner is present. There was only one case in which a complaint was filed against the decree on limiting the freedom of movement of and accommodating a foreigner in the Shelter for Foreigners, and this complaint was rejected. A complaint against the decree on implementing or prolonging the measure of stay in the Shelter is decided upon by a competent higher court. The complaint does not postpone the execution of the decision. It is particularly important that the legislator has envisaged a clear period of duration of the measure, and the possibility that a competent higher court decides upon the complaint against the competent authority's decision.

[56]The competent authority shall expel forcibly a foreigner unlawfully residing in the Republic of Serbia or who does not leave the Republic of Serbia within the set deadline. A foreigner who was pronounced a protective measure of expulsion or security measure of deportation and a foreigner who should be returned under an international treaty shall immediately be forcibly expelled. (Law on Foreigners, Article 46)

After a foreigner's identity is established, or after it is established that it cannot be done, the foreigner is released from the Shelter. A foreigner is also released if he/she cannot be voluntary returned or forcibly expelled. As it has already been mentioned above, the procedure of forcible expulsion procedure is not implemented for the countries from which the majority of migrants come from.

In 2013, four intentions to seek asylum were expressed in the Shelter for Foreigners, and persons were held for 16 days, in average. A foreigner who expresses an intention to seek asylum in the Shelter, remains in it until an identity card for an asylum seeker is issued to him/her, and there has not been a single case where a person stayed in the Shelter until the finalisation of the asylum procedure. There have also not been cases of foreigners staying in the Shelter to have their asylum application rejected or refused.

In 2013, the average duration of a foreigner's stay in the Shelter was for 6 days.[57] Although there are legal grounds for sending almost all the migrants included in the migration flow on the territory of the Republic of Serbia to the Shelter for Foreigners, owing to the fact that they have no personal documents based on which their identity could be established reliably and who were caught illegally staying in the country or who have not left the country in the envisaged time period, this practice has not been established yet.[58] Furthermore, this possibility also exists in cases when a return of a person should be ensured to the countries of transit under a readmission agreement, but since they are almost not implemented at all, at least when RS sends a request, the issue of purpose of sending a foreigner under the existing circumstances to the Shelter for foreigners is raised.

As it was the case in other segments, the practice of releasing the persons who have stayed in the Shelter for Foreigners for a certain period of time, may be interpreted in two ways. Although such an established practice reduces the risk of violating the non refoulement principle, on the other hand, the practise of releasing the foreigners contributes to an uncontrolled migration flow on the territory of the RS, which not only imposes the risk of abusing the asylum system, but also becomes a security issue for he RS. Moreover, what is rarely stated is the fact that migrants, who are not part of the system that is monitored by the competent state authorities, are exposed to possible violations of their fundamental human rights, the protection of which is Serbia's responsibility while they are under its jurisdiction.

[57] Stay in the Shelter lasts until the forced expulsion of a foreigner and may not be longer than 90 days, and it may be prolonged in the case when: his/her identity has not been established; he/she deliberately hinders forced expulsion; or when he/she, in the course of forced expulsion procedure, applies for asylum with an aim of avoiding forced expulsion. Total time of stay in the Shelter may not exceed 180 days

[58] This means that a stay in the Shelter for Foreigners may also be imposed on foreigners whose asylum application has been rejected or refused, or whose asylum procedure has been suspended, if there are no other legal grounds for their presence in the RS, provided that the foreigners do not leave the territory of the RS voluntarily within the prescribed deadline, until the necessary conditions for the implementation of forced expulsion are met.

### 5.3. Penitentiary - correctional institutions in which foreigners are held[59]

The majority of foreigners in the institutions for the enforcement of criminal sanctions in Serbia are migrants serving short prison sentences for a misdemeanour, illegal crossing of the state border or illegal presence in the Republic of Serbia. Among them, there are persons who have been returned to Serbia under readmission agreements. On other grounds, there are persons who are in custody because they are subject to criminal proceedings for the crime of illegal crossing of the state border and smuggling of people. (Article 350, the Criminal Code of the RS).[60]

> While visiting Sremska Mitrovica Prison, we interviewed two citizens of Pakistan. Both of them had spent some time in the Asylum Centre in Obrenovac where they applied for asylum and after this they had been caught illegally crossing the state border with the Republic of Croatia and returned to Serbia. The Misdemeanor Court department in Nis punished them by imprisonment lasting for five days.

Although institutions, in which these persons stay, differently treat the foreigners punished for offences, they all emphasise the issue of difficult communication between the staff and the foreigners, since these institutions do not hire interpreters for this purpose. The issue of quality of information that are available to them on exercising guaranteed rights and procedures for exercising them may be raised. The wardens claim that none of the foreigners punished for offences has applied for asylum during their stay in the penitentiary-correctional institutions, which could be a consequence of several factors: quality of available information on the asylum protection (way of acquiring it and grounds for acquiring it), qualification of the staff to recognise the persons' intention to seek asylum, but also the lack of intention of these persons to apply for asylum in Serbia. However, hindered communication caused by language barriers may have a negative impact on identifying particularly vulnerable categories of migrants, particularly minors. The foreigners are not adequately familiar with the Prison Rulebook and with their rights and obligations prescribed by the Law on Enforcement of Criminal Sanctions, since these provisions have not been translated into the languages of the countries from which the majority of migrants come. Furthermore, the lack of informational brochures in the language understood by migrants, on the possibilities of applying for asylum in Serbia, was noticed.

Average duration of the sentence these persons serve is 10 days, the minimum duration is 2 to 3 days, and the maximum one is up to 30 days. After serving the sentence, they are

[59] Within the project implementation we visited DP Subotica, DP Vranje and Sremska Mitrovica Prison. All the information provided in this section were gathered during the monitoring visits to these institutions

[60] In 2013, criminal charges were raised against 44 foreigners for illegal crossing of the state border and smuggling of people, under Article 350 of trhe Criminal Code of the RS.

somewhat differently treated in various places. So, in DP in Vranje and Sremska Mitrovica Prison, after the foreigners serve their sentence, they are taken over by police officers of regional police directorates, while in DP in Subotica, the foreigners are taken over only if there is a larger group of them, 20 migrants or more, **otherwise, the foreigners are here set free after serving the sentence.**

The current practice may be interpreted almost in the same manner as the practice of releasing the persons who have stayed in the Shelter for Foreigners.

### 5.4. Asylum Centres

The situation in asylum centres has thus far been mostly considered in relation to the lack of accommodation capacities, which is a challenge Serbia has been facing since 2011. Competent authorities have been managing to find some *ad hoc* solutions and solve the lack of accommodation capacity issue at least on short-term basis. In 2013, it was tackled by opening new temporary accommodation facilities at four locations - Vracevici, Obrenovac, Sjenica, and Tutin. Providing additional accommodation capacities, besides the fact it satisfies the basic needs of asylum seekers, is particularly important having in mind that the Asylum Office carries out the tasks from its scope of competence in the asylum procedure only for those persons who are accommodated in an asylum centre, or for those who have an approval for staying at a private address.[61]

On the other hand, it is concerning that in 2013 a lot of foreigners were staying in the open or in private accommodation nearby asylum centres, without being registered in the MoI RS, i.e. without any kind of system and institutional support. These were persons who had expressed an intention to seek asylum, but among them there were also persons without any legal grounds for staying in the RS.

In the case of *M.S.S. v. Greece and Belgium*, analysing life conditions in which the applicant was staying in Greece, in the context of violation of Article 3 of ECHR, the Court stated that: "Despite the obligations of Greek authorities stemming from their own legislation and the EU Directive on Asylum, the applicant spent months living in a state of the most extreme poverty, unable to cater for his most basic needs: food, hygiene and a place to live (...)The applicant's statement was also supported in the reports of various international bodies and organisations, above all, in the reports of the Commissioner for Human Rights of the Council of Europe and UNHCR...(..) Anyway, the Court does not understand how the authorities could not assume that the applicant was homeless. The Government itself admitted that in shelters there were less than 1000 beds

[61] More details at: Challenges of Forced Migration (2013); Right to asylum (2013)

for the accommodation of dozens of thousands of asylum seekers. (..) On the basis of the abovementioned, it could be concluded that this situation, which is not in line with Article 3, was caused by a mistake of the authorities, and consequently this provision was violated. The description of conditions by the ECHR related to Greece, are definitely comparable to the conditions in the RS. It remains to be seen whether the competent authorities will take the necessary measures to prevent the repetition of the same situation in which, in the light of the abovementioned judgement, there are elements that could lead to the conclusion that Article 3 of the ECHR has been violated.

When there are no more available beds, the Centre is not obliged to receive and accommodate a person who has been sent to them and who has expressed an intention to seek asylum, regardless of the fact that Article 39(1) of the Law on Asylum prescribes that the competent authorities are obliged to provide accommodation for every person who seeks asylum. In such cases, this person has no other option but to stay in the open or to stay "informally" in a private accommodation. According to the established procedure, the possibility to register residence outside an asylum centre is interpreted by the competent authorities as an exception (the author agrees), and the application for registration of residence outside the centre may be submitted only by a person who has filed an application for asylum, and not a person who has just expressed an intention to seek asylum (to file an asylum application it is necessary for the foreigner to be registered before that[62]).[63]With this interpretation, the competent authority *sticto iure* exposes even the persons who apply for asylum in good faith in the RS, to the risk of their 'transferring' to an irregular status and thus may influence exercising and protection of their rights while under its jurisdiction. In cases when a person has not been registered yet and has not filed an asylum application, he/she may prove to be staying legally in the RS only with a certificate of the intention to seek asylum. However, Article 23(3) of the LoA stipulates that the certificate is a proof that a foreigner has expressed an intention to seek asylum and to have the right to stay for 72 hours.

However, the attention was not sufficiently paid to the fact that a large number of migrants arrived to some of the centres (near centres) without having taken the certificates of the intention to seek asylum from the Ministry of Interior before this, which should be a prerequisite for them to be sent to and accommodated in the centres. The abovementioned could be an indicator of an informal system that plays a significant part related to the position of migrants in the Republic of Serbia.[64] Additionally, there is no prescribed procedure for

[62] In the Asylum Centre in Bogovadja, employees of the Asylum Office did not perform any official tasks envisaged by the asylum procedure from August till the end of 2013, so that asylum seekers in this Asylm Centres were not able to access the asylum procedure.Moreover, in newly-opened centres in Tutin and Sjenica, the Asylum Office did not carry out any official tasks within the asylum procedure, including the registration of asylum seekers, until June 2014. More details in: Right to Asylum (2013)

[63] The Ministry of Interior of the RS, the Minister's Office, 01 No.10287/13, 9 April 2014

[64] Recommendations of the Ombudsperson of the Republic of Serbia intended for the MoI RS, Police Directorate and Commissariat for Refugees and Migration, 2014.

leaving the centres after competent authorities issue a negative decision on the asylum application. The persons are only informed on the obligation to leave the centre and on the reasons for leaving.

In such cases, as in other cases when conditions prescribed by the Law on Foreigners are fulfilled,[65] the persons are considered to be illegally staying in the Republic of Serbia. The foreigner staying illegally in the Republic of Serbia needs to leave its territory immediately or within the envisaged time period. A total of 5,066 residences of foreigners were cancelled in 2013.[66] As the competent authorities have emphasised on several occasions: "there is problem related to monitoring the measure of cancelling residence of foreigners because of the possibility of abusing the time period envisaged for leaving the territory of the Republic of Serbia, and because there is no obligation to register and control the foreigner's leave, *and therefore, it is necessary to establish an efficient system of following the foreigner whose residence has been cancelled*."[67] This actually means that persons whose residence has been cancelled, including the persons who were staying in asylum centres, become a part of an uncontrolled migration flow until the moment they 'meet' again with one of the competent institutions.

## 6. READMISSION OF THIRD-COUNTRY NATIONALS AND STATELESS PERSONS[68]

Application of a readmission agreement in Serbia includes an obligation of Serbia to readmit Serbian nationals, and also the obligation of readmission of third-county nationals and stateless persons. In this context, under the *Law on ratification of the Agreement between the Republic of Serbia and the European Community on the Readmission of Persons Residing without Authorisation*[69] and concluded bilateral agreements, Serbia is obliged to readmit all third - country nationals or stateless persons who do not, or who no longer, fulfil the legal conditions in force for entry to, presence in, or residence on, the territory of the Requesting Member State provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that such persons: hold, or at the time of entry held, a valid visa or residence permit

[65] Illegal stay in the Republic of Serbia is a stay on its teritory without a visa, residence permit or other legal grounds.

[66] Table listing residence cancellation measures applied, ordered by nationality, are in Annex II of this paper.

[67] Strategy for Combating Illegal Migration 2009-2014, 23.

[68] All the statistical data listed in this chapter have been provided by the Ministry of Interior of the RS, the Minister's Office, 01 No.5685/14-4, 20 June 2014

[69] Besides the body text of the Agreement, there are seven Annexes that are its integral part and that regulate the following issues: Annex 1 - list of documents the presentation of which is considered as proof of nationality; Annex 2 - list of documents the presentation of which is considered as prima facie evidence of nationality; Annex 3 - common list of documents which are considered as proof of the conditions for the readmission of third country nationals and stateless persons; Annex 4 - common list of documents which are considered prima facie evidence of the conditions for the readmission of third country nationals and stateless persons; Annex 5 - list of documents which are considered as proof or as prima facie evidence of the conditions for the readmission of former nationals of the Socialist Federal Republic of Yugoslavia; Annex 6 - a form of the Readmission Application; and Annex 7 - a form of the Transit Application.

issued by Serbia; or illegally and directly entered the territory of the Member States after having stayed on the territory of the RS. All the abovementioned may be applied vice versa, in situations when Serbia is a requesting state.[70] These agreements regulate the issue of transit of third-country nationals or stateless persons through the territory of the requested state, in case when the other contracting party has ensured the readmission of the person in transit in a third country. It is important to emphasise that the transit state may refuse transit through its territory if, among other things, the third - country national or the stateless person runs the real risk of being subjected to torture or to inhuman or degrading treatment or punishment or the death penalty or of persecution because of his race, religion, nationality, membership of a particular social group or political conviction in the State of destination or another State of transit.

As regards the Agreement with the EU, it is important that its provisions take precedence over the provisions of any bilateral agreement or arrangement on the readmission of persons residing without authorisation which have been or may be concluded between individual Member States and Serbia, in so far as the provisions of the latter are incompatible with those of the Agreement with the EU. Apart from some differences in structure, bilateral agreements essentially contain similar provisions, both related to the conditions under which a regular procedure is implemented and to the conditions and modality of implementation of an accelerated procedure.

In the Strategy for Combating Illegal Migration 2009 - 2014, the impossibility of returning third-county nationals into the country of origin or the transit state (territory from which the person entered Serbia), because the readmission agreements have not been concluded with some transit states, is emphasised as a problem. According to the Strategy: "in this regard, it is necessary to open negotiations on the conclusion of readmission agreements and harmonisation of positions with other states bordering the Republic of Serbia, as well as with states with high migration risk."
The strategic orientation to conclude agreements with neighbouring countries has been achieved and the Republic of Serbia has concluded agreements with all the adjacent countries. Furthermore, since four of them are EU Member States, in respect of the readmission procedure, besides the application of bilateral agreements, the application of a Agreement with the EU is possible. The main challenge is currently its efficient implementation, particularly in cases when the RS submits a readmission application. Serbia has not signed readmission

[70] All these Agreements envisage exceptions from the obligation of readmitting third-country nationals and stateless persons, which are more or less the same (for instance, the readmission obligation does not apply for the third-county nationals who come from the countries adjacent to the contracting party submitting the readmission application or if the third country national or stateless person has only been in airside transit via an International Airport of Serbia). The Agreements also envisage protection of personal data used in the readmission procedure in compliance with the national legislation and relevant international treaties whose subject are the contrracting parties. Protocols that precisely define technical issues related to the Agreements are their integral parts.

agreements with the so-called high-risk countries, i.e. the countries from which the majority of migrants come, so the Strategy that will be adopted for the forthcoming period should set the conclusion and implementation of these agreements as one of its priority aims, and envisage precise guarantees in proceedings and material and legal guarantees for the protection of individuals to whom these agreements will apply.

The Readmission Agreements with Croatia and Macedonia, besides the obligation arising from them related to the readmission of third-country nationals and stateless persons who previously resided on their territory, also regulate the readmission of persons in transit ('transit' is the passage of a third country national or a stateless person through the territory of the Requested State while travelling to the country of destination). It is specific for these agreements that besides the standard exceptions from the application, they particularly emphasise the exception for the third-country nationals or stateless persons who have, under a final decision, acquired a refugee status or a stateless person status from a requesting state, or for whom this state has initiated the procedure for recognising the refugee status, until the final decision.

### 6.1. Serbia as a Requested State[71]

**In 2013**, under the readmission agreements, Serbia received **in total 2.894 readmission applications** for third-country nationals and stateless persons from foreign competent authorities and, after necessary screenings, **granted 2,786 applications** and **declined 108 of them.**

The highest number of applications was sent by Hungary – 2,837, out of which 2,746 applications were granted. To a lesser extent, applications were also submitted by the Republic of Croatia - 13 (7 granted), Bosnia and Herzegovina - 23 (14 granted) and Romania -21 (19 approved). **For comparison**, i**n 2012**, **in total 4,237 applications** were received from foreign competent authorities for readmission of third country nationals and stateless persons and, after the necessary screenings, **3,715 applications were granted**, while **522 applications were declined.** The same as in 2013, highest number of applications was sent by Hungary (3,767 applications- 3.453 granted, 314 declined). **In the period between 1 January 2014 and 1 June 2014**, **a total of 1,067 applications** were received, out of which **971 were granted** and **96 declined.** Almost all applications were filed by the Hungarian authorities - 1001, out of which 940 were granted.

[71] Annex to this document includes tabulation of readmission data on third country nationals and stateless persons. The data refer to 2012, 2013 and first six months of 2014, for regular and accelerated procedure, in cases when the Republic of Serbia is both a requesting and requested state. The data also contain information on the countries of origin for the persons included in readmission applications.

Administrative Affairs Directorate of the Ministry of Interior of the Republic of Serbia, responsible for implementation of the agreement, does not possess any records on the declined applications, according to the reasons for negative decisions on applications. „Taking into account that, pursuant to the readmission agreements, a condition for readmission of third country nationals and stateless persons to the territory of the Republic of Serbia is a proof, or that it can be credibly assumed based on prima facie evidence, that the respective person owns, or at the time of entry owned, a valid visa or a residence permit issued by the Republic of Serbia or that he/she illegally and directly entered the territory of another country, after residing in or transiting through the territory of Serbia, lack of this kind of evidence represents a major reason for deciding negatively about their readmission to Serbia."[72]

Competent authorities highlight exceptionally good cooperation with Hungarian authorities in terms of implementation of the Readmission Agreement, which is supported by the number of granted readmissions applications. Border crossings appointed for implementa-tion of the readmission procedure include Kelebija, which is under Subotica district PD and Horgos, police station Kanjiza, within the Kikinda PD. Due to high number of persons returned from Hungary within the readmission procedure, one special room in Kanjiza police station is specially equipped for temporary accommodation of these foreigners. In case it is determined that misdemeanour proceedings were instituted against a person, he/she is also released. In case a person is not registered, misdemeanour charges are raised against them for illegal border crossing and misdemeanour proceedings are instituted, resulting in imprisonments for 3 or 5 days, as they do not have any financial means.

AAD does not possess any records about the number of minor third country nationals and stateless persons, unaccompanied by parents or guardians, for whom readmission applications are submitted to this Ministry under readmission agreements. "Immediate reception of persons for whom readmission to the territory of the Republic of Serbia was granted in accordance with the stated agreements is the responsibility of the Border Police Directorate, while Administrative Affairs Directorate distributes all available information to competent authorities in order to carry out the readmission of minors with regard to the best interest of a child and full respect of their rights, in accordance with the applicable inter-national conventions referring to this category of persons."[73]

As regards the accelerated procedure, in the period from 2012 to June 2014, excluding 6 applications filed by the Macedonian competent authorities in 2014, all other applications for readmission within an accelerated procedure were submitted by competent authorities of the Republic of Croatia. In 2013, 885 applications for readmission to the territory of Serbia were receive and, after necessary screenings by the Regional Centre as a body responsible for

[72] The Ministry of Interior of the RS, the Minister's Office, 01 No.5685/14-4, 20 June 2014
[73] *Ibid*.

implementation of the accelerated procedure, all required readmissions were granted; in 2012, 1176 applications were received, out of which 1,165 were approved; in the period between 1 January 2014 and 1 June 2014, a total of 200 applications were received, out of which 197 were approved after the necessary screenings, while 3 applications were declined (Republic of Croatia submitted 194 applications and they were all granted, while Macedonian authorities submitted 6 applications, three of which were declined)**.**

### 7.2. Serbia as a Requesting State

As regards the applications that the Ministry of Interior of the Republic of Serbia filed to foreign authorities for readmission of third-country nationals and stateless persons within regular procedures, **in 2013** all the applications were submitted to Macedonian authorities, a **total of 19 applications**, out of which Macedonian authorities **approved 11 and declined 8**. **In 2012**, a total of **15 applications** were submitted to the Macedonian authorities, out of which **3 were approved** and **12 were declined.** In **2014**, **there were no readmission applications** by this Ministry for third-country nationals and stateless persons within a regular procedure. There were no applications addressed to foreign authorities for readmission in regular procedure by MoI of the Republic of Serbia, in accordance with readmission agreements, related to minors unaccompanied by parents or guardians. As explanations for a small number of granted readmissions by the Macedonian authorities, MoI states that the basic reason for not accepting some of the application for readmission to the territory of the Republic of Macedonia is that is it not proved whether a person has entered Serbia illegally and directly after residing in or transiting across the territory of Macedonia.[74]

**Within 2013**, Regional Centres and Border Police Directorates, as bodies responsible for accelerated procedure with foreign competent authorities, submitted **a total of 140 applications** for readmission of third-country nationals and stateless persons within an accelerated procedure, out of which **9 readmissions were granted** and **131 declined.** All the applications within this period were submitted to the competent Macedonian authorities. **In 2012**, RC PBD submitted **a total of 28 applications** for readmission of third-country nationals and stateless persons in accelerated procedure to competent foreign authorities, out of which **22 were accepted** and **6 declined**, while in the first six months of **2014,** a **total of 128 applications** were submitted by RC PBD for readmission of third-country nationals and stateless persons in accelerated procedure, which were **all declined.** The same as in 2013, in 2012 and 2014 all applications in accelerated procedure were directed to the competent Macedonian authorities.

[74] *Ibid*.

If we correlate this data to the fact that in 2013, 4,682 (attempts of) illegal state border crossings were recorded, the question of the extent to which the agreement with Macedonia is effectively implemented becomes unavoidable. Firstly, what proves questionable is a relatively small number of applications submitted by Serbia, followed by relatively small number of readmissions that the Macedonian competent authorities approved. A small number of submitted applications leave space for assumptions that there is an informal system of returning third-country nationals, which has been emphasised by providers of free assistance to asylum seekers and representatives of international organizations for a number of times.[75] On the other hand, this may also be interpreted in a way that responsible authorities, due to the lack of readiness of the Macedonian authorities to fulfil their obligations arising from the bilateral agreement, give up from submitting applications and instead, let these persons move freely on the territory of Serbia and across its borders.

On the other hand, a small number of granted readmissions are also disputable, if we consider as a starting point the provisions of Protocol on Application, which is a constituent part of this Agreement. Namely, according to the Protocol, proving residence in or transit across a territory is carried out on the basis of a whole range of evidence graded as those that may prove residence or transit, strictly formal (for example, entry and exit stamp and also other notes of the authorities of the requested state written in passports or other identification documents; valid residence permit; personal documents issued by authorities of the requested state) and other evidence evaluated as indirect, creating basic assumption of residence in or transit across a territory, which may be described as less formal, above all as they are not based on the act / activity of competent state authorities (cards ensuring access to public areas; tickets with traveller's name and/or list of travellers for air, rail, bus or water transport, which indicate the presence of and the itinerary of the respective person on the territory of the requested state; hotel bill including the name of the traveller; currency exchange receipts). Additionally, among other indirect evidence, there is also a provision leaving wide scope for interpretation an application regarding "other material evidence which corresponds in terms of time period with illegal crossing of state border and which is in concrete case recognized by the authority of the requested state." Taking into account the characteristics of the migration flows, investing additional efforts in providing indirect evidence is the only option available to the competent authorities of Serbia, but also having in mind that these agreements are concluded in the spirit of mutual trust, the Macedonian authorities need to show readiness and political will to apply the Agreement in practice, as well.

Unlike with other six neighbouring countries of the Republic of Serbia, in terms of return and readmission of third-country nationals, the practice implemented with the Republic of Bulgaria

[75] According to the UNHCR report, there are records about some cases where official border procedures were not obeyed during the removal process, but instead the police transported these persons to border crossings and asked them to return to Macedonia on their own. Serbia as a Country of Asylum - Observations on the situation of asylum-seekers and beneficiaries of international protection in Serbia, UNHCR, August 2012. Paragraph 13.

is an exception. Namely, apart from the concluded agreement on return and readmission of persons who illegally reside on the territory of the two countries and a Agreement with the EU which may also be applied, readmission is performed under the Agreement between the SFRY and Bulgaria on the manner of investigation and resolution of border violations on the Yugoslav-Bulgarian Border.[76] By this Agreement, contracting parties agreed to undertake all the necessary measures in order to prevent border violations and remove the possible causes which may lead to these situations, to timely solve the cases of border violations, to keep and maintain border signs and clean border lines. Central Joint Border Committee is established for the purpose of implementation of provisions of this Agreement, which consists of 6 members, while Sectorial Joint Border Committees are also formed for each border sector, which take due care, all the time, about the implementation of the Agreement (for example, the committees are responsible for handover of persons, undertaking measures against border violations, investigating and deciding on the cases of border violations, etc.) Border violations, under this Agreement, implies, among other things, "*border crossing by a person, cattle, land or air transport means outside the determined areas and not in accordance with border crossing procedure, disturbing officials in performing their duties at the border by the nationals of the other contracting party*". Persons who unintentionally cross the border are returned within the shortest time possible and in 8 hours from the moment they are found on the territory of the other contracting party, at the latest. Handovers of these persons are recorded in the form which is a constituent part of the Agreement. Although the Regulation deals with border violation and return of nationals of contracting parties, the third-country nationals and stateless persons captured in illegal crossing of state border are readmitted in accordance with the provisions of this Regulation. Present experience indicates that the Bulgarian authorities receive all foreigners who resided and transited through its territory provided this may be proved on prima facie grounds. In 2013, a total of 622 persons were returned, out of which even 90 % on "neighbourly" basis, while in 10 % of cases the persons were taken over after being penalized in the Republic of Serbia. On the other hand, the Bulgarian border police returned 9 persons. In the first three months of 2014, 86 foreigners were returned to Bulgaria. Not any of these persons were seeking asylum in Serbia.

In wider context and having in mind the complete system of 'managing' migration flows, the established readmission practice in the Republic of Serbia may be assessed as positive, taking into account that the described practice is the only functional mechanism of return. However, the position of UNHCR about the present practice on treating refugees and asylum seekers in Bulgaria calls for a special attention in acting with these cases. In the beginning of 2013, UNHCR announced its opinion that returns to Bulgaria should be temporarily suspended, based on Dublin Regulation, [77]but in April, it mitigated its position, stating that certain efforts had been made and that the system had been advanced, but that there were still certain

[76] The Regulation was adopted in 1966 and has been amended twice.

Dublin Regulation / procedure establishes rights about (taking over) responsibilities of Member States for examining asylum claims. More details at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/index_en.htm

shortcomings and that it was necessary for every single case of return that countries make individual estimations, especially for persons with special needs or other vulnerable categories.[78]

## 7. UNACCOMPANIED MINORS[79]

Undoubtedly, like any other children, unaccompanied minors irrespective of their immigration status should receive adequate protection, since the Republic of Serbia is obliged to act in accordance with the Convention on the Rights of the Child as the most important catalogue of children`s rights. However, having regard that, apart from the precise statistical data on unaccompanied minors who applied for asylum and resided in one of the two Units for accommodation of foreign unaccompanied minors responsible for primary reception in Belgrade and Nis, relevant authorities of the Republic of Serbia[80] do not possess any records about foreign unaccompanied minors,[81]and it is unclear what can be considered as reliable grounds for monitoring Serbia`s fulfilment of its obligations in terms of providing adequate protection.

Within the period between 1 January and 31 December 2013, 598 unaccompanied minors expressed their intention to seek asylum, out of which 564 were boys and 34 girls, but only 2 unaccompanied minors from Afghanistan submitted asylum applications. Institute for Education of Children and Youth in Belgrade provided shelter for 43 unaccompanied minors in 2013 (and 3 minors who resided in the Institute since December 2012), 42 boys and 4 girls. Out of this number, 20 minors were accomodated in Banja Koviljaca asylum centre, 8 in Bogovadja asylum centre, 4 were facilitated with parents, while 14 minors left the Institute upon their own will.[82] In the same period, Institute for Education of Children and Youth in Nis accommodated 23 persons.

Serbia has not yet established adequate mechanisms for identification of neither unaccompanied minors nor unaccompanied minors seeking international protection "It is mostly the

[78] UNHCR observations on the current asylum system in Bulgaria, UN High Commissioner for Refugees, 2014.; http://www.refworld.org/docid/534cd85b4.html

[79] For the needs of the document, the term `unaccompanied minors` shall include underage asylum seekers unaccompanied by parents or guardians and separated from parents or guardians and foreign underage persons unaccompanied by parents or guardians or separated from parents, but with`irregular status` in the RS. As regards the failure regarding the definition of the term in the presently effective Law on Asylum, see the Draft of the proposal for improvement of the Law on Asylum of Group 484 and Belgrade Center for Human Rights, comment to Article 2 (1) (13).

[80] We received no data about unaccompanied minors found on the territory of the Republic of Serbia, as MoI does not keep such records.

[81] The Ministry of Interior of the RS, the Minister's Office, 01 No.5685/14-4, 20 June 2014; The Ministry of Interior of the RS, the Minister's Office, 01 No. 10287/13, 9 April 2014

[82] Source: Employees of the Institute for Education of Children and Youth in Belgrade, interview of 27 June 2014.

case that the identification is established in the absence of qualified civil service officials, such as social workers or other child care services. Apart from this, in the first phase of contact, interpreters are rarely available."[83] Furthermore, there is no formally established procedure for the estimation of the person`s age. In case they do not possess any personal documents, their age is determined based on their statements. In practice, in majority of cases when there is some doubt about the accuracy of the statements of persons related to their age, competent authorities treat them as minors, and there are even some cases recorded with questionable assessment of their age made by the authorities.

Committee on the Rights of the Child in General Comment No. 6 states that: "identification of a child as separated or unaccompanied includes age assessment and should not only take into account the physical appearance of the individual, but also his or her psychological maturity. The assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect[84] to human dignity. In the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such."[85]

Members of the working group interviewed a foreigner serving a prison sentence in the District Prison Subotica, originally from Syria, who by his physical characteristics gave the impression of a minor. During the conversation, the person explicitly claimed to be a minor and stated that a wrong date of birth was assigned to him during his stay in Hungary, and that the competent authorities of the RS upon admission did not make any further checks, but rather took his wrongly estimated date of birth as granted (this person was staying in the District Prison after returning under the Readmission Agreement with Hungary). In addition, the assessed age was re-examined neither during the misdemeanor proceedings, nor in the process of admission to prison. Working group recorded a similar case during the visit to the District Prison Vranje, where a person claimed that the judge of the misdemeanor court misunderstood the date of his birth.

As regards the implementation of procedures contributing to a more efficient protection of unaccompanied minors, the situation in Belgrade Unit is better. Above all, in terms of interpreting services, availability of information, and the possibility of consulting representatives of non-governmental organization offering free legal assistance to unaccompanied minors (Asylum Protection Centre). In Nis, minors obtain information about their status, rights

[83] Serbia as a Country of Asylum - Observations on the situation of asylum-seekers and beneficiaries of international protection in Serbia, UNHCR, August 2012

[84] The Ministry of Interior of the RS, the Minister's Office, 01 No.5685/14-4, 20 June 2014; The Ministry of Interior of the RS, the Minister's Office, 01 No. 10287/13, 9 April 2014.

[85] General Comment No. 6, Tretament of Unaccompained and Separated Children outside of Country of Origin, CCRC/GC/2005/6, 1. Septembar 2005

and obligations from the officials of the legal department of the Institute. Major problem for the Institute is inability to provide interpreting services.

In May 2014, the Institute for Education of Children and Youth in Nis carried out the reception of minor I.M. originating from Syria, aged 14. The minor was escorted to the Institute by SWC Nis and police officer of Police District Nis, Department for Foreigners, Suppressing Illegal Migration and Human trafficking. On the same date, the minor was brought before the Misdemeanor Court in Nis, and he was reprimanded by the court's decision. At the same time, it was determined that the minor should spend 14 days in the Institute, while his brother would be serving a prison sentence in the same period in the Nis prison. On the same day, court interpreter informed the minor about the court decision and explained the conditions under which he would reside within the Institute. Taking into account that the minor could speak only his mother tongue, Institute employees were not in the possibility to communicate with the minor. Following the employees' initiative, a non-governmental organization provided an interpreter who assisted in conducting an interview two days after the initial interview with the court interpreter. Inability to communicate had almost made it impossible to notice important facts for the estimation of minor's needs and deciding upon the manner in which he should be treated, to his best interest.

While monitoring this case, the working group also found that after 14 days a police officer came for the minor and, as it was stated in the official note of the Institute: "He has been returned with his adult brother to the Regional Center for the border with Macedonia".[86] Further treatment of the stated individuals is not known, but under these circumstances, it may be assumed that the RC grounded its competence for taking over the individuals on the basis of the authority to conduct accelerated readmission procedure. On the other hand, we herewith remind that during the first six months of this year, Macedonian authorities did not grant any readmission requests of RC for taking over individuals under the accelerated procedure.

From normative aspect, apart from the existing legislative framework which in a very general manner defines the position of unaccompanied minors, employees of Institutes for Education of Children and Youth, which include in their organization Units for primary reception of unaccompanied minors, apply in their work the existing guidelines for social protection, which anyway are not completely adapted to special needs of this vulnerable category of minors. To certain extent, this situation affects the lack of developed and synchronized practice in this area. Due to this, some countries (among the countries in the region, it is the Republic of Croatia) decide to adopt special protocols which precisely prescribe the manner of treatment of foreign unaccompanied minors, regardless of their immigration status.

There is still no systematic monitoring of minor asylum seekers during the asylum process with regard to coordination of temporary guardians about the condition of minors, exchange of

[86] Institute for Education of Children and Youth Nis, note no. 01-559, of 23 June 2014

information and mutual reporting, all in order to achieve the best interests of a child. An unaccompanied minor expressing intention to seek asylum is assigned different temporary guardians three times from the beginning of the procedure.

General rules of the procedure are effective in examining the eligibility of asylum request for an unaccompanied minor. In CEAS directives, starting with preambles, the obligation of respecting the principle of the best interest of a child is highlighted, and it is further developed by a number of guarantees for minors seeking asylum or enjoying some form of international protection.

Minors seeking asylum, regardless of all the shortcomings of the asylum system, are still taken care of with an increased attention, while on the other hand, there is no adequate system of support and assistance for minors not seeking asylum.[87] Taking into account that no mechanism for collection of data has been established, we may reasonably expect that this is most probably the reason why competent authorities which make decisions and implement national regulations are not completely aware of the size and complexity of this phenomenon, which makes these children invisible, who therefore receive no adequate assistance and protection. Absence of a regulated system for officering adequate care exposes minors to further risks, including human trafficking, forced labor and other forms of human rights abuses.

There is an impression that the complex phenomenon of unaccompanied minors has not yet been sufficiently recognized and that, although certain stakeholders who participate in their facilitation tend to provide assistance in accordance with their needs and rights, protection standards and synchronization with the principles of the best interest of a child are often not fulfilled as, apart from other present (system) shortcomings, there is a lack of financial resources which would enable implementation of these standards.[88]

## 8. VICTIMS OF HUMAN TRAFFICKING

In 2013, 92 victims of human trafficking were identified in the Republic of Serbia, i.e. 76 exploited victims of human trafficking and 16 potential victims of human trafficking. While preliminary identification of victims may be carried out by a wide range of stakeholders, final identification and assigning the status of victim is the responsibility of the Center for Human Trafficking Victims Protection. The Centre received 176 applications in 2013, and identification process was initiated for 154 applications. Four applications referred to asylum seekers accommodated in Bogovadja Asylum Centre. In two cases, identification process was not

[87] More details in: Children before the law: in internatioanl transit and as asylum seekers, Group 484, Belgrade,2013

[88] Unaccompanied foreign minors in the Republic of Croatia, Radojka Kraljević, Lovorka Marinović,Branka Živković Žigante, UNHCR, Zagreb, 2011

initiated as the young men who were potentially human trafficking victims left the asylum center before the officials of the Center for Human Trafficking Victims Protection managed to start communication with them. There was also a case of a three-year old girl who was separated from her mother during the transit and who arrived to the Asylum Centre accompanied by a person who claimed to be her relative, and who left the girl with the Centre. When her mother appeared, the employees of the Centre did not allow her to approach the child until their family relations were established, which was done by monitoring the girl's behavior, but no DNK analysis was carried out. Another case was of a young woman doubted to be underage, travelling with her unmarried husband. She was identified as potential victim[89] and was assigned a temporary custody, but she had left the asylum center before concrete measures were taken. All persons for whom the screening was required or performed were underage or assumed to be underage; three from Afghanistan and one from Syria.

The problem of identification of potential human trafficking victims among asylum seekers, along with the fact that majority of them stays in asylum centers for a short period of time, is that there are no visible indicators which would point to human trafficking, there is no previous information about suspicious persons, and there is no possibility to check their future movements. According to the Head of the Office for Coordination of Human Trafficking Victims Protection, officials of this institution therefore have to ground their assessments upon observational data and upon direct checking of certain assumptions through observation and through practical constructing of the situation on the spot, which may indirectly assist them in bringing conclusion about the risk of human trafficking at particular situations.

Despite the educational trainings organized by non-governmental organizations in previous years, asylum centers' officials and the others who are in direct contact with asylum seekers and irregular migrants are still not sufficiently informed about the risks of human trafficking. In all cases for which the Center for Human Trafficking Victims Protection was contacted, there was no specific indicator to human trafficking, but all were rather general doubts that something was wrong and that certain activities should be undertaken.

In the last few years, non-governmental organisations have been organising group informative workshops for asylum seekers about the risks of human trafficking, with possibility of organising individual interviews. The goal of this workshops is to inform asylum seekers about the signals for attracting persons for human trafficking, to recognize exploitation, but also to learn to protect themselves and whom to address to in case they find themselves in risky situations. Special emphasis is placed on women and children. Although generally they have understanding of exploitations, so far there have not been any 'drastic' cases of exploitation

[89] Center for Human Trafficking Victims Protection in its Report defines potential victims of human trafficking as "victims whose living conditions are such that there is a huge possibility that they will become exploited victims of human trafficking unless they are provided with necessary assistance and support, i.e. when there is a goal of exploitation, but exploitation has not yet been realized", Center for Human Trafficking Victims Protection, *Annual Report for 2013*, Belgrade, February 2013

reported by workshop participants, which is not unusual taking into account that all irregular migrants and asylum seekers, from the moment they left their country till the arrival to Serbia, were referred to using the services of smugglers, being aware that this was the case of illegal, i.e. irregular movement and that there was no institution which can protect them from this. Furthermore, taking into account that Serbia is just a transit country for certain number of asylum seekers and irregular migrants, any case of reporting violence or exploitation may appear only as an obstacle leading them away from their goals. However, this must not serve as an excuse for not offering assistance and protection to persons at risk. Taking into account the context in which these persons found themselves in the territory of Serbia and vulnerability which stems from their position, assistance and protection must be offered to all, and system and all components of the system must be sufficiently trained for adequate reactions. On the other hand, trainings for employees or amending regulations are not enough if there is no possibility to apply the acquired knowledge, i.e. if they are not accompanied by the development of corresponding services to which asylum seekers under risk may be referred.

## 9. RIGHT TO FREEDOM AND PROTECTION FROM TORTURE

Right to freedom from torture is included in many international regulations, the most important of which is United Nations Convention against Torture (UNCAT). According to UNCAT definition: "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions''.

Experience of torture is one of the most traumatic experiences, even if we take into account all other traumatic events caused by war.[90] Torture is an extreme, interpersonal trauma, which as such threatens, more than any other trauma caused by natural disasters and catastrophes, to endanger physical health of an individual. Consequences of the experienced torture are manifold and may be long-lasting, especially if not treated timely. Asylum seekers frequently carry experiences of difficult trauma and even torture (according to a research, it is generally estimated that between 5% and 35% of refugees has experienced torture[91]) experienced in the

[90] Silove, D., Steel, Z., McGorry, P., Miles, V. and Drobny, J., The impact of torture on post -traumatic stress symptoms in war-affected Tamil refugees and immigrants. Comprehensive Psychiatry 43, (2002), 49-55.

[91] Recognising victims of torture in national asylum procedures – A comparative overview od early identification of victims and their access to medico-legal reports on asylum – receiving counties, International Rehabilitation Council for Torture Victims

country of origin, but also during their travel to planned destination. Very often, long periods of time pass before the moment they are given the possibility to deal with their trauma, or to treat the consequences. The consequences are both physical and psychological, and can be visible many years after the torture takes place. Physical consequences may be seen on the body of an individual, resulting from severe physical abuse, or may be reflected in chronic somatic diseases (diabetes, hormonal problems, heart problems, etc.). The most common psychological effects include post-traumatic stress disorder,[92] depression, anxiety disorders, and substance abuse. Consequences of torture are often reinforced by untimely treatment and also new traumatic experiences that asylum seekers experience while traveling to their destination countries, such as staying in a cramped, crowded spaces, new apprehensions, and new abuses also, exploitation, and so on. Early identification of torture victims among asylum seekers is implemented in the practice of many countries.

The fact that Reception Conditions Directive 2013/33 / EC (Articles 22-25) obliges Member States to introduce mechanisms of screening for the sake of identifying highly vulnerable categories of asylum seekers which include victims of torture also emphasizes the need for an early identification of particularly vulnerable categories of asylum seekers.[93] Early identification is beneficial for the state from which a victim seeks protection, since providing medical and psychological support can prevent further deterioration of mental and physical health of the victim.

In other words, health problems of a victim may become even a heavier "burden" for the state in long-term future period if they are left unrecognised and untreated. On the other hand, early identification of torture victims among asylum seekers enables a victim to have asylum application within shortest possible terms and as complete as possible, based on medical proofs of torture. Medical proofs of torture of medical legal report (MLR) is a report which includes physical and/or psychological assessment of a victim of torture, as well as the finding and the opinion about the correlation between physical and / or psychological consequences and experiences of torture and abuse that the victims claim. Office of the UN High Commissioner for Human Rights recommends that the process of documenting torture should be guided by the Istanbul Protocol.[94] The same guideline is also included in the Asylum

[92] Post-traumatic stress disorder is a mental disorder that occurs as a delayed / and or extended response to a traumatic event. Three groups of symptoms within the PTSD are symptoms of intrusion (disturbing recollections of the traumatic event, disturbing dreams of the event, flash-back episodes, etc..), avoidance (efforts to avoid thoughts, feelings and conversations about the trauma, avoidance of activities, places people who resemble the trauma, feeling of alienation, etc.), increased vegetative irritability (problems with sleeping and falling asleep, outbursts of anger and irritability, difficulty in concentrating, etc.).

[93] Recognising victims of torture in national asylum procedures – A comparative overview od early identification of victims and their access to medico-legal reports in asylum – receiving counties, International Rehabilitation Council for Torture Victims, 55 – 57., 2013.

[94] Istanbul Protocol, Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment , Office of the UN High Commissioner for Human Rights, New York and Geneva, 2004, available at: http://www.ian.org.rs/publikacije/istambulskiprotokol/Istambulski%20protokol%20-%20CEO.pdf

Procedures Directive 2013/32/EU, which in its preamble (Para 31) indicates that national measures dealing with identification and documentation of symptoms and signs of torture or other serious acts of physical or psychological violence, including acts of sexual violence, in procedures covered by this Directive may, inter alia, be based on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

As regards Serbia, exact number of victims of torture among asylum seekers is unknown, as there are no official records. When an asylum seeker arrives at Asylum Center, first interview with him/her is conducted by somebody from the Center, and sometimes may be a legal advisor and/or psychologist from some of non-governmental organizations that provide support.

Due to all of the above stated, is it a positive fact that Law on Asylum prescribes among its principles that attention will be paid during asylum procedure to specific situation of especially vulnerable categories, which among others, also include persons exposed to torture or other serious forms of psychological, physical or sexual violence.

Asylum seekers in Serbia, including also asylum seeker who are victims of torture, are entitled to health care, implying also psychological and psychiatric assistance which, if necessary, they may receive in health centers and hospitals. But mostly, psychological assistance is provided by non-governmental organisations and, according to their opinion, there are a significant number of victims of torture and generally highly traumatised among asylum seekers.[95] Psychological assistance they receive, individually and at the level of group work, is the same as for other asylum seekers. The assistance they receive is in the form of psychological support, counselling and psychological workshops. Psychotherapy is usually not performed, as asylum seekers usually briefly remain in the centres and, on the other hand, language is certainly an aggravating factor that influences the effects of psychological work. Communication during the process is mainly assisted by an interpreter, unless asylum seekers speak English.
Not any of the interviews or even the hearing executed by the Asylum Office[96] includes a screening focused on identification of victims of torture and highly traumatised persons. Upon reception to the centre, all persons undergo a mandatory medical check-up.

[95] Source: Interview with representatives of DRC, who offer psychological assistance and support to asylum seekers, 3 July, 2014

[96] In the process of conducting interview, and even submitting asylum applications, the focus is on the path by which asylum seeker came, i.e. through how many countries he/she passed, and how he/she entered Serbia. There is a standard set of questions for border police experienced in implementing the law and whose representatives are not trained to a satisfactory level in the area of asylum procedure. Apart from this, too wide interpretation of Article 26 about of the Law on Asylum in part in which the ''safe third country'' concept is defined, prevents a full assessment of substance of asylum application. Actually, due to the fact that not enough attention is drawn to the claims of the asylum seekers which are necessary to determine whether a request is valid (or no), an interview mostly does not present an adequate base for considering the substance of the case. Interview is more focused to the assessment of the possibility to apply the "safe third country''

If on the basis of this check-up, there appear some indications that torture or any physical abuse occurred, there is no clear procedure that would include a more detailed assessment and verification by professionals (trained psychologists or forensics) and documentation through a report, and on the other hand, rapid access to services providing professional and comprehensive assistance to victims of torture (professionals trained to work with victims of trauma / torture - psychological, medical, legal and social assistance). The possibility of obtaining MLR could be of great benefit to the victims of torture in the process of obtaining asylum or subsidiary protection, as it confirms and lays the victim's story on observable evidence, both physical and / or psychological.

Although victims of torture have the same rights and access to health care as all other asylum seekers in Serbia, and despite the fact that the non-governmental sector provides psychological / psychiatric help, it would be important that the need for special treatment of these individuals is also formalised, through the adoption of some kind of protocol or instructions for dealing with highly traumatised and vulnerable asylum seekers, as are undoubtedly victims of torture.

## CONCLUSIONS

> *"Although different in scope and nature, efforts to develop better systems for migration and for asylum go hand in hand. Asylum systems cannot function effectively without well-managed migration; and migration management will not work without coherent systems and procedures for the international protection of refugees".*[97] *Based on the abovementioned UNHCR conclusion, the question which imposes itself is whether the Republic of Serbia fully understands the intercorrelation between the asylum system and other systems within migration. Additionally, having in mind that Serbia is an EU candidate member state and the complexity of requirements of the accession process related to asylum and migration, it is pivotal to show, as soon as possible, a full commitment to initiating and responsible management of reform processes.*

The guiding idea that should be the foundation is an achievement of balance between the national interest of a state to have control over its borders while applying international standards for the protection of human rights and protection of refugees in general, respecting the right to seek asylum, and respecting the non refoulement principle, in particular. In this regard, it is encouraging that the UNHCR and IOM have initiated a process under the UNHCR 10-Point Plan of Action on Refugee Protection and Mixed Migration that should result in asylum system and migration management reforms in Western Balkan countries. Its goal is to "assist States in developing and implementing protection-sensitive migration strategies, that

concept at certain phase of the interview than to determining potential grounds for international protection. Source: Serbia as Asylum Country, UNHCR

[97] UN General Assembly of October 2003, UNHCR 'Asylum and Migration Nexus',

is, strategies that take into account the needs of refugees and other specific groups of persons travelling within mixed flows." This initiative, above all, covers a significant regional aspect of the problem - solution and gives recommendations at general level on reforms of individual systems, but the key challenge remains the adjustment of the proposed reforms to particularities of each system arising from legal framework, political will, social and economic circumstances in the country, and other similar factors.

For Serbia, *condition since qua non* is the establishment of a mechanism for gathering and statistical analysis of the data related to migration. Accurate and reliable data will contribute to a more realistic insight into the volume of migration flow on the territory of the RS and to defining polices and measures that need to be implemented.

## RECOMMENDATION

**In regard to normative and strategic framework:**

- The Republic of Serbia needs to take necessary legislative and other measures in order to ensure full compliance with the ratified Council of Europe Convention on preventing and combating violence against women and domestic violence, and particularly its Chapter VII dedicated to migration and asylum issues prescribing several obligations aimed at introducing gender-sensitive understanding of violence against women migrants and women asylum seekers.
- It is necessary to adopt as soon as possible the revised National Programme for the adoption of the EU acquis communautaire formulating a realistic and detail plan of harmonisation of the legislation and defining human and financial resources necessary for implementation of reforms related to migration issues. In the National Programme development process, it is desirable to consult non-institutional players as well, who are directly involved in the asylum procedure and protection of other category migrants' rights.
- In the reform of legislation regulating migration issues within the EU accession process, it is primarily important to objectively assess and take into account the particularities of the RS, its constitutional and legal order, institutional and administrative capacities, as well as its economic and social factors, and thus ensure an effective implementation of the adopted standards. It is pivotal that the newly adopted documents are completely in compliance with each other in order to avoid legal gaps or opposite solutions.
- According to the recommendations of the Committee on the Rights of the Child given in General Comments No. 6, it is necessary to envisage by the legislation the existence of adequate protective mechanisms that will be applied to unaccompanied minors, and particularly in regard to the manner of establishing identity/procedure for assessing a person's age.

- Further efforts should be invested in strengthening cooperation and practical implementation of the readmission agreements concluded by the countries in the region. It is particularly necessary to intensify a dialogue on the implementation of the Readmission Agreement with Macedonia. In this regard, a support should be provided both by relevant EU institutions and representatives of international organisations in order to harmonise the number of persons to be returned with the actual situation.
- It is necessary to initiate negotiation process on the conclusion of readmission agreements with the countries of origin of the majority of migrants, which could be considered safe countries of origin, according to generally accepted standards.
- Provision of a special status for the migrants who cannot be returned to their countries of origin, or countries of transit, and who do not fulfil the conditions for any form of an international protection, should be introduced by legal provisions in order to stop the practice of releasing the migrants who have been staying in the Shelter for Foreigners, asylum centres and some of the penitentiary-correctional institutions. This would contribute to the reduction of uncontrolled migration flow on the territory of the RS and exposure of migrants who are outside the systems to violations of their fundamental human rights
- It is necessary to adopt a protocol or an instruction on the treatment of victims of torture, where particular attention should be paid to discovering and documenting symptoms and signs of torture or other forms of serious physical and psychological violence, which could be, among other things, based on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

**Serbia as a transit country and de facto destination of migrants and asylum seekers - statistical indicators:**

- Conditions for establishing migrants' identity which would enable reliability of the gathered data, should be created in the shortest time possible. In this regard, the possibility of taking fingerprints in the earliest phase of establishing contacts with migrants and regardless of the status arising from the legislation on foreigners and asylum, should be taken into consideration. If such a procedure is envisaged, all the necessary infrastructural, material and technical, and human resources should be provided. A bylaw regulating the establishment of a Single system of gathering, organising, and exchanging the data necessary for migration management should be adopted in the shortest time possible.
- To avoid ambiguities, statistical data on denial of entry should be kept more precisely, in regard to the countries of origin of foreigners who have been denied entry. Furthermore, parameters for statistical analysis of unlawful crossing of the state border and illegal entry of foreigners, and the statistical data on unaccompanied minors should be defined more adequately.

**Treatment of irregular migrants/asylum seekers:**

- First-contact officials' competences for the recognition of various migrant categories should be improved in order to ensure that asylum seekers, persons with special needs and vulnerable groups of migrants are provided with appropriate procedures. Moreover, trainings on treatment and protection, and on the obligation to respect fundamental human rights of migrants who have the status of irregular migrants, and particularly the non refoulement principle, should be provided.
- Protection of smuggled migrants' rights should be provided in compliance with the Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime.
- The persons staying in the transit zone, besides the guarantees of fundamental human rights (right to life, prevention of torture, inhuman and degrading treatment, etc.), which are envisaged not only by international contract law, but also by customary law, and even by compelling international law, should with no exception also be enabled to enjoy fundamental protection envisaged by the Convention relating to the Status of Refugees.
- It is necessary to ensure that migrants staying in penitentiary-correctional institutions are informed on their rights in the language they understand, and above all on the possibility to apply for asylum. Furthermore, minors staying in the working unit in Nis should acquire information on their status, rights and obligations from the persons who have specialised in working with migrant children and who are familiar with the asylum system in the RS.
- It is necessary to harmonise, at the level of the Republic of Serbia, the manners of treatment of foreign unaccompanied minors by defining clear procedures, competences and duties of some institutions - and also enable a multi-disciplinary approach to this issue.

**Education and strengthening institutional capacities:**

- Capacities for the accommodation of all asylum seekers in the Republic of Serbia should be increased as a matter of priority in the shortest time possible, by opening another, permanent asylum centre. Meanwhile, the mechanism for accommodating all asylum seekers should be established in order to avoid that a certain number of asylum seekers search for an accommodation by themselves, or stay in the open or in inadequate conditions due to the lack of personal financial resources. Moreover, it is necessary that the procedures/documents by which asylum seekers may prove their status are available to all of them, which will enable them to lawfully register their residence outside an asylum centre and legally reside on the territory of the RS.
- A better coordination between representatives of the MoI RS, who usually have the first contact with migrants, primary healthcare centres and social work centres should be established, particularly in regard to unaccompanied minors. Furthermore, it is necessary to provide trainings to, above all, primary healthcare centres' employees so

that they could be familiar with the rules and instructions for the treatment of irregular migrants.

- Additional education of misdemeanour judges should be provided in order to improve their qualifications for recognising the need for an asylum protection, and so that they could get acquainted with the standards for the application of the principle of non-punishment.
- It is necessary to allocate the funds from the budget of the Republic of Serbia for ensuring that all the basic needs of unaccompanied minors are met within the relevant institutions of the system. The prerequisite for this would be the allocation of funds for engaging competent interpreters/translators to ensure better understanding of the foreign minors' situation and needs and to improve the quality of information available to minors, and consequently, the quality of protection provided to them.
- The knowledge of civil servants working with irregular migrants/asylum seekers related to the issues of human trafficking, and particularly to identification of victims, should be advanced. Additionally, the coordination among state systems in charge of asylum and migration management and combat against human trafficking should be enhanced.
- Prevention activities need to be continuously carried out among irregular migrants and asylum seekers. These activities will not only increase possibilities of identifying victims among irregular migrants and asylum seekers, but also reduce the risks of human trafficking in these migrants' communities.
- It is necessary to introduce a mechanism for identification of victims of torture and other highly traumatised persons, though psychological screenings and medical examinations that would be done by competent persons in asylum centres.

**It is particularly important to organise trainings on:**

1. Recognising signs and symptoms of torture/trauma, for everyone involved in the procedure or included in taking care of asylum seekers (psychologists, lawyers, asylum centres' employees, employees of SWCs, Asylum Section employees, medical staff providing medical assistance to them, etc.).
2. Techniques of interviewing highly traumatised persons, for asylum centres' employees, psychologists/lawyers providing assistance to asylum seekers.
3. on the importance and application of the Istanbul Protocol in documenting torture, for associations providing assistance to asylum seekers, police officers, particularly those working for the Asylum Section, judges of the Administrative Court of the RS, Asylum Commission, medical staff and asylum centres' employees.

# ANNEX 1

## 1. List of applications, by requesting state and nationality of persons or by the last country of residence for stateless persons

Applications submitted by competent authorities of the Republic of Hungary
2013

| NATIONALITY (last country of residence) | TOTAL | ACCEPTED | REJECTED |
|---|---|---|---|
| Afghanistan | 386 | 385 | 1 |
| Pakistan | 778 | 771 | 7 |
| Iran | 16 | 15 | 1 |
| Libya | 12 | 12 | 0 |
| Turkey | 66 | 66 | 0 |
| Tunisia | 81 | 80 | 1 |
| Somalia | 49 | 32 | 17 |
| Algeria | 290 | 284 | 6 |
| Palestine | 26 | 25 | 1 |
| Morocco | 112 | 112 | 0 |
| Syria | 242 | 234 | 8 |
| Macedonia | 13 | 13 | 0 |
| Eritrea | 97 | 66 | 31 |
| Egypt | 17 | 16 | 1 |
| India | 40 | 40 | 0 |
| Iraq | 12 | 12 | 0 |
| Sudan | 33 | 25 | 8 |
| Mauritania | 10 | 5 | 5 |
| Montenegro | 4 | 4 | 0 |
| Bangladesh | 161 | 160 | 1 |
| Western Sahara | 4 | 4 | 0 |
| Jordan | 1 | 1 | 0 |
| Sierra Leone | 8 | 8 | 0 |
| Bosnia and Herzegovina | 2 | 2 | 0 |
| Cameroon | 5 | 5 | 0 |
| Albania | 33 | 33 | 0 |
| Senegal | 57 | 57 | 0 |
| Liberia | 2 | 2 | 0 |
| Nigeria | 76 | 76 | 0 |
| Sri Lanka | 1 | 1 | 0 |
| Gambia | 15 | 15 | 0 |
| Stateless persons | 1 | 1 | 0 |
| Guinea | 9 | 7 | 2 |
| Burkina Faso | 7 | 7 | 0 |
| Ivory Coast | 17 | 17 | 0 |
| Mali | 54 | 54 | 0 |

| | | | |
|---|---|---|---|
| Togo | 2 | 2 | 0 |
| Russian Federation | 4 | 4 | 0 |
| Cuba | 13 | 13 | 0 |
| Croatia | 2 | 2 | 0 |
| Ghana | 44 | 43 | 1 |
| Yemen | 2 | 2 | 0 |
| Nepal | 1 | 1 | 0 |
| Myanmar | 13 | 13 | 0 |
| Congo | 1 | 1 | 0 |
| Georgia | 7 | 7 | 0 |
| Comoro islands | 10 | 10 | 0 |
| Central African Republic | 1 | 1 | 0 |
| **TOTAL:** | 2837 | 2746 | 91 |

**Applications submitted within a regular procedure by competent authorities of the Republic of Croatia**
**2013**

| NATIONALITY (last country of residence) | TOTAL | ACCEPTED | REJECTED |
|---|---|---|---|
| Afghanistan | 3 | 0 | 3 |
| Pakistan | 4 | 4 | 0 |
| Syria | 1 | 1 | 0 |
| Somalia | 1 | 0 | 1 |
| Bangladesh | 2 | 0 | 2 |
| Iraq | 1 | 1 | 0 |
| Albania | 1 | 1 | 0 |
| **TOTAL:** | 13 | 7 | 6 |

**Applications submitted by competent authorities of Bosnia and Herzegovina**
**2013**

| NATIONALITY (last country of residence) | TOTAL | ACCEPTED | REJECTED |
|---|---|---|---|
| Afghanistan | 16 | 9 | 7 |
| Algeria | 2 | 0 | 2 |
| Pakistan | 1 | 1 | 0 |
| Syria | 4 | 4 | 0 |
| **TOTAL:** | 23 | 14 | 9 |

Applications submitted by competent authorities of the Republic of Romania
2013

| NATIONALITY (last country of residence) | TOTAL | ACCEPTED | REJECTED |
|---|---|---|---|
| Algeria | 2 | 2 | 0 |
| Pakistan | 4 | 4 | 0 |
| Bangladesh | 9 | 9 | 0 |
| Nigeria | 1 | 1 | 0 |
| Tunisia | 2 | 2 | 0 |
| Afghanistan | 1 | 0 | 1 |
| Turkey | 1 | 1 | 0 |
| Albania | 1 | 0 | 1 |
| TOTAL: | 21 | 19 | 2 |

## 2. List of applications, by requested state and nationality of persons, or the last country of residence for stateless persons

Applications submitted to competent authorities of the R. of Macedonia in regular procedure
2013

| NATIONALITY | TOTAL | ACCEPTED | REJECTED |
|---|---|---|---|
| Afghanistan | 8 | 6 | 2 |
| Syria | 4 | 4 | 0 |
| Pakistan | 6 | 0 | 6 |
| Iraq | 1 | 1 | 0 |
| TOTAL: | 19 | 11 | 8 |

## 3. List of applications, by the requested state and nationality of persons, or the last country of residence for stateless persons:

Applications submitted to competent authorities of the R. of Macedonia within an accelerated procedure
2012

| NATIONALITY | TOTAL | ACCEPTED | REJECTED |
|---|---|---|---|
| Afghanistan | 18 | 2 | 16 |
| Pakistan | 7 | 4 | 3 |
| Syria | 3 | 0 | 3 |
| TOTAL: | 28 | 6 | 22 |

## 4. List of applications, by the requested state and nationality of persons, or the last country of residence for stateless persons

Applications submitted to competent authorities of the R. of Macedonia within an accelerated procedure
2013

| NATIONALITY | TOTAL | ACCEPTED | REJECTED |
|---|---|---|---|
| Afghanistan | 55 | 4 | 51 |
| Syria | 11 | 4 | 7 |
| Pakistan | 35 | 0 | 35 |
| Iraq | 1 | 1 | 0 |
| Somalia | 1 | 0 | 1 |
| Algeria | 8 | 0 | 8 |
| Palestine | 1 | 0 | 1 |
| Morocco | 1 | 0 | 1 |
| Mauritania | 4 | 0 | 4 |
| Bangladesh | 3 | 0 | 3 |
| Gabon | 1 | 0 | 1 |
| Senegal | 2 | 0 | 2 |
| Nigeria | 2 | 0 | 2 |
| Guinea | 2 | 0 | 2 |
| Rwanda | 2 | 0 | 2 |
| Burkina Faso | 1 | 0 | 1 |
| Mali | 5 | 0 | 5 |
| Ghana | 5 | 0 | 5 |
| TOTAL: | 140 | 9 | 131 |

## 5. List of applications, by the requested state and nationality of persons, or the last country of residence for stateless persons

Applications submitted to competent authorities of the R. of Macedonia within an accelerated procedure
2014

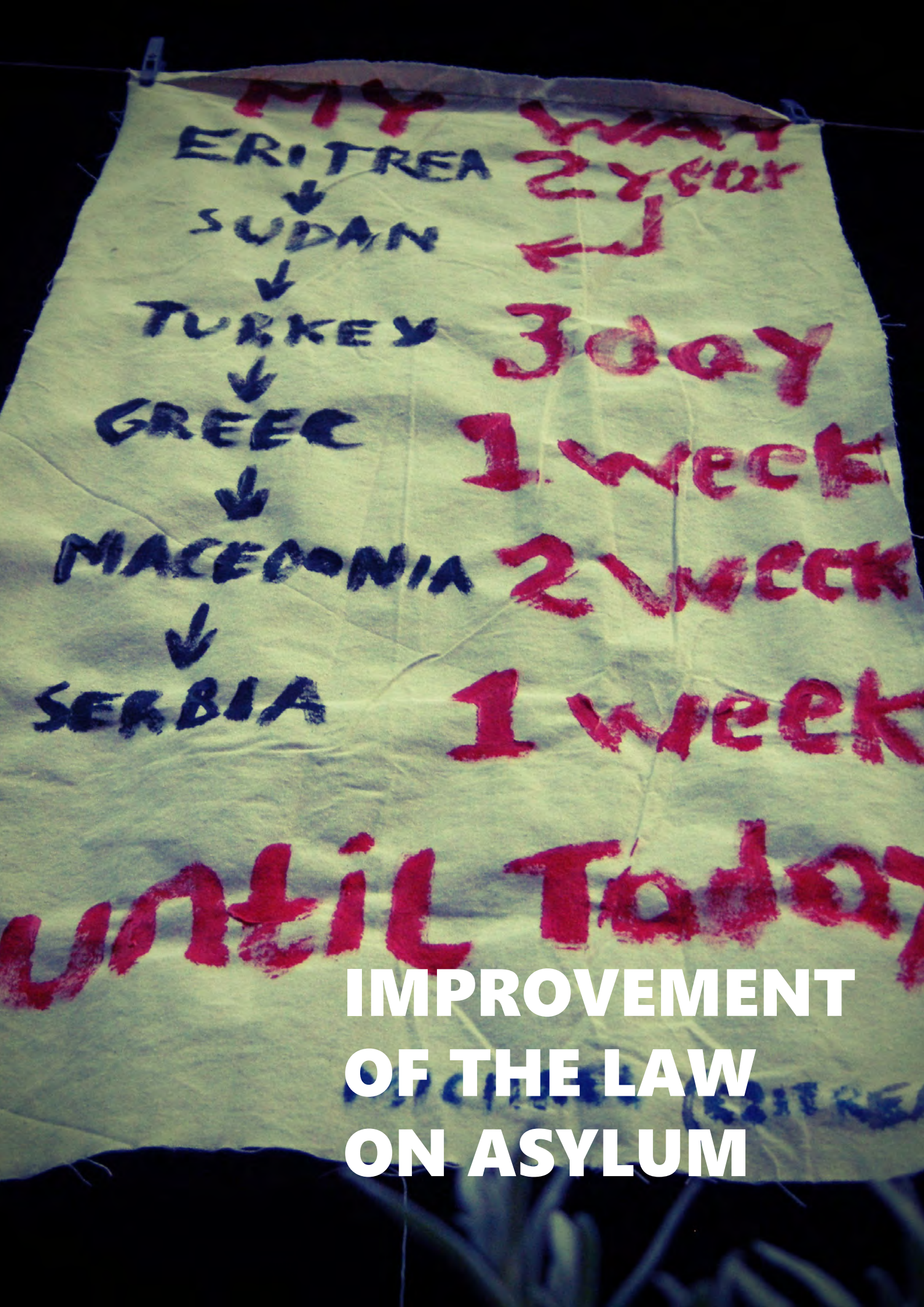
| NATIONALITY | TOTAL | ACCEPTED | REJECTED |
|---|---|---|---|
| Afghanistan | 51 | 0 | 51 |
| Pakistan | 4 | 0 | 4 |
| Somalia | 18 | 0 | 18 |
| Syria | 48 | 0 | 48 |
| Eritrea | 3 | 0 | 3 |
| Iraq | 1 | 0 | 1 |
| Sudan | 1 | 0 | 1 |
| Bangladesh | 1 | 0 | 1 |
| Nigeria | 1 | 0 | 1 |
| TOTAL: | 128 | 0 | 128 |

# ANNEX 2

## 1. List of the number of persons on whom residence cancellation measures were applied (ordered by nationality/country of origin)

| | |
|---|---|
| China | 11 |
| Comoro islands | 15 |
| Congo | 25 |
| The Democratic Republic of the Congo | 14 |
| Cuba | 6 |
| Latvia | 1 |
| Lebanon | 2 |
| Liberia | 2 |
| Libyan Arab Jamahiriya | 15 |
| Madagascar | 2 |
| Hungary | 5 |
| Macedonia | 81 |
| Mali | 108 |
| Morocco | 126 |
| Mauritania | 11 |
| Myanmar | 13 |
| Germany | 8 |
| Niger | 2 |
| Nigeria | 143 |
| Ivory Coast | 31 |
| Pakistan | 1159 |
| Palestine | 63 |
| Poland | 2 |
| Rwanda | 7 |
| Romania | 85 |
| Russian Federation | 6 |
| USA | 1 |
| Senegal | 87 |
| Sierra Leone | 11 |
| Syria | 653 |
| Slovakia | 2 |
| Slovenia | 1 |
| Somalia | 81 |
| Sudan | 41 |
| Tanzania | 2 |
| Togo | 3 |
| Tunisia | 102 |
| Turkey | 114 |
| Uganda | 2 |
| Ukraine | 8 |
| The Great Britain | 4 |
| Venezuela | 2 |

| | |
|---|---|
| Vietnam | 1 |
| Zimbabwe | 1 |
| The Czech Republic | 2 |
| Spain | 2 |
| Switzerland | 1 |
| Sweden | 6 |
| TOTAL: | 5066 |




# IMPROVEMENT OF THE LAW ON ASYLUM

# ASYLUM LAW IMPROVEMENT PROPOSAL BY GROUP 484 AND BCHR – WORKING PAPER[98]

## INTRODUCTION

The purpose of this document is to provide a basis for the public discussion of the amandments to the existing Asyum Law, as part of the asylum system reform to be implemented to meet the standards established in the EU. In addition to the authors' efforts to complement their long-standing experience in the monitoring of the established practices and their active role in the asylum system by a comprehensive legal analysis, the preparation of this document was prompted also by the initiative of the Serbian Ministry of the Interior to establish a forum of the key stakeholders to formulate the specfic proposals for the amendments to the current Law and the improvement of the existing practice.[99] Conditioned by the forum's oprating procedures (Chatham House Rule) and a relatively short period of its operations, the formulated proposals, including the proposals drafted by the BCHR and Group 484, were not presented to the public. Therefore, we hereby offer our suggestions as a starting point for the formulation of the specific solutions, without any intention for this document to be perceived formally as the Draft or Model Asylum Law. To support that, it has been noted that the views of the Belgrade Centre for Human Rights and Group 484 regarding the organization of specific institutions and competences differ, and such solutions are presented and clearly visually marked in the document.

The structure of the document is in line with the structure of the Asylum Law. The articles of the current Asylum Law are followed by the proposals to correct the identified shortcomings, and the explanations of the proposed amendments, which are based on the interpretations of the provisions of other laws applicable in Serbia, experiences from the practice, solutions adopted in the neighbouring countries and the EU Member States, European directives, and the international human rights protection standards.

In addition, it has to be noted that the document is not prepared in accordance with the Integrated Methodology Rules for Legal Amendments, primarily for easier comprehension of

[98] Please note that we cannot guarantee for the validity of English version of the Law on Asylum that is on force. The text is downloaded from website of Ministry of Interior RS, available at: http://goo.gl/0kbPKw.

[99] "In accordance with the Decision of the Ministry of the Interior, in December 2013, a Project Group was established within the Ministry of the Interior to draft a new Asylum Law. The Project Group meetings are attended by the representatives of various state institutions (Ministry of tthe Interior, Commissioner for Refugees and Migration, Ombudsman), international agencies and organizations (UNHCR, IOM, EU Delegation to Serbia, the UN Office in Serbia), and non-governmental organizations (Belgrade Center for Human Rights, Asylum Protection Center, Group 484, and Zero Tolerance), and are chaired by Mr Vladimir Bozovic, State Secretary of the Ministry of the Interior;" Source: Azil u RS: izveštaj za period januar - april 2014, BCHR, available at: http://www.azil.rs/doc/SRB_april_2014_1.pdf

the proposed amendments in relation to the current Law and, on the other hand, because we believe that continued dialogue between the key stakeholders and the participation of the public, particularly the academic community and judicial function holders, could ensure that certain provisions are further improved.

Finally, it has to be noted that it is essential that all the solutions that would be agreed upon should be harmonized with the provisions of other laws that are currently under revision or will be revised in the near future, and which are directly referred to in the Asylum Law, i.e. which are implemented as subsidiary regulation in the asylum system, primarily the Law on Administrative Procedure and the Law on Aliens.

## GENERAL REMARKS

With respect to the grounds of persecution, agents of persecution, subjects of protection, and the acts of persecution, there is a need to identify the most appropriate part in the law in which these provisions would be stipulated.

**Grounds of persecution**

**Article 1**

Race shall be understood to mean in particular one's skin colour and skin colour factors, origins and membership to a particular ethnic group;

Religion shall be understood to mean in particular theistic, atheistic and agnostic views, participating in formal rituals of private and public character, both individually and in community with others, or not participating in such rituals, other forms of religious acts and their expression, i.e. individual or collective acts associated with religious beliefs;

Nationality shall be understood to mean in particular membership to a population that is determined by its cultural, ethnic or linguistic identity, common geographical or political origins, i.e. the relationship with the population of another state, and may include citizenship.

Political opinion shall be understood to mean in particular one's opinion, attitude, or beliefs in relation to the potential agents of persecution as required by this Law, and their policies or methods, irrespective of whether the applicant has acted on the basis of such opinion, attitude or beliefs.

A group shall be considered as a particular social group if:
- its members share common internal characteristics, i.e. common past that is not subject to change, i.e. share common characteristics and beliefs that are so crucial to the identity and dignity of the person that he/she cannot be asked to give them up, or
- it has a specific identity in its country because the other social groups in the region consider it is different;

Acts of persecution
Article 2

Well-founded fear of persecution shall be established if the acts of persecution are:
1. sufficiently serious by their nature or repetition that they constitute a serious violation of the fundamental human rights, particularly the non-derogable rights under Article 15 paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, or if they present
2. a set of various measures, including violations of human rights, which are sufficiently serious that they can in combination affect individuals as specified in subparagraph 1 of this paragraph.

The acts of persecution referred to in paragraph 1 of this Article *inter alia* include:
1. physical or mental violence, including sexual violence,
2. legal, administrative, police and/or judicial measures that are discriminatory or taken in a discriminatory manner,
3. disproportionate or discriminatory legal prosecution or punishment,
4. denial of court protection,
5. prosecution or punishment for any refusal to perform military service during an armed conflict, when performing such military duties would imply committing criminal acts or taking actions that are considered the grounds for denial in accordance with Article 31 of this Law;
6. acts that are, by their nature, specifically gender-related or directed against children.

The act of persecution and the grounds of persecution must be linked.

In assessing whether an asylum seeker's fear of persecution is well-founded, it shall not be of crucial importance whether the actual asylum seeker's race, religion, language, gender, ethnic, social or political characteristics are considered the grounds of persecution if he/she has been attributed such characteristic by the agent of persecution.

Agents of persecution

Article 3

The persecution in accordance with Article 2 can be implemented by:

- the state,
- political parties or organizations, including international organizations, which have the control over the state or a significant part of its territory,
- non-governmental agencies, if it can be established that the state or political parties, i.e. organizations that have control over the state or a significant part of its territory, including international organizations, are unable or unwilling to provide protection against persecution or serious injury in accordance with Article 2, paragraph 1, subparagraph 8 (Subsidiary protection).

Subjects of protection in the country of origin

Article 4

The protection from persecution in accordance with Article 2, and serious injury in accordance with Article 2, paragraph 1, subparagraph 8 of this Law, in the country of origin can be provided by:

- the state,
- political parties or organizations, including international organizations, which have the control over the state or a significant part of its territory.

The protection referred to in paragraph 1 of this Article shall be effective and shall not be of a temporary nature. The provision of the protection referred to in paragraph 1 of this Article shall be understood to mean taking the administrative, court or other measures to prevent the persecution, i.e. serious injury in accordance with Article 2, paragraph 1, subparagraph 8 of this Law, even if the applicant has access to this type of protection.

# LAW ON ASYLUM

## I GENERAL PROVISIONS

### The subject matter of the Law
### Article 1

This Law shall prescribe the principles, conditions and procedure for the granting and cessation of asylum, as well as the status, rights and obligations of asylum seekers and persons granted the right to asylum in the Republic of Serbia.

### Definitions of terms
### Article 2

The basic terms used in the text of this Law shall mean the following:

asylum shall be understood to mean the right to residence and protection accorded to an alien to whom, on the basis of a decision of the competent authority deciding on his/her application for asylum in the Republic of Serbia, refuge or another form of protection provided for by this Law was granted;

PROPOSAL TO AMEND

Paragraph 1, subparagraph 2, is revised:

asylum shall be understood to mean the right to residence and protection accorded to an alien to whom, on the basis of a decision of the competent authority deciding on his/her application for asylum in the Republic of Serbia, refuge or supsidiary protection provided for by this Law was granted;

RATIONALE

The revised Qualification Directive 2011/95/EU, which came into force in December 2013, establishes the standards and criteria for identifying persons in need of international protection and recognizes both "refugees" and "persons who have been granted subsidiary protection" as "beneficiaries of international protection." This equalization of the guaranteed rights results in a *de facto* uniform status for all persons under international protection. By adopting this solution, the EU institutions and Member States, at least on a declarative level, demonstrate their commitment to respecting the international legal instruments guaranteeing the fundamental human rights, including those that prohibit discrimination. In addition, given the specificities of the way in which temporary protection is granted, as well as the newly introduced institution of humanitarian asylum, we believe that the term asylum should refer only to the refugee status and subsidiary protection.

**the asylum procedure** shall be understood to mean a procedure, governed by this Law, for the acquisition and cessation of the right to asylum and other rights of asylum seekers**;**
**an alien** shall be understood to mean any person who is not a citizen of the Republic of Serbia, irrespective of whether he/she is a foreign national or a stateless person**;**

**a country of origin** shall be understood to mean the country of citizenship of an alien or the country where a stateless person had habitual residence, and if an alien has more than one citizenship, a country of origin shall be understood as each country where the alien has citizenship**;**

**an asylum seeker** shall be understood to mean an alien who has filed an application for asylum in the territory of the Republic of Serbia, on whose application the final decision has not been taken;

PROPOSAL TO AMEND

Paragraph 1, subparagraph 5, is revised:

an asylum seeker shall be understood to mean an alien who has expressed his/her intention to seek asylum in the territory of the Republic of Serbia, on whose application the final and unappealable decision has not been taken;

RATIONALE

Article 2, paragraph 1, subparagraph 1 of the current Asylum Law specifies the asylum procedure as a procedure, regulated by this Law, for the acquisition and termination of the right to asylum and other asylum seekers' rights. If one takes into account the way in which the current provisions and this proposal regulate the section relating to the asylum procedure, it is clear that the procedure includes also the actions that precede the asylum application, and that from the moment of expressing the intention there is a certain body of law and obligations that relate to asylum seekers.

In addition, the proposed amendments primarily aim to harmonize the current practices and the legal provisions. While the term “asylum seekers” in accordance with the applicable provisions of the Asylum Law implied persons who have applied for asylum, the provisions specifying the rights and obligations of asylum seekers applied also to all persons who have expressed their intention to seek asylum. For example: all persons who expressed their intention to seek asylum and who reported to the Asylum Centre within 72 hours had the right to accommodation and basic living conditions in accordance with Article 39 of this Law.

**a refugee** shall be understood to mean a person who, on account of well-founded fear of persecution for reasons of race, sex, language, religion, nationality, membership of a social group or political opinions, is not in the country of his/her origin, and is unable or unwilling, owing to such fear, to avail him/herself of the protection of that country, as well as a stateless

person who is outside the country of his/her previous habitual residence, and who is unable or unwilling, owing to such fear, to return to that country;

PROPOSAL TO AMEND

Paragraph 1, subparagraph 6, is revised:

a refugee shall be understood to mean a person who, on account of well-founded fear of persecution for reasons of race, sex, language, religion, nationality, membership of a particular social group or political opinions, is not in the country of his/her origin, and is unable or unwilling, owing to such fear, to avail him/herself of the protection of that country, as well as a stateless person who is outside the country of his/her previous habitual residence, and who is unable or unwilling, owing to such fear, to return to that country;

RATIONALE

While the grounds for granting refugee status have been transposed from the Geneva Convention, the terminology of the Convention has not been fully adopted. According to the wording of the Convention, the refugee status (i.e. "asylum/shelter", in accordance with the terminology used in the Serbian national legislation) is granted to a person who fears persecution because of *inter alia* his/her membership of a particular social group. The Asylum Law, in Article 2, paragraph 1, subparagraph 6, and the Serbian Constitution in Article 57, Paragraph 1, refer to a membership of a social group. On the other hand, in Article 6 of the Asylum Law, the legislature refers to a membership of a particular social group. Considering that the term "social group" is rather vague and that it can create significant problems in practice, which is confirmed also by the doctrine, the national courts' case law, and the definition of the term in the Qualification Directive 2011/95/EU, we belive that the term "particular social group" should be used.

**refuge** shall be understood to mean the right to residence and protection granted to an refugee who is on the territory of the Republic of Serbia, with respect to whom the competent authority has determined that his/her fear of persecution is well-founded;

**subsidiary protection** shall be understood to mean a form of protection the Republic of Serbia grants to an alien who would be subjected, if returned to the country of origin, to torture, inhuman or degrading treatment, or where his/her life, safety or freedom would be threatened by generalized violence caused by external aggression or internal armed conflicts or massive violation of human rights;

PROPOSAL TO AMEND

Paragraph 1, subparagraph 8, is revised:

subsidiary protection shall be understood to mean a form of protection granted by the Republic of Serbia to an alien when there are substantial grounds to believe that he/she would be exposed to a real risk of torture, inhuman or degrading treatment if returned to the country of origin or where his/her life, safety or freedom

would be threatened by generalized violence caused by external aggression or internal armed conflicts or massive violations of human rights;

RATIONALE

The grounds including a real risk of death penalty or execution (its execution),[100] torture, inhuman or degrading treatment are based on the obligation to respect the principle of *non refoulement,* established by the Convention Against Torture[101] and the ECHR case law. [102]

Further information: on the comparative practice in various countries, *Complementary Protection in Europe*, European Council for Refugees and Exiles, 2009, http://www.refworld.org/pdfid/4a72c9a72.pdf

Qualification Directive 2011/95/EU, Article 2,paragraph 1 (f):„person eligible for subsidiary protection' means a third- country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15,and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country";

Furthermore, Article 15 define that serious harm consists of:

(a) the death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or

(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

PROPOSAL TO AMEND

Subparagraphs 8 and 9 are inserted:

temporary protection shall be understood to mean a form of protection granted by the Republic of Serbia in the event of a mass influx of persons from a country where their life, safety or freedom is threatened by generalized violence, foreign aggression, internal armed conflicts, massive violation of human rights or other circumstances that cause a serious disturbance of public order, when due to such mass arrival it is not possible to implement individual asylum procedures.

[100] The term used in the English version is "execution" and therefore [in the Serbian version] both possible translations are offered in order to consider the adequate translation.

[101] "No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture" (Article 3 (1) 1984 Convention Against Torture).

[102] Article 3 and Protocol 6 of the ECHR implicitly create a non-refoulement obligation, in accordance with the view of the European Court of Human Rights (*Soering v. The United Kingdom*, 14038/88)

humanitarian asylum shall be understood to mean a form of protection that may be granted to an alien when the requirements for granting asylum or subsidiary protection are not satisfied, but there are special humanitarian reasons for granting asylum.

RATIONALE

While the Asylum Law provides for temporary protection as a form of protection, it does not contain a definition of that term in the definitions of terms. To ensure a clearer and more consistent interpretation of the institution of temporary protection, we have included this term in the definitions of terms.
Humanitarian asylum is a discretionary form of protection that the States may grant to aliens on humanitarian grounds. The possibility for the State to grant this type of protection to an alien originates from Article 1C, paragraph 1, subparagraph 5, of the Geneva Convention, stipulating that an alien's refugee status shall not be terminated because the circumstances in connection with which he/she has been recognized as a refugee have ceased to exist, and the alien is able to invoke compelling reasons arising out of previous persecution. This form of protection is used to "cover" cases that do not necessarily fall under the international obligations of the State. While the need for protection in these cases is inspired by the international human rights law, granting such protection is left to the discretion of the State. That is the case, for example, when an alien's health is so endangered that for that reason he/she cannot be returned to the country of origin or when an alien would not be able in his/her country of origin to enjoy certain rights and freedoms guaranteed under the ECHR, such as the freedom of religion. Bearing in mind that this type of protection is entirely dependent on the goodwill of the State, the (same) requirements for the termination of humanitarian asylum are not prescribed as those for other forms of protection.
Humanitarian asylum is provided by other countries as well: Sweden, Slovenia, Germany, Spain, Netherlands, the Czech Republic, and Portugal. For further information on humanitarian protection see: *The different national practices concerning granting of non-EU harmonized protection statuses produced by the European Migration Network, December 2010,* available at: http://goo.gl/QpqRg8

**UNHCR** shall be understood to mean the Office of the United Nations High Commissioner for Refugees;

**a safe country of origin** shall be understood to mean a country from a list established by the Government whose national an asylum seeker is, and if the person concerned is stateless, a country where that person had previous habitual residence, which has ratified and applies international treaties on human rights and fundamental freedoms, where there is no danger of persecution for any reason which constitutes grounds for the recognition of the right to refuge or for granting subsidiary protection, whose citizens do not leave their country for those reasons, and which allows international bodies to monitor the observance of human rights;

**a safe third country** shall be understood to mean a country from a list established by the Government, which observes international principles pertaining to the protection of refugees

contained in the 1951 Convention on the Status of Refugees and the 1967 Protocol on the Status of Refugees (hereinafter referred to as: the Geneva Convention and the Protocol), where an asylum seeker had resided, or through which he/she had passed, immediately before he/she arrived on the territory of the Republic of Serbia and where he/she had an opportunity to submit an asylum application, where he/she would not be subjected to persecution, torture, inhuman or degrading treatment, or sent back to a country where his/her life, safety or freedom would be threatened;

PROPOSAL TO AMEND

Paragraph 1, subparagraph 11, is revised:

a safe third country shall be understood to mean a country included in the list established by the Government, in which the alien had resided, or through which he/she had passed, immediately before he/she arrived on the territory of the Republic of Serbia, where he/she would not be subjected to persecution, torture, inhuman or degrading treatment, or returned to a country where his/her life, safety or freedom would be threatened, provided that he/she had an opportunity to be granted asylum in that country;

RATIONALE

Generally speaking, the "safe country" institution is described as a procedural mechanism for referral of an asylum seeker to another country that is considered to be primarily responsible to assess his/her claim and for which there are grounds to believe that it can be considered safe. The ECHR has adopted the position that the application of the safe third country institution does not free the country in which the asylum seeker claimed asylum from the obligation under Article 3 of the ECHR.[103] That directly implies that returning asylum seekers without adequate guarantees is not in accordance with the ECHR. Consequently, there is a need to prescribe very strict criteria based on which a country could be considered safe: the respect of the Convention Relating to the Status of Refugees and other international human rights protection instruments, in particular the Convention Against Torture, and the criterion of establishing fair and efficient procedures for recognizing a person as a refugee, i.e. a person worthy of another form of international protection.

Accordingly, paragraph 1, subparagraph 11, had to be revised so that, in addition to the guarantee of the protection from persecution and the protection from torture, inhuman or degrading treatment, as well as from the return to a country where one's life, safety or freedom would be threatened, it would provide stronger guarantees relating to the asylum system in the country that is considered safe. Thus, instead of a possibility to apply for asylum, it provides for the standard possibility to be granted asylum. That clearly indicates that such country needs to have a system established in which individuals are not only given a possibility to apply for asylum, but also, if they satisfy the requirements, a possibility to be recognized as persons worthy of protection.

[103] *T.I. v UK,* Application no. 43844/98 (Admissibility).

**a family member** shall be understood to mean a minor child, adopted child or step-child, who is not married, a spouse, provided that the marriage was contracted before the arrival in the Republic of Serbia, as well as a parent or an adoptive parent legally obliged to support him/her. The status of a family member may also be granted to other persons in exceptional circumstances, particularly taking into account the fact that they were supported by the person who has been granted refuge or subsidiary protection;

PROPOSAL TO AMEND

Paragraph 1, subparagraph 12 is revised:

a family member shall be understood to mean a minor child, adopted child or a step-child, the spouse provided that the marriage was contracted before the arrival to the Republic of Serbia, unmarried partner in accordance with the legislation of the Republic of Serbia, as well as parents and other adults who can, in accordance with the law or customs, maintain the person who has been granted asylum.

In exceptional circumstances, the status of a family member of a person who has been granted asylum or subsidiary protection may also be granted to other persons particularly taking into account their age and financial and emotional dependence of the person in question, including health, social, cultural or other similar circumstances.

RATIONALE

The Serbian Constitution, in Article 62, paragraph 5, guarantees, in principle, the equalization of marriage and cohabitation. Although the Constitution provides that the constitutional guarantee is implemented in accordance with law (primarily the Family Law), in this case, one has to bear in mind the general constitutional framework that defines the framework for and the volume of legislative activity in the sphere of human rights (Article 18, paragraph 2). Additionally, the Constitution (Article 17) guarantees aliens in Serbia all the rights guaranteed by the Constitution and the law, with the exception of the rights that in accordance with the Constitution and the law belong exclusively to the citizens of the Republic of Serbia: the electoral rights (Serbian Constitution, Article 52, paragraph 1) which, according to the explicit constitutional provision, are enjoyed exclusively by the citizens, and the prohibition of expulsion, which applies only to the citizens and protects them from deportation, while aliens may be expelled (Serbian Constitution Article 39, paragraph 3).

The Qualification Directive 2011795/EU, in Article 2(j), defines the term “family member” so that it includes *inter alia*: „the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals“;

The current Serbian regulations on aliens do not equate married and unmarried partners, and at this point it is uncertain whether the announced amendments to the Law on Foreigners would include also the issue of the status of unmarried partners.[104]

There is no integrated practice at the level of the EU Member States. The solutions range from those that recognize only the spouse (marriage), to those that recognize a stable cohabitation (relationship) between persons of the same sex. For example, the Slovenian Law on Foreigners from 2011 extended the definition of family to include also the registered partners or cohabiting partners, irrespective of their sex or sexual orientation.[105]

In addition, with regard to the cases of determination of the status of a family member of a minor who has been granted asylum, there is a need to prescribe more extensive criteria. In accordance with the current Asylum Law, that could be a parent or an adoptive parent who is legally responsible to maintain him/her. The ECHR finds that the family life under Article 8 of the ECHR includes the spouses and their minor children, including illegitimate and adopted children. The protection is provided also to unmarried couples who are cohabiting and their minor children. The relationships between siblings are also included under the protection referred to in Article 8 of the ECHR, and a family relationship may exist also between a grandmother or grandfather and a grandchild, and, exceptionally, even between an uncle and a nephew. [106] The Qualification Directive, in Article 2 (j), stipulates who is considered a family member. In line 3, it is indicated: father, mother or other adult responsible for the beneficiary of international protection in accordance with the law or practice of the Member State.

Furthermore, in accordance with the current law, the status of a family member may be granted in exceptional circumstances to other persons, taking into account particularly the fact that they are dependents of the person who has been granted asylum or subsidiary protection. The European Council on Refugees and Exiles indicates that due to the specific position and experience of refugees, there is a need for a broader interpretation of dependence to ensure that in addition to the financial (dependents) it includes also the psychological, social, emotional, and medical dependence. [107]

Underlined: limiting the application of the safeguard measures to unmarried minors - Article 22 (1) of the Convention on the Rights of the Child obliges the States to provide appropriate assistance and humanitarian

[104] In accordance with the National Acquis Adoption Program (2013 - 2016), one of the priorities for 2013 is the preparation of the Draft Law on Aliens and its adoption.
Available at: http://www.seio.gov.rs/upload/documents/nacionalna_dokumenta/npi_usvajanje_pravnih%20tekovina.pdf
[105] Uradni list RS, no. 50/2011 from 27 June 2011, available at http://www.uradni-list.si/1/content?id=104275
[106] For further information see: Zaštita prava migranata u Republici Srbiji, priručnik za državne službenike i službenike u lokalnoj samoupravi, International Organization for Migrations – Mission in Serbia, Ivana Krstić PhD, Belgrade 2012, p. 105
[107] ECRE, Submission in response to the Commission's Green Paper on the right to family reunification of third country nationals living in the European Union (Directive 2003/86.EC),2012

aid to all minor asylum seekers, regardless of their marital status and to respect the principle of "the best interests of the child".

**an unaccompanied minor** shall be understood to mean an alien under 18 years of age who was unaccompanied by parents or guardians on his/her arrival to the Republic of Serbia, or who became unaccompanied by parents or guardians after arriving to the Republic of Serbia**.**

PROPOSAL TO AMEND

Paragraph 1, subparagraph 13, is revised:

an unaccompanied minor shall be understood to mean an alien under 18 years of age who was or who became unaccompanied by his/her parents or guardians or other adult relatives on or after his/her arrival to the Republic of Serbia.

RATIONALE

The general comments of the Committee on the Rights of the Child, particularly Comment no. 6, discuss the treatment of separated and unaccompanied children (minors).[108] The distinction between these two categories is accepted in both the doctrine and the practice, and the definitions of both of these categories are “present”. The manner in which the legislature defines the meaning of the term “unaccompanied minor” is more in line with the generally recognized definition of children separated from their parents or guardians: "*children separated from both of their parents or their previous legal guardians, but not necessarily separated from their relatives,*" but even considering that, the definition has not been transposed consistently.

While an unaccompanied minor (unaccompanied child) means a child who is separated from both of his/her parents and has no adult (relative) to take primary responsibility of him/her, either in accordance with law or the custom."

The Directives and the Dublin Regulation, which are part of the Common European Asylum System,[109] specify: “unaccompanied minor’ as a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States“.

Taking into account that the proposed amendment concerns the definitions of the general terms, we suggest that the term “unaccompanied minor” should be defined so as to incorporate both of these categories, or that two separate definition should be provided. However, the minors who fall under both of these categories must be given special guarantees. The amendments to this paragraph need to be taken into

[108] General Comment No. 6, Tretament of Unaccompained and Separated Children outside of Country of Origin, CCRC/GC/2005/6, 1 Septembar 2005.

[109] Article 78 of the Treaty of the Functioning of the EU provides that the Union shall develop a common asylum, subsidiary protection and temporary protection policy to ensure granting appropriate status to any third-country national seeking international protection and to ensure compliance with the principle of non-refoulement.

account when prescribing the norms for the principles of treatment of persons with special needs and the best interests of the child.

**The application of this Law in the asylum procedure**
**Article 3**

The provisions of this Law shall apply to the basic principles and conditions for the acquisition of the right to asylum and the reasons for its cessation, to the fundamental rights and obligations of asylum seekers, refugees and persons granted another form of protection envisaged by this Law, and also to the asylum procedure.

The regulations governing general administrative proceedings shall apply to the issues related to the asylum procedure that are not regulated by this Law.
The regulations governing the movement and residence of aliens shall apply to the issues related to the scope, content and type of the rights and obligations of asylum seekers, persons granted refuge, subsidiary protection or temporary protection not regulated by this Law.

This Law shall not apply to refugees who were granted that status under the Law on Refugees (The Official Gazette of the Republic of Serbia, nos. 18/92 and 45/2002).

PROPOSAL TO AMEND

In paragraph 3, the following wording is inserted:
The regulations governing the movement and residence of aliens, as well as the regulations governing migration management, shall apply to the issues related to the scope, contents and type of the rights and obligations of asylum seekers and persons granted asylum, subsidiary protection or temporary protection, which are not regulated by this Law.

In paragraph 4, the following wording is inserted:
This Law shall not apply to refugees who were granted that status under the Law on Refugees (The Official Gazette of the Republic of Serbia, nos. 18/92 and 45/2002 and nos. 30/2010 )

RATIONALE

The Law on Migration Management generally governs the issue of the integration of persons who have been granted asylum (Article 14), as well as the provision of temporary accommodation for persons who have been granted asylum, i.e. subsidiary protection (Article 13).
In paragraph 3, the term “regulation“ is used to indicate numerous bylaws whose adoption and application is prescribed by the Law on Migration Management.
In terms of paragraph 4, the Law on Refugees was last revised in May 2010.

**The right to filing an application for asylum**
**Article 4**

An alien who is on the territory of the Republic of Serbia shall have the right to file an application for being granted asylum in the Republic of Serbia.

If the alien referred to in paragraph 1 of this Article is not eligible for being granted the right to refuge, the competent authorities shall consider ex officio whether there exist conditions for granting subsidiary protection.

**Cooperation with UNHCR**
**Article 5**

The competent authorities shall cooperate with UNHCR in the conduct of its activities, in conformity with its mandate.

PROPOSAL TO AMEND

List of safe third countries and countries of origin

Article 5a

In evaluating the facts determining whether a country could be considered a safe country of origin, the general legal and political situation in the country shall be taken into account, and in assessing the situation, the following shall be considered in particular:

1. the ratification and respect of the rights and freedoms guaranteed by the international and regional legal instruments, particularly the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on the Protection of Human Rights and Fundamental Freedoms, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,
2. adherence to the international refugee protection principles enshrined in the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, particularly the prohibition of expulsion or return (*non-refoulement*),
3. the relevant laws and regulations of the country of origin and the procedures for their implementation, and
4. the existence of effective remedies against human rights violations.

In assessing whether a country is a safe third country, in addition to the requirements specified in paragraph 1 of this Article, the existence of an effective asylum system in the country shall also be taken into account.

The assessment of whether a country is a safe country of origin in accordance with Article 2 of this Law shall be

based on a range of information sources, including particularly information from other Member States, UNCHR, the Council of Europe, relevant case law of the European Court of Human Rights, other international organizations, as well as the relevant non-governmental organizations.

The Government of the Republic of Serbia shall adopt a list of safe third countries and safe countries of origin in accordance with the provisions of paragraphs 1, 2, and 3 of this Article, at the proposal of the Ministry of Foreign Affairs.

The proposed list of safe third countries and safe countries of origin shall include explanations and shall be public.

The list of safe third countries and safe countries of origin shall be revised every six months.

The list of safe third countries and safe countries of origin may be revised even outside the timeline specified in paragraph 5, at the proposal of UNCHR and the authorities responsible to decide on the asylum procedure if it is required due to a rapidly deteriorating political situation or the human rights situation in the countries included in the list of safe third countries and countries of origin.

RATIONALE

See the explanation relating to Article 2, paragraph 1, subparagraph 11

Procedure Directive 2013/32/EU

Article 37

National designation of third countries as safe countries of origin

1. Member States may retain or introduce legislation that allows, in accordance with Annex I, for the national designation of safe countries of origin for the purposes of examining applications for international protection.
2. Member States shall regularly review the situation in third countries designated as safe countries of origin in accordance with this Article.
3. The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, EASO, UNHCR, the Council of Europe and other relevant international organizations.
4. Member States shall notify to the Commission the countries that are designated as safe countries of origin in accordance with this Article.

Article 38

The concept of safe third country

1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection will be treated in accordance with the following principles in the third country concerned:
(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
(b) there is no risk of serious harm as defined in Directive 2011/95/EU;
(c) the principle of non-refoulement in accordance with the Geneva Convention is respected;
(d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and
(e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.
2. The application of the safe third country concept shall be subject to rules laid down in national law, including:
(a) rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country;
(b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;
(c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that the third country is not safe in his or her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him or her and the third country in accordance with point (a).
3. When implementing a decision solely based on this Article, Member States shall:
(a) inform the applicant accordingly; and
(b) provide him or her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.
4. Where the third country does not permit the applicant to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.
5. Member States shall inform the Commission periodically of the countries to which this concept is applied in accordance with the provisions of this Article
Annex I
Designation of safe countries of origin for the purposes of Article 37(1)
A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is

generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.
In making this assessment, account shall be taken, inter alia, of the extent to which protection is provided against persecution or mistreatment by:
(a) the relevant laws and regulations of the country and the manner in which they are applied;
(b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;
(c) respect for the non-refoulement principle in accordance with the Geneva Convention;
(d) provision for a system of effective remedies against violations of those rights and freedoms.

The criteria based on which a country is included in the list, i.e. the criteria taken into account, shall be publicly available. The process that preceded the adoption of the Decision establishing the list of safe third countries of origin and safe third countries has been perceived by a large number of stakeholders as completely non-transparent.[110] Additionally, stipulating paragraphs 4, 5, and 6 is of special importance, considering the current experience in the practice. The Decision of the Serbian Government establishing the list of safe countries of origin and safe third countries was adopted in 2009 and has not been updated. For example, the list includes Greece for which in 2011 the ECHR found in the case of *M.S.S. v. Belgium and Greece*[111] that its asylum procedure was inefficient and that it systematically violated the human rights of asylum seekers. Following the decision of the ECHR in the case of *M.S.S. v. Belgium and Greece*, a large number of EU countries refrained from the practice of returning asylum seekers to Greece in accordance with the Dublin Regulation. Also, back in December 2009, UNCHR issued their official position advising governments not to return asylum seekers to Greece in accordance with the Dublin procedure[112] or on any other grounds.

[110] UNHCR, Srbija kao zemlja azila 2012, available at: http://www.unhcr.rs/dokumenti/istrazivanja/srbija-kao-zemlja-azila.html; Grupa 484, Izazovi prisilnih migracija: drugi pogled na pitanja azila i readmisije, 2013, available at: http://www.grupa484.org.rs/publikacije/cemi/prisilne-migracije
[111] *M.S.S. v Belgium and Greece*, Application No. 30696/09, Judgment of the Grand Chamber dated 21 January 2011
[112] The Dublin procedure establishes the rules on (assuming) the competences of Member States for the examination of asylum applications. Further information available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/index_en.htm

## II BASIC PRINCIPLES

### Non-refoulement
### Article 6

No person shall be expelled or returned against his/her will to a territory where his/her life or freedom would be threatened on account of his/her race, sex, language, religion, nationality, membership of a particular social group or political opinions.

The provisions of paragraph 1 of this Article shall not apply to a person with respect to whom there are reasonable grounds to believe that he/she constitutes a threat to national security, or who has been convicted of a serious crime by a final court judgment, for which reason he/she constitutes a danger to the public order.

Notwithstanding the provisions of paragraph 2 of this Article, no person shall be expelled or returned against his/her will to a territory where there is a risk of his/her being subjected to torture, inhuman or degrading treatment or punishment.

PROPOSAL TO AMEND

The principle of refugees *sur place*

Article 6a

A refugee *sur place* shall be understood to mean a person who was not a refugee when he/she left his/her country of origin, but who become a refugee at a later date, during his/her stay in another country.

The well-founded fear of persecution or real risk of serious injuries referred to in Article 2 of this Law can be based on the circumstances that occurred after the asylum seeker had left his/her country of origin, i.e. on the person's activities after he/she left the country of origin, particularly where it is established that they present an expression or continuation of the beliefs or orientation he/she had in the country of origin.

RATIONALE

The requirement that an alien must be out of the country of origin to qualify as a refugee does not necessarily mean that the alien had to leave his/her country because of a well-founded fear of persecution. An alien may decide to apply for asylum after he/she has already resided in a foreign country for a while. A person who has not been a refugee at the moment of leaving his/her country of origin but who become a refugee at a later date is called a refugee *sur place* (Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status by UNCHR, December 2011).

The introduction of this principle would ensure that the Asylum Law complies with the Qualification Directive 2011/95/EU, which, in Article 5, stipulates protection of refugees *sur place*.

**The principle of non-discrimination**
**Article 7**

In the asylum procedure in the Republic of Serbia, any discrimination on any grounds shall be prohibited, and in particular on the grounds of race, colour, sex, nationality, social origin or a similar status, birth, religion, political or other beliefs, financial standing, culture, language, age, mental, sensory or physical disability.

**The principle of non-punishment for unlawful entry or stay**
**Article 8**

An asylum seeker shall not be punished for unlawful entry or stay in the Republic of Serbia, provided that he/she submits an application for asylum without delay and offers a reasonable explanation for his/her unlawful entry or stay.

**The principle of family unity**
**Article 9**

The competent authorities shall take all the available measures for the purpose of maintaining family unity during the asylum procedure and after the granting of the right to asylum.

Persons granted asylum shall be entitled to family reunion, in accordance with the provisions of this Law.

PROPOSAL TO AMEND

paragraph 3 is inserted:

A family member of a person who has been granted asylum residing legally in the Republic of Serbia shall have equal rights as persons granted asylum, in accordance with the provisions of this Law.

RATIONALE

The current Asylum Law does not contain a provision specifying the body of rights and obligations of the family members of persons who have been granted asylum.

Paragraph 3 is defined based on the Qualification Directive 2011/95/EU - Article 23, paragraph 2, stipulates that the family members are guaranteed equal rights as persons enjoying international protection. This approach is in accordance with Article 8 of the EHRC as well.[113]

[113] ECRE Information Note on the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), dostupno na: http://helsinki.hu/wp-content/uploads/ECRE-Information-Note-on-QD.pdf

**The principle of providing information and legal aid**
**Article 10**

An alien who has expressed his/her intention to seek asylum in the Republic of Serbia shall be entitled to being informed about his/her rights and obligations in the course of the entire asylum procedure.

An asylum seeker shall have the right to free legal aid and representation by UNHCR and NGOs whose objectives and activities are aimed at providing legal aid to refugees**.**

PROPOSAL TO AMEND

The principle of providing information and legal aid

Article 10

An alien who has expressed his/her intention to seek asylum in the Republic of Serbia shall be entitled to being informed timely about his/her rights and obligations in the course of the entire asylum procedure.
Women accompanied by men shall be informed about their right to submit an individual asylum application.
The competent state authority shall inform an asylum seeker from the moment he/she has expressed his/her intention to seek asylum about the possibility of being entitled to free legal aid and shall allow him/her access to legal aid.

An asylum seeker and a person granted asylum shall have the right to free legal aid that shall imply the right to the general information about the rights and obligations and the right to representation before the competent authorities.

The persons referred to in the previous paragraph shall have access to free legal aid and representation by UNCHR, by associations whose objectives and activities focus on the provision of legal aid to victims of human rights violations, as well as by lawyers who have special expertise and experience in the field of refugee law.
The funds required for the free legal aid referred to in paragraph 3 of this Article shall be provided from the budget of the Republic of Serbia.
An asylum seeker shall be exempt from the payment of fees for a public inspection and copying of documents that are not delivered to him/her personally and that are relevant for the exercising of his/her rights.

RATIONALE

All the above amendments to this Article ensure harmonization with the UNCHR standards and the recommendations of the Council of Europe. See:

1. UNHCR, Executive Committee Conclusion No. 8 (XXVIII) Determination of Refugee Status, 1977, available at: http://goo.gl/7Ph2Fr
2. UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees 1979 (re-edited 1992), available at: http://goo.gl/m5G21D
3. Council of Europe, Parliamentary Assembly, Report on the protection and reinforcement of the human rights of refugees and asylum-seekers in Europe, Doc. 7783, 26 March 1997, available at: http://goo.gl/FSWpVy

The Directive on Asylum Procedures 2013/32/EC and the Admission Directive 2013/33/EC contain several articles governing the notification of asylum seekers about their rights and obligations, as well as the conditions under which asylum seekers may be entitled to free legal aid. The solutions adopted by various Member States are quite different, which is partly a consequence of the fact that the Directives are binding in terms of the outcomes achieved, but leave the national authorities a discretion to choose the form and methods of implementation, and, on the other hand, the fact that the Directives set out the minimum standards that the countries must meet, while explicitly prescribing a possibility of adopting more favourable solutions.

Underlined: In the Repulic of Serbia, the Law on Free Legal Aid has yet to be adopted, although in the last couple of years several drafts were released to the public and were the subject of heated debates. The solutions that would be adopted in this Article would certainly have to rely on the model for accessing free legal aid that would be stipulated by the primary law.

The term "timely" has been inserted in paragraph 1 as it has been noted in the course of the provision of legal aid that during the asylum procedure aliens tend to be informed about their rights and obligations by the competent authorities (the Commissioner for Refugees and Migrations, Asylum Department) only when applying for asylum.

In addition, in order to respect the gender sensitivity principle and bearing in mind that many women seeking asylum actually come from the countries with traditionally patriarchal societies, women need to be specially informed about their right to submit an individual application. This is particularly important considering that persecution may constitute sexual violence against women that women cannot disclose to their family

members because of the fear that they would be punished by the family for "sullying family honour" by having been a victim of sexual violence (e.g. honour killings in Afghanistan).

It is essential for asylum seekers to be informed as soon as possible about the right to free legal aid. In practice, asylum seekers are normally informed about the rights and obligations by their proxies (Article 10 of the Directive on Asylum Procedures 2005/85/EC).

We believe that it is necessary to stipulate in the law the obligation to allocate funds from the budget to ensure access to free legal aid. From the entry into force of the Asylum Law, free legal aid has been financed predominantly by UNCHR. The question is how the asylum seekers would access free legal aid or be informed about their rights, if at some point there would be no non-governmental organizations able to provide free legal aid, i.e. no donors interested to support such a project. Accessing this right varies from country to country, and in some countries asylum seekers are entitled to free legal aid in the appeals procedure or the right to legal aid at own expense, while in many countries legal aid is provided throughout the procedure, and after the status has been acquired as well.

To ensure effective provision of legal aid, it is necessary to prescribe also the requirements for the associations and lawyers.

The legislation does not recognize the concept of non-governmental organizations, but the association in accordance the Law on Associations (“The Official Gazette of the RS," No. 51/2009 and 99/2011 – separate laws). During the procedure to adopt the Asylum Law, the civil society suggested to include in this Article the obligation of the competent Minister of the Interior to adopt a separate Regulation on Legal Aid, but that suggestion was not accepted.

The legal regulations do not recognize the concept of non-governmental organizations, but the association in accordance the Law on Associations (“The Official Gazette of the RS," No. 51/2009 and 99/2011 – separate laws).

## The principle of providing free translation services
## Article 11

An asylum seeker who does not understand the official language of the procedure shall be provided with free services for the purpose of translation into the language of the country of origin or a language he/she can communicate in.

An asylum seeker may engage an interpreter of his/her own choice and at his/her expense.

The obligation of providing free translation services referred to in paragraph 1 of this Article shall apply to the use of sign language and the availability of materials in the Braille alphabet and other accessible formats.

**The principle of free access to UNHCR**
**Article 12**

An asylum seeker shall have the right to contact authorized UNHCR staff at any stage of the asylum procedure.

**The principle of personal delivery**
**Article 13**

Any written official communication in the procedure shall be delivered to an asylum seeker or his/her legal representative in person. A written official communication shall be considered delivered when either of the above-mentioned persons has received it.

**The principle of gender equality**
**Article 14**

It shall be ensured that an asylum seeker is interviewed by a person of the same sex or provided with a translator or an interpreter of the same sex, unless it is not possible or is associated with disproportionate difficulties for the body conducting the asylum procedure.

The principle referred to in paragraph 1 of this Article shall always be applied in the cases of conducting a search, body checks and other actions in the procedure presupposing physical contact with an asylum seeker.

PROPOSAL TO AMEND

The principle of gender equality and sensitivity

Article 14

An asylum seeker shall be ensured an opportunity to apply for asylum and make a statement before a person of the same sex, i.e. shall be provided a translator or an interpreter of the same sex, unless that is not possible or it is associated with disproportionate difficulties for the authority conducting the asylum procedure.

Female asylum seekers accompanied by men shall always be interviewed separately from their companions.

The principle referred to in paragraph 1 of this Article shall be applied always when conducting searches, body checks, and other actions during the procedure that require physical contact with asylum seekers.

RATIONALE

The principle of gender sensitivity is inserted into the title of this Article because this Article, as it is currently defined, does not refer to gender equality (as it does not require that male and female asylum seekers should be equal in their rights and obligations), but rather to attention in treating asylum seekers, implying that asylum seekers would be interviewed by an officer of the same sex, and that they would have an interpreter of the same sex available, if that is possible. This is particularly important considering that persecution can imply gender-based violence, and it can be expected that asylum seekers would disclose more readily the reasons why they had to leave their country of origin to persons of the same sex.

In terms of paragraph 1, certain linguistic corrections have been made – the term “interviewed“ has been replaced by the term “make a statement“. In addition, we believe that the same obligation (right) that is prescribed for making a statement should be prescribed also for applying for asylum.

In accordance with the proposed amendments, in the abbreviated procedure, the act of submitting an application is of great importance, as the facts presented during the submission of the application may be the basis for deciding on the application. Having in mind that both of these actions have almost the same "strength" in terms of acquiring the facts of crucial importance for the decision, we believe that they need to be equalized in terms of the application of this principle.

The newly introduced paragraph 2 needs to ensure exactly that this principle is implemented (see the explanation of Article 10, paragraph 2).

The gender sensitivity principle is recognized also by the Qualification Directive (Preamble, subparagraph 32).

## The principle of providing care for persons with special needs
## Article 15

Care shall be taken in the asylum procedure of the specific situation of persons with special needs who seek asylum, such as minors, or persons completely or partially deprived of legal capacity, children separated from parents or guardians, handicapped persons, elderly people, pregnant women, single parents with minor children andpersons who were subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

PROPOSAL TO AMEND

Article 15 is revised:

Care shall be taken in the asylum procedure of the specific situation of persons with special needs who seek asylum, such as minors, unaccompanied minors, or persons completely or partially deprived of legal capacity, children separated from parents or guardians, handicapped persons, elderly people, pregnant women, single parents with minor children, victims of human trafficking and persons who were subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.

The priority shall be given to the procedures with the asylum applications submitted by the persons referred to in paragraph 1 of this Article.

RATIONALE

In terms of unaccompanied minors, see the explanation of Article 2, paragraph 1 (12).
With regard to victims of trafficking, for example, Bosnia and Herzegovina in the Handbook on Asylum[114] regulates specifically the issue of the care and treatment of victims of human trafficking in situations when they seek asylum. Furthemore, all specified categories are recognise in Reception Directive, Article 21.
In terms of paragraph 2 - Article 23 of the Directive on Asylum Procedures 2005/85/EC provides that the Member States when considering asylum applications should give priority to asylum seekers with special needs.

## The principle of representation of unaccompanied minors and persons without legal capacity
## Article 16

A guardian shall be appointed by the guardianship authority before the submission of an asylum application, in conformity with the law, for an unaccompanied minor or a person without legal capacity who does not have a legal representative.

The guardian shall be present in the course of an interview with an unaccompanied minor or a person without legal capacity referred to in paragraph 1 of this Article**.**

[114] Pravilnik o azilu u Bosni i Hercegovini, Aricle 21, Paragraph 1. http://goo.gl/Me5Piy

PROPOSAL TO AMEND

Paragraph 1 is revised:

An unaccompanied minor or a person deprived of legal capacity who does not have a legal representative, shall be appointed by the guardianship authority, without any delay and before the submission of his/her asylum application, a guardian who shall be obligated, in accordance with law, to take care of the ward. The guardian shall be changed only when that is necessary.

RATIONALE

The legal basis for the appointment of a guardian arises from the provisions of the Family Law (Article 132, paragraph 4), the Law on Social Protection (Article 41), and the Asylum Law (Article 16).

The appointment of a guardian promptly and before an asylum application is submitted is necessary for the guardian to inform himself/herself about the circumstances of that particular case before the application is to be submitted, as one of the key steps during the procedure, and consequently to be able to represent adequately the best interest of the child. An unaccompanied minor who has expressed his/her intention to seek asylum is appointed three different provisional guardians before the beginning of the procedure for his/her application. "Such practice of “bouncing” the child from one guardian to another does not guarantee effective and efficient guardianship of minor asylum seekers, hindering or even preventing the establishment of a relationship of trust between the child and guardian."[115]

Underlined: The EU Member States have established different models for the appointment of legal guardians, especially where it relates to minors. Thus, the solutions range from appointing persons from the government child-care or social protection institutions (in some countries, those persons are at the same time the legal representatives of the minor - The Czech Republic), but also persons from the civil society organizations, judges, attorneys, etc.[116]

PROPOSAL TO AMEND

The principle of the best interest of the child

Article 16a

In all procedures concerning minors, and particularly unaccompanied minors, the best interest of the child shall be taken into account.

The best interest of the child should be interpreted in accordance with the provisions of the Convention on the Rights of the Child and the accompanying protocols.

[115] Srbija kao zemlja azila; Zapažanja o položaju tražilaca azila i korisnika međunarodne zaštite u Srbiji, UNHCR, August 2012, p. 15.

[116] For further information see: Right to asylum for unaccompanied minors in the European Union, Comparative study in the 27 EU countries, France terre d’asile, available at: http://www.frsh.de/fileadmin/beiboot/BB3/BB-3-12-Anlage.pdf

RATIONALE

The Directives that make up the CEAS, starting with the Preambles, underline the obligation to respect the principle of the best interests of the child, which has been expanded to include a number of guarantees for minors who seek asylum or enjoy some form of international protection.

Underlined: Although it is common to diferentiate between those who are considered, in accordance with the provisions of the immigration rules, irregular/economic migrants and those who express the intention to seek asylum or who have become asylum seekers by having submitted their asylum application, this division is questioned in reality, and it becomes increasingly difficult to distinguish between different categories of unaccompanied minors. That is why some countries (the Republic of Croatia among the countries in the region) decide to adopt special protocols stipulating precisely the procedures for treatment of unaccompanied minor aliens, irrespective of their immigration status.[117]

## The principle of directness
## Article 17

Any alien who has filed an asylum application shall have the right to a verbal and direct interview, carried out by an authorized officer of the organizational unit of the Ministry of the Interior in charge, regarding all the facts relevant to the recognition of the right to refuge or to the granting of subsidiary protection**.**

PROPOSAL TO AMEND

Article 17 is revised:

Any alien who has submitted an asylum application shall have the right to present all the facts relevant to the recognition of the right to asylum or granting subsidiary protection verbally and directly to an authorized officer of the organizational unit of the Ministry of the Interior in charge.

RATIONALE

The principle of directness is based on the principle of ensuring a hearing for the parties in the administrative procedure, which implies that the party must be given an opportunity, before the decision is adopted, to make a statement regarding the facts and circumstances that are relevant for the decision. Consequently, the *rationale* of the provision limiting the respect of the principle to a single action (Article 26 of the Asylum Law) is unclear. In addition, this proposal would satisfy the principle of directness in the course of submission of

[117] For further information see: Deca pred zakonom: u međunarodnom tranzitu i kao tražioci azila, Grupa 484, February 2013, available at: http://www.grupa484.org.rs/sites/default/files/Deca%20pred%20zakonom,%202013.pdf

the asylum application, orally for the record, as well as in the event of the termination of asylum byway of the annulment of the decision, by the alien contesting the circumstances in which such decision was made.

**The principle of confidentiality**
**Article 18**

The data on an asylum seeker obtained in the course of the asylum procedure shall constitute an official secret and access to it shall be allowed only to persons authorized by law.

The data referred to in paragraph 1 of this Article shall not be disclosed to the country of origin of an asylum seeker, unless he/she has to be forcibly returned to the country of origin upon the completion of the procedure, his/her asylum application having been rejected. In that case, the following data may be provided:

- identification data;

- data on family members;

- data on documents issued by the country of origin;

- address of his/her permanent residence;

- fingerprints, and

- photographs.

PROPOSAL TO AMEND
Article 18 is revised:

The information regarding an asylum seeker or a person who has been granted asylum obtained in the course of the asylum procedure, as well as the fact that a person has sought asylum in the Republic of Serbia, shall constitute official secrets and may be available only to the persons authorized in compliance with the law governing classified information.

Any information regarding asylum seekers shall be considered a particularly sensitive information in accordance with the law governing the protection of personal information.

The information referred to in paragraph 1 shall not be disclosed to the country of origin of the asylum seeker, i.e. the person who has been granted asylum, unless he/she has to be forcefully returned to the country of

origin. In that case, with the prior written consent of the asylum seeker or the person who has been granted asylum, the following information may be disclosed:

- identification data;
- data on family members;
- data on documents issued by the country of origin;
- address of his/her permanent residence;
- fingerprints, and
- photographs.

In the event referred to in paragraph 3 of this Article, the information that an alien has claimed asylum in the Republic of Serbia shall not be disclosed to the country of origin.

RATIONALE

This Article has been revised to comply with the Law on Classified Information and the Law on the Protection of Personal Information, as well as with the UNCHR guidelines regarding the information that must not be disclosed to the asylum seeker's country of origin.

The classification of the confidentiality level "state secret" and "persons authorized in accordance with the law governing classified information" referred to in paragraph 1 are regulated more specifically in the Law on Classified Information and the Decree on Specific Criteria for Determining "State Secret" and "Top Secret" Confidentiality Levels.

The term "particularly sensitive information" within the meaning of paragraph 2 and the processing of such information and the safeguard measures are defined in Article 16 of the Law on Protection of Personal Information.

It has been stipulated that the information regarding an asylum seeker may be disclosed to the country of origin with a prior consent in writing in order to harmonize the Asylum Law with Article 17 of the Law on Protection of Personal Information.

UNCHR has pointed to serious consequences that may arise as a result of disclosing classified information, particularly the fact that a person has sought asylum, including the fact that the asylum seeker in this case may become a refugee *sur place*, to the asylum seeker's country of origin and that the safety of the asylum seeker's associates or relatives in the country origin may be seriously compromized

(for further information see UNHCR, Advisory opinion on the rules of confidentiality regarding asylum information, http://www.refworld.org/pdfid/42b9190e4.pdf)

The last paragraph is an adjustment with Article 22 of the Directive of Asylum Procedures 2005/85/EC.

PROPOSAL TO AMEND

Assumption of the genuineness of asylum applications

Article 18a

In the absence of sufficient evidence, it shall be decided in favour of the applicant, after all the available evidence has been collected and verified, and after the officer of the Asylum Office has been convinced of the applicant's genuineness.

The asylum applicant's allegations must be convicing, and must not be contradictory and inconsistent with the generally accepted facts.

RATIONALE

The UNCHR observations regarding the burden of proof with respect to refugee applications provide for "the benefit of doubt", i.e. that in the absence of sufficient evidence officials should decide in favour of the asylum seeker. The *rationale* underlying this rule is that due to high-risk circumstances in which they left their country of origin asylum seekers are usually not able to provide adequate and credible evidence to support the well-foundedness of their fear of prosecution in the country of origin.

For further information see: the UNCHR paper on the rules of evidence, 16 December 1998, available http://goo.gl/xALKC4

This rule is stipulated also by the Qualification Directive 2011/95/EU, in Article 4, paragraph 5.

## III THE COMPETENT AUTHORITIES

### The Asylum Office
### Article 19

With respect to asylum applications and the cessation of the right to asylum, the competent organizational unit of the Ministry of the Interior (hereinafter: the Asylum Office) shall conduct the procedure and take all decisions in the first instance.

Authorized officers conducting the asylum procedure in the Asylum Office shall be specially trained for the performance of these tasks.

The Minister of the Interior (hereinafter referred to as: the Minister), shall more specifically define the terms and criteria pertaining to officers performing tasks in the Asylum Office through an act passed by him/her.

Note: The bylaws to be adopted in accordance with the provisions of this Article need to stipulate the obligation that *all authorized officers who come in contact with minor asylum seekers must undergo special training.*

In the Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, UNCHR stated that "it is desirable that all interviews with minor asylum seekers (including those directly related to the decision on the refugee status) are conducted by persons who have professional qualifications, who are specially trained and have adequate knowledge of the physical and emotional development and behavior of children." [118] The same standard has been introduced also by the European Union: the Directive on Asylum Procedures requires that if an interview is conducted with a minor relating to his/her asylum claim (...) it needs to be conducted by persons who have a special knowledge of the minor's needs" (the Directive on Asylum Procedures 2005/85/EC, op.cit. (Note 17), Article 17 –4a). Finally, the Council of Europe in the Recommendation 1810 (2011) to all Member States indicates that: "All interviews with minors in relation to their personal circumstances should be conducted individually and by specifically trained officials." [119]
Underlined: The term "Asylum Office" does not exist in the organizational structure of the Serbian Ministry of the Interior, which, not including larger organizational units, has Divisions or Departments.

**The Asylum Commission**
**Article 20**

The Asylum Commission shall be comprized of the Chairman and eight members appointed by the Government for a four-year term, and shall decide in the second instance on complaints lodged against the decisions taken by the Asylum Office.

In the budget of the Republic of Serbia, an appropriation shall be made for the work of the Asylum Commission.

A person may be appointed the Chairman or a member of the Asylum Commission if he/she is a citizen of the Republic of Serbia, has a university degree in law and a minimum of five years of working experience as a practicing lawyer, and is familiar with regulations in the field of human rights.

The Government shall set the amount of remuneration due to the members of the Asylum Commission for their work by passing an act on it.

[118] UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, op.cit. (Note 38), Chapter 5
[119] Council of Europe's Parliamentary Assembly, Resolution 1810 (2011), op.cit. (Note 40), §5.7

The Asylum Commission shall be independent in its work and shall pass decisions by a majority vote of the overall number of its members.

The Ministry of the Interior shall perform administrative tasks for the Asylum Commission.

Within 30 days of the date of the appointment of its members, the Asylum Commission shall pass its Rules of Procedure. The Rules of Procedure shall more specifically regulate the decision-making method of the Asylum Commission, the calling of its meetings and other issues of relevance to the work of the Asylum Commission.

## PROPOSAL BY GROUP 484

At this stage, the two-tier procedure needs to remain, i.e. the jurisdiction as established by the existing Law should not be changed. The Asylum Law will inevitably be revised in the future along with Serbia's progress in the negotiation process to ensure that it is fully harmonized with the EU legislation, which is itself subject to frequent changes and revisions (primarily, at this stage, some of the standards cannot be adopted considering that the requirement for the implementation is that the State is a full-fledged member - the implementation of the EURODAC system and the Dublin Regulation). On the other hand, the experiences of other countries show that the EU standards should be adopted gradually, as harmonization alone is not sufficient, and that the implementation needs to be at a satisfactory level as well, and that is why the countries that are now Member States revised their legislation even several times in the course of the accession process. Therefore, we believe that in the coming period, as part of future revisions, the abolishment of the two tiers and the introduction of a direct jurisdiction should be considered primarily due to the current objective circumstances in which the Administrative Court of Serbia operates and the way in which court jurisdiction in the asylum procedures is regulated in other countries.

Serbia 2002 Progress Report[120] indicated the need to develop the expertise of the Administrative Court judges in the field of asylum. Since then, the judges have undergone training in the asylum procedures.[121] In addition, the recent practice shows that the Administrative Court does not have a Chamber specialized for the asylum issues, and that it mostly reviews the procedural legality of the Asylum Commission's decisions formally. The Administrative Court annulled only two decisions of the Asylum Commission in the old composition, and not one in the new composition. In 2011 and 2012, there were no judgments in which the Administrative Court accepted the claim. The overall number of pending cases at the Court is 43,265, while the average number of cases per judge is 925.4. To ensure efficient and effective operations of the Court, the necessary minimum would be 50 judges (currently 37) and it is necessary to continue with the assessment of

[120] Serbia 2012 Progress Report, October 2012, Brussels, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf

[121] Annual Performance Report of the Administrative Court by Matters for the period 1 January 2013 – 31 December 2013.

the factors determining the actual necessary staffing numbers. A staff increase would create a basis for the establishment of the two-tier administrative judiciary, which is identified as one of the main objectives in the 2013-2018 National Judiciary Strategy.[122]

Therefore, the Court is yet to undergo reform, and at this point there is no precise information on how the two tiers would be introduced and, consequently, there are no indications in terms of the jurisdiction for the asylum procedures.

The comparative solutions mainly imply specialized Administrative Court departments, i.e. courts specialized for the asylum or aliens' status issues (*Belgium Council for Alien Law Litigation (CALL)*, Austria - *the Asylum Court, UK - the First-Tier Tribunal, Immigration and Asylum Chamber, Upper Tribunal Immigration and Asylum Chamber*. In addition, in terms of the general (regular) administrative courts, the main criterion applied is the real jurisdiction (depending on the asylum seeker's place of residence (e.g. Germany).

It is interesting that in the Republic of Croatia, in 2007, there were proposals to introduce second-tier judicial review. However, after a careful consideration and an intervention by the civil society organizations (Croatian Legal Centre, at that time, an UNCHR implementing partner, and the provider of legal aid to asylum seekers), the solution was dropped.[123] Instead of that, they introduced a solution that implies shared competence between the Commission (the authority deciding on appeals) and the Administrative Court in charge of resolving appeals against the Commission, as well as decisions taken in the accelerated procedure when an appeal is found admissible. *The date of the abolishment of the Commission has been deferred until such time the the envisaged reform of the Administrative Court has been implemented.*

*We believe that, at this point, in Serbia, it would be advisable to keep the principle of the administrative control of the administration, and use the additional resources for the education of the members of the second-instance authority.*

## PROPOSAL BY BCHR

This Article needs to be deleted and direct judicial review needs to be introduced. See the explanation of the BCHR proposal regarding Article 35, Court protection.

[122] *Ibid.*

[123] Razvoj sustava azila u Hrvatskoj, Goranka Lalić Novak, Društveno veleučilište u Zagrebu, 2010.

## The Asylum Centre
## Article 21

Pending the adoption of the final decision on asylum applications, asylum seekers shall be provided with accommodation and basic living conditions at the Asylum Centre, which is part of the Commissariat for Refugees as a special organization, in accordance with the Law on State Administration and the Law on Civil Servants. The Government shall pass an act establishing one or more asylum centres**.**

PROPOSAL TO AMEND

Paragraph 1 is inserted:

Pending the adoption of the final decision on asylum applications, asylum seekers shall be provided with accommodation and basic living conditions at the Asylum Centre, which is part of the Commissariat for Refugees and Migration as a special organization, in accordance with the Law on State Administration and the Law on Civil Servants. The Government shall pass an act establishing one or more asylum centres.

PROPOSAL TO AMEND

PROPOSAL BY BCHR

The Asylum Centre

Article 21

Pending the adoption of the final decision on their asylum applications, asylum seekers shall be provided accommodation and basic living conditions at the Asylum Centre, which is part of the Asylum Office. The Government shall pass an act establishing one or more asylum centres.

RATIONALE

Providing accommodation for asylum seekers is an obligation of the State ensuring primarily care and assistance to asylum seekers during their stay in the territory of the country, i.e. during the asylum procedure, when they are unable to provide accommodation on their own due to insufficient resources. Thus, the stay in the accommodation centres is closely related to the asylum procedure. In other words, only those persons who have initiate the asylum procedure should be accommodated in centres for asylum seekers (See the Preamble to the Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers).

From the entry into force of the Asylum Law, there have been numerous problems in practice due to the shared jurisdiction between the Asylum Office and the Commissioner for Refugees and Migrations. One of

the problems brought about by this shared jurisdiction occurred at the end of 2013, when the temporary asylum centres were opened without any prior consultations with the Ministry of the Interior in Sjenica and Tutin where the Asylum Office, which is located in Belgrade, does not perform any official activities due to a lack of human and financial capacities. That resulted in the persons accommodated in the above two centres effectively put in a legal vacuum, without a clearly defined status, considering that they had expressed their intention to seek asylum, but were not registered and were not allowed to apply for asylum. Asylum centres must be in the function of the procedure and must ensure that the asylum seekers have contact with their relatives, UNCHR, legal representatives, and the NGOs involved in the human rights protection (Article 14 of the Directive 2003/9/EC laying down minimal standards for the reception of asylum seekers).

If the Asylum Office is transferred to the civilian part of the Ministry of the Interior, it would be more efficient in terms of the procedure for the asylum centres to be under its jurisdiction. That would allow for the transfer of responsibilities to be avoided and a clear link to be established between the procedure and accommodations, which is currently missing. Also, in that case, the Ministry of the Interior would have to perform the official activities within the asylum procedure in such a centre (or such centres) and they would be organized in accordance with the existing capacities of the MoI. The Asylum Office could delegate the management of the asylum centres to the Commissioner for Refugees, social services or various associations. This model exists in many European countries: The Czech Republic, Hungary, Croatia, Poland, and Austria.

The operation of the Asylum Centre shall be managed by the official in charge of the Commissariat for Refugees, who shall regulate the internal organization and job classification at the Asylum Centre by passing an act on it.

PROPOSAL TO AMEND

PROPOSAL BY GROUP 484

In paragraph 2, the following wording is inserted:

The operation of the Asylum Centre shall be managed by the official in charge of the Commissariat for Refugees and Migration, who shall regulate the internal organization and job classification at the Asylum Centre by passing an act on it.

PROPOSAL BY BCHR

This paragraph needs to be deleted.

The official in charge of the Commissariat for Refugees shall pass regulations pertaining to the housing conditions, House Rules and providing the basic living conditions at the Asylum Centre.

PROPOSAL TO AMEND

PROPOSAL BY GROUP 484

In paragraph 3, the following wording is inserted:

The official in charge of the Commissariat for Refugees and Migration shall pass regulations pertaining to the housing conditions, House Rules and providing the basic living conditions at the Asylum Centre.

PROPOSAL BY BCHR

Paragraph 3 is revised:

The Minister shall pass the regulations relating to the housing conditions, House Rules, and the provision of the basic living conditions at the Asylum Centre.

RATIONALE

This paragraph is harmonized with the proposal for the asylum seekers' accommodation to be under the jurisdiction of the Asylum Office.

The funds for the operation of the Asylum Centre shall be provided from the budget of the Republic of Serbia.

PROPOSAL TO AMEND

PROPOSAL BY GROUP 484

Group 484 believes that the solution from the currently existing Asylum Law needs to be kept. Also, it has to be noted that in order to establish an efficient system it is necessary to stipulate that the officials of the Immigration Department (Asylum Office) must be allocated to the asylum centres, to be able to perform the actions that are part of the asylum procedure. The practice established in the Asylum Centre in Banja Koviljača has demonstrated the benefits of such a solution. With further clarification of the actions and responsibilities relating to the operations of the centres themselves, the asylum system could be more efficient without changing the jurisdiction (e.g. stipulate that the list of persons accommodated in the asylum centres is to be maintained jointly by the manager of the centre and the authorized officer (Asylum Department) of the Asylum Office to ensure that persons can leave the centre only with the consent of both the authorities, etc).

The EU legislation does not provide specific guidelines on how the jurisdiction for the care (reception) of asylum seekers needs to be regulated, and the experiences of the Member States in this respect vary.

For further information see: http://goo.gl/FStJX4

## IV THE ASYLUM PROCEDURE

### Intention to seek asylum
### Article 22

An alien may, verbally or in writing, express his/her intention to seek asylum to an authorized police officer of the Ministry of the Interior, during a border check in the course of entering the Republic of Serbia, or inside its territory.

PROPOSAL TO AMEND

Paragraph 2 is inserted:

If an alien expresses his/her intention to seek asylum to the officers of other administrative or judicial authorities, that person shall be referred to the nearest territorial organizational unit of the Ministry of the Interior.

RATIONALE

In practice, unaccompanied minors often express their intention during their stay in one of the two existing Units for the accommodation of unaccompanied alien minors operating within the Institute for Education of Children and Youth in Belgrade and in Nis. "If they express their intention to seek asylum, as most of them do immediately upon the reception, the relevant officials of the MoI are promptly informed and, following that, the measures are taken to place them in the asylum centres."[124] In addition, there were cases of persons expressing their intention before the magistrates in the misdemeanour courts in the course of the proceedings for illegal entry or stay in the territory of the Serbia.[125]

The Directive on Asylum Procedures 2013/32 / EC (Article 6, subparagraph 1 (3)) stipulates that Member States must ensure that the public authorities that persons who wish to apply for asylum would likely turn to are able to instruct them how and where they can submit their application and/or may require these authorities to forward the applications to the competent authority. In addition, the Directive stipulates the obligation to ensrure that the authorities that could reasonably be expected to come in contact with the above persons have adequate knowledge of the international protection issues.

[124] Deca pred zakonom: u međunarodnom tranzitu i kao tražioci azila, Group 484, February 2013. http://www.grupa484.org.rs/sites/default/files/Deca%20pred%20zakonom,%202013.pdf

[125] http://www.azil.rs/documents/category/odabrane-presude

An alien who has expressed an intention to seek asylum shall be entered into records and referred to the Asylum Office, i.e., the Asylum Centre. An alien shall be under an obligation to report within 72 hours to an authorized officer of the Asylum Office, i.e., the Asylum Centre.

If an authorized officer of the Ministry of the Interior, in the case referred to in paragraph 1 of this Article, suspects that one of the reasons for the restriction of movement referred to in Article 51 of this Law applies to the case in hand, he/she shall escort the alien to the Asylum Office or the Asylum Centre.

Paragraphs 2 and 3 are deleted, i.e. the provisions, with some minor changes, have become an integral part of the Article on the referral of asylum seekers to Asylum Centres.

PROPOSAL TO AMEND

Registration

Article 22a

An authorized officer of the Ministry of Interior shall register an asylum seeker and his/her family members
The registration shall include:
1) establishing identity;
2) taking a photograph;
3) taking fingerprints, and
4) temporary seizure of all identification papers and documents which can be of relevance in the asylum procedure, of which a certificate shall be issued to an alien.

Asylum seeker who possesses a passport, an identity card or some other identification document, a residence permit, a visa, a birth certificate, a travel ticket and/or another document or some official communication of relevance to the asylum procedure, shall be obliged to submit them upon registration or when filing an asylum application, but prior to his/her interview at the latest.

An authorized police officer shall have the right to search asylum seeker and his/her personal belongings for the purpose of finding identification papers and documents.

An authorized police officer shall inform the asylum seeker about the actions that will be taken during the registration in a language that he/she can understand or for which it could reasonably be expected that he/she can understand it.
If the person intentionally obstructs, avoids or fails to consent to the registration referred to in paragraph 2 of this Article it shall be deemed that he/she has waived the intention to seek asylum.

**The procedures for the registration of persons who have expressed their intention to seek asylum shall be specified by a regulation of the Minister.**

RATIONALE

The proposed solution is a modification of the proposal formulated in the course of the work of the Project Group, which was established by the Serbian MoI. Taking into account the character of the current migration flows to the territory of the Republic of Serbia, almost all the key stakeholders are unanimous in their opinion that asylum seekers need to be registered at the eraliest possible stage, based on precise parameters. This procedure is important for several reasons: 1. to reduce the potential "abuse of the asylum system;" 2. to obtain accurate data on asylum seekers; 3. to facilitate comparison of data with the records relating to other categories of forced migrants (irregular migrants/persons convicted for illegal stay in Serbia or illegal crossing of the state border, implementation of readmission agreements, etc.).

With respect to the way in which the Article is formulated, there are no major modifications in relation to Article 24 of the current Asylum Law: paragraphs 1 and 3 - revised to ensure they are harmonized with Article 2, paragraph 1 (5). In addition, an innovation in relation to the current Law is that the act of the asylum seeker registration is performed by an authorized officer of the Ministry of the Interior, rather than by an officer of the Asylum Office, as previously envisaged. It actually means that the act of registration will be carried out in the police administrations in which the person applied for asylum and that the data will be forwarded to the Asylum Office.

Paragraph 4 is deleted and the act of issuing identity cards is deferred to a later stage, i.e. after applying for asylum (see the comment, Article 60).

Paragraph 5 is revised to specify the provision more precisely.

Paragraph 6 remains unchanged.

Underlined: In the course of the work of the working group, there were suggestions that the acts of registration and keeping records should be regulated under one Article. We believe that this solution is logical, and its adoption would have its practical advantages - one bylaw regulating the procedures for both registration and keeping records. In this proposal, we did not incorporate these two Articles primarily to allow for keeping track of the amendments that need to be made in relation to the current Asylum Law.

**Keeping records**
**Article 23**

An authorized officer of the Ministry of the Interior, to whom an alien has expressed an intention to seek asylum, shall make a record of it.

The entry into the records shall include the issuance of a prescribed certificate containing the personal data that the alien has provided about him/herself or that can be established on the basis of the identification papers and documents available on his/her person.

The certificate referred to in paragraph 2 shall serve as proof that the alien in question has expressed an intention to seek asylum and that he/she has the residence right for 72 hours.

An authorized police officer shall have the right to search an alien and his/her personal belongings for the purpose of finding identification papers and documents required for the issuance of the certificate referred to in paragraph 2 of this Article. All identification papers and documents which have been found shall be recorded in the certificate.

The manner of making a record of aliens who have expressed an intention to seek asylum shall be regulated in more detail by an act passed by the Minister**.**

PROPOSAL TO AMEND

Keeping records

Article 23

Upon the completion of the registration procedure, the person who has expressed his/her intention to seek asylum shall be entered into the records.

The entry into records shall include the issuance of a prescribed certificate containing the personal data that the alien has provided about him/herself or that can be established on the basis of the identification papers and documents available on his/her person.

The certificate referred to in paragraph 2 shall serve as proof that the alien in question has expressed an intention to seek asylum and that he/she has the residence right for 72 hours.

The manner of making a record of aliens who have expressed an intention to seek asylum shall be regulated in more detail by an act passed by the Minister.

RATIONALE

Paragraph 2: We believe that the introduction of the obligation for the certificate of the expressed intention to include a photograph would minimize the dangers of abuse, i.e. the use of one certificate by several persons.

Paragraph 4 is deleted from this Article, and incorporated in Article 22 a (Registration).

**Registration**
**Article 24**

An authorized officer of the Asylum Office shall register an alien and his/her family members.

The registration shall include:
1) establishing identity;
2) taking a photograph;
3) taking fingerprints, and
4) temporary seizure of all identification papers and documents which can be of relevance in the asylum procedure, of which a certificate shall be issued to an alien.

An alien who possesses a passport, an identity card or some other identification document, a residence permit, a visa, a birth certificate, a travel ticket and/or another document or some official communication of relevance to the asylum procedure, shall be obliged to submit them upon registration or when filing an asylum application, but prior to his/her interview at the latest.

Upon the completion of his/her registration, an alien shall be issued an identity card for asylum seekers.
An alien who deliberately obstructs, avoids or does not agree to the registration referred to in paragraph 1 of this Article shall not be allowed to submit an asylum application.

The manner of conducting the registration referred to in paragraph 1 of this Article shall be prescribed by the Minister**.**

See the comment on Article 22a.

PROPOSAL TO AMEND

Referral to Asylum Centre

Article 23 a

An asylum seeker shall be referred to the Asylum Centre, to which he/she shall report within 72 hours from the issuance of the confirmation referred to in Article 23, paragraph 2, of this Law.

If a person fails to report within the period specified in paragraph 1 of this Article without a justified excuse, the measures in accordance with the regulations on aliens shall be applied.

If the authorized police officer of the Ministry of the Interior, in the event referred to in paragraph 1 of this Article, suspects that any of the reasons for the restriction of movement under Article 51 of this Law applies, he/she shall escort the person to the Asylum Centre.

An unaccompanied minor who has expressed an intention to seek asylum shall be escorted to the Asylum Office or the Asylum Centre accompanied by an officer of the guardianship authority.

Upon the reception at the Asylum Centre, the authorized officer who manages the Centre shall validate the asylum seeker's certificate referred to in Article 23, paragraph 2, of this Law. Such validated certificate may be used as an identification document exclusively in the territory of the city or municipality in which the Asylum Centre is located until the issuance of the identity card.

RATIONALE

See the comment on Article 22 a.

Paragraph 2: The proposed solution has been taken over as a positive solution from the comparative practice of the Republic of Croatia (Asylum Law, NN79/07, 88/10, 143/13, Article 20). We believe that this solution is suitable considering the current migration flows faced by Serbia - a significant number of persons who express their intention do not do so in good faith and never show up at the asylum centres, i.e. they show up at the asylum centres after the expiry of the 72 hour timeline.

Underlined: There is a need to reconsider whether the prescribed timeline of 72 hours is appropriate or a shorter/longer timeline for asylum seekers to report to the Asylum Centre needs to be specified.

Paragraph 3: Taken over from Article 22 of the current Asylum Law – Intention to Seek Asylum

Paragraph 4: Even though the authorities have pointed out that such solution is already implemented in practice, we believe that this obligation must be prescribed explicitely by law, i.e. appropriate bylaw, should the view that the treatment of unaccompanied minors should be regulated under a separate bylaw prevail.

Paragraph 5: To ensure that the asylum seeker is present in order to implement the asylum procedure, it has been stipulated that the certificate may be used as an identification document exclusively in the territory of

the municipality or city in which the Asylum Centre is located. This form of the restriction of movement is in accordance with the provisions of the Asylum Law (Article 51).

## MODEL PROCEDURE II – ACTIONS PRECEDING ASYLUM APPLICATION

Model procedure II, i.e. the part that regulates the actions that precede the asylum application, has been offered as the way in which the procedure will be standardized, largely depends on the technical and human resources that are available or will be available to the competent Ministry, i.e. the competent authority within the Ministry, and the competencies to undertake specific actions by the representatives of the authorized bodies. For example, the way in which the registration procedure will be regulated depends on the technical capacities for fingerprinting in the Asylum Centres/police administrations; the competencies of certain officials of the Serbian MoI to perform fingerprinting: forensic technicians/police inspectors from the Department for Aliens, and the suppression of illegal migrations and human trafficking in police administrations/Asylum Department officers, on the existing human capacities in individual working units in the MoI, primarily the Asylum Department, etc.

### IV THE ASYLUM PROCEDURE

### Intention to seek asylum
### Article 22

An alien may, verbally or in writing, express his/her intention to seek asylum to an authorized police officer of the Ministry of the Interior, during a border check in the course of entering the Republic of Serbia, or inside its territory**.**

PROPOSAL TO AMEND

Paragraph 2 is inserted reading:

If an alien expresses an intention to seek asylum to other administrative or judicial authorities, that person shall be referred to the nearest territorial organizational unit of the Ministry of the Interior.

RATIONALE

In practice, unaccompanied minors often express their intention during their stay in one of the two existing Units for the accommodation of unaccompanied alien minors operating within the Institute for Education of Children and Youth in Belgrade and in Nis. "If they express their intention to seek asylum, as most of them do immediately upon the reception, the relevant officials of the MoI are promptly informed and, following that, the measures are taken to place them in the asylum centres."[126]

[126] Deca pred zakonom: u međunarodnom tranzitu i kao tražioci azila, Group 484, February 2013. http://www.grupa484.org.rs/sites/default/files/Deca%20pred%20zakonom,%202013.pdf

In addition, there were cases of persons expressing their intention before the magistrates in the misdemeanour courts in the course of the proceedings for illegal entry or stay in the territory of the Serbia.[127]

An alien who has expressed an intention to seek asylum shall be entered into records and referred to the Asylum Office, i.e., the Asylum Centre. An alien shall be under an obligation to report within 72 hours to an authorized officer of the Asylum Office, i.e., the Asylum Centre.

PROPOSAL TO AMEND

Paragraph 4 is inserted reading:

A person who having expressed his/her intention to seek asylum fails to report to the authorized officer of the Asylum Office, i.e. Asylum Centre, within the period specified in paragraph 3 of this Article without a justified excuse shall be subject to the regulations on the movement and stay of aliens.

RATIONALE

The solution proposed in the inserted paragraph 4, [has been] taken over as a positive solution from the comparative practice of the Republic of Croatia (*Asylum Law, NN*79/07, 88/10, 143/13, Article 20). We believe that this solution is suitable considering the current migration flows faced by Serbia - a significant number of persons who express their intention do not do so in good faith and never show up at the asylum centres, i.e. they show up at the asylum centres after the expiry of the 72 hour timeline.

If an authorized officer of the Ministry of the Interior, in the case referred to in paragraph 1 of this Article, suspects that one of the reasons for the restriction of movement referred to in Article 51 of this Law applies to the case in hand, he/she shall escort the alien to the Asylum Office or the Asylum.

PROPOSAL TO AMEND

Paragraph 6 is inserted reading:

An unaccompanied minor who has expressed an intention to seek asylum shall be escorted to the Asylum Office or the Asylum Centre accompanied by an officer of the guardianship authority.

RATIONALE

This is in accordance with the principle of special care and the best interest of the child from this Law. Even though the authorities have pointed out that such solution is already implemented in practice, we believe that this obligation must be prescribed explicitely by law, i.e. appropriate bylaw, should the view that the treatment of unaccompanied minors should be regulated under a separate bylaw prevail.

[127] http://www.azil.rs/documents/category/odabrane-presude

**Keeping records**
**Article 23**

An authorized officer of the Ministry of the Interior, to whom an alien has expressed an intention to seek asylum, shall make a record of it.

The entry into records shall include the issuance of a prescribed certificate containing the personal data that the alien has provided about him/herself or that can be established on the basis of the identification papers and documents available on his/her person**.**

PROPOSAL TO AMEND

Paragraph 2 is inserted:

The entry into records shall include the issuance of a prescribed certificate containing the personal data and photography that the alien has provided about him/herself or that can be established on the basis of the identification papers and documents available on his/her person.

RATIONALE

We believe that the introduction of the obligation for the certificate of the expressed intention to include a photograph would minimize the dangers of abuse, i.e. the use of one certificate by several persons.

The certificate referred to in paragraph 2 shall serve as proof that the alien in question has expressed an intention to seek asylum and that he/she has the residence right for 72 hours.

An authorized police officer shall have the right to search an alien and his/her personal belongings for the purpose of finding identification papers and documents required for the issuance of the certificate referred to in paragraph 2 of this Article. All identification papers and documents which have been found shall be recorded in the certificate.

The manner of making a record of aliens who have expressed an intention to seek asylum shall be regulated in more detail by an act passed by the Minister.

**Registration**
**Article 24**

An authorized officer of the Asylum Office shall register an alien and his/her family members.

The registration shall include:
1) establishing identity;
2) taking a photograph;
3) taking fingerprints, and

4) temporary seizure of all identification papers and documents which can be of relevance in the asylum procedure, of which a certificate shall be issued to an alien.

An alien who possesses a passport, an identity card or some other identification document, a residence permit, a visa, a birth certificate, a travel ticket and/or another document or some official communication of relevance to the asylum procedure, shall be obliged to submit them upon registration or when filing an asylum application, but prior to his/her interview at the latest.

Upon the completion of his/her registration, an alien shall be issued an identity card for asylum seekers.
An alien who deliberately obstructs, avoids or does not agree to the registration referred to in paragraph 1 of this Article shall not be allowed to submit an asylum application.

The manner of conducting the registration referred to in paragraph 1 of this Article shall be prescribed by the Minister**.**

PROPOSAL TO AMEND

Registration

Article 24.

An authorized officer of the Ministry of Interior shall register an asylum seeker and his/her family members
The registration shall include:
1) establishing identity;
2) taking a photograph;
3) taking fingerprints, and
4) temporary seizure of all identification papers and documents which can be of relevance in the asylum procedure, of which a certificate shall be issued to an alien.

Asylum seeker who possesses a passport, an identity card or some other identification document, a residence permit, a visa, a birth certificate, a travel ticket and/or another document or some official communication of relevance to the asylum procedure, shall be obliged to submit them upon registration or when filing an asylum application, but prior to his/her interview at the latest.

An alien who intentionally obstructs, avoids or fails to consent to to the registration referred to in paragraph 1 of this Article shall not be allowed to apply for asylum and shall be subject to the regulations on the movement and stay of aliens.

An authorized officer who fails to perform the registeration within the period referred to in paragraph 1 of this Article shall be subject to the disciplinary procedure in accordance with the Law on Police ("Official Gazette of RS," no. 101/2005, 63/2009 - Decision of the Constitutional Court and 92/2011).

RATIONALE

Paragraphs 1 and 3 - revised in order to comply with Article 2, paragraph 1 (5).

Paragraph 4 is deleted and the act of issuing identity cards is deferred to a later stage, i.e. after applying for asylum (see the comment, Article 60).

Paragraph 5 is revised to specify the provision more precisely.

Paragraph 6 remains unchanged.

## Initiating the procedure for granting asylum
## Article 25

The procedure for granting asylum shall be initiated by submitting an asylum application to an authorized officer of the Asylum Office on a prescribed form, within 15 days of the day of registration, and in justified cases, the Asylum Office may extend this time limit at the request of an alien**.**

Before the submission of an asylum application, an alien shall be informed of his/her rights and obligations, especially of the rights to residence, a free interpreter, legal aid and access to UNHCR.

An alien shall lose the right to reside in the Republic of Serbia if he/she unjustifiably fails to abide by the time limit referred to in paragraph 1 of this Article.

The content and the format of the asylum application form shall be prescribed by the Minister.

PROPOSAL TO AMEND

Initiating asylum procedure

Article 25

An asylum application shall be submitted orally for the record to an authorized officer of the Asylum Office within 8 days from the date of reception to the Asylum Centre. In the event of asylum seekers residing outside the Asylum Centre, based on the decision of the Asylum Office, the asylum application shall be submitted within 8 days from the date of the decision granting temporary residence at a private address. In justified cases, at the request of the asylum seeker, the Asylum Office may extend this timeline. The procedure shall be initiated by signing and concluding the minutes.

Before the submission of an asylum application, asylum seeker shall be informed of his/her rights and obligations, especially of the rights to residence, a free interpreter, legal aid and access to UNHCR.
The legal representative of the alien shall be present during the submission of the asylum application.
The contents and the form of asylum applications shall be specified by the Minister.

The authorized officer of the Asylum Office shall pay special attention during the submission of the asylum application to ensure that the alien applying for asylum has indicated all the facts and circumstances relevant for the implementation of the provisions on the abbreviated procedure referred to in Article 35b.

If the authorized officer of the Asylum Office fails to allow the submission of the application within the timeline referred to in Paragraph 1 of this Article, the asylum seeker may do so by filling out the application form with the assistance of his/her legal representative within 8 days from the expiry of the timeline referred to in Paragraph 1 of this Article. It shall be considered that the procedure is initiated after the competent authority has received a proper asylum application.

In the event that the application has been submitted in accordance with Paragraph 6 of this Article, before adopting the decision, the authorized officer of the Asylum Office shall allow the person to make a statement in accordance with Article 26 of this Law.

RATIONALE

A more precise definition of the initiation of the asylum procedure is intended primarily to ensure the harmonization with the Law on Administrative Procedure (LAP) – in the event that the initiation of the procedure requires the existence of an application, the procedure is initiated after the competent authority has performed any procedural action for the purpose of conducting the procedure – the principle of officiality of administrative procedure (Article 125 of the LAP). In addition, the submission of asylum applications as described above enables the abbreviated procedure, without the act of taking statement, and is in accordance with the principle of directness under the LAP, and the principle of ensuring access to a hearing under the LAP (Article 9).

Paragraphs 2 and 3 specify more precisely the procedural safeguards contained in the principles in this proposal (the right to legal aid, the best interests of the child, and the care of persons with special needs).

Paragraphs 5 and 6 have been introduced to ensure additional guarantees for the access to the asylum procedure and the establishment of a fair and efficient asylum procedure in Serbia. Namely, until now, in practice, in some cases even several months would pass from the time of arrival to the Asylum Centres before applying for asylum. In addition, paragraph 6 has been introduced to ensure the respect for the principle of directness in the event that the application is submitted as described in paragraph 5.

**Interview**
**Article 26**

An authorized officer of the Asylum Office shall interview an asylum seeker in person as soon as possible. An asylum seeker may be interviewed more than once.

An audio recording of an interview may be made provided the asylum seeker in question is informed of this.

A legal representative of an asylum seeker and a UNHCR representative may be present at an interview, provided that the asylum seeker does not object to that.

An authorized officer of the Asylum Office shall endeavour during the interview to establish all the facts of relevance to making a decision on an asylum application, and in particular:
1) the identity of the asylum seeker in question,
2) the grounds on which his/her asylum application is based,
3) the asylum seeker's movement after leaving his/her country of origin, and
4) whether the asylum seeker has previously sought asylum in any other country.

An asylum seeker shall be obliged to fully cooperate with the Asylum Office and to accurately present all the facts of relevance to decision-making**.**

PROPOSAL TO AMEND

Oral hearing

Article 26

Within 15 days from the date of the asylum application, the authorized officer of the Asylum Office shall hold the oral hearing to which he/she shall invite the asylum seeker to give a statement accompanied by his/her legal representative, if any. The asylum seeker may give a statement several times.

The statement may be recorded in visual and audio formats, after the asylum seeker has been informed thereof.

The UNCHR representatives may be present during the statement giving, if the asylum seeker does not object to it.

The statement giving shall be carried out in the conditions that ensure the confidentiality of the procedure.

Oral hearings shall be closed to the public.

Oral hearings shall be conducted, as a rule, in the absence of the asylum seeker's family members, unless the authorized officer of the Asylum Office considers their presence necessary for the appropriate examination of the asylum application.

During the statement giving , the authorized officer of the Asylum Office shall seek to establish all the facts of relevance to the decision on the asylum application, and in particular:

1) the identity of the asylum seeker;
2) the grounds on which his/her asylum application is based;
3) the asylum seeker's movements after leaving the country of origin, and
4) whether the asylum seeker has already sought asylum in another country.

The asylum seeker shall fully cooperate with the Asylum Office and present accurately all the facts of relevance to the decision-making.

RATIONALE

In line with the cost-effectiveness principle, we have introduced the prescribed timeline of 15 days during which the Asylum Office should interview the asylum seeker. In practice, the interview has on occassion been conducted even 2 months after the date of the asylum application.

The term "interview" has been replaced with the term "oral hearing," which is more suitable for the asylum procedure during which various evidence may be presented and which is by itself more adversarial. This ensures the harmonization of the Asylum Law with the Law on General Administrative Procedure, which has subsidiary application in the asylum procedure, and which closely regulates oral hearings.

The remaining amendments to this Article relate to the harmonization of the Asylum Law with the Directive on Asylum Procedures 2013/32/EC, Articles 14, 15, 16, and 17.

## First-instance decisions of the Asylum Office
## Article 27

After conducting the procedure, the Asylum Office shall pass a decision on:
1) granting an asylum application and recognizing the right to refuge or extending subsidiary protection to an alien;
2) refusing an asylum application and ordering an alien to leave the territory of the Republic of Serbia within a set time limit, unless he/she has some other grounds for residence.

The decision referred to in paragraph 1 of this Article shall also apply to a refugee's family members who have not submitted asylum applications.

In legally defined cases, the Asylum Office shall decide to suspend the asylum procedure.

PROPOSAL TO AMEND

First-instance decisions of the Asylum Office

Article 27

The Asylum Office shall pass a decision:

1) granting the asylum application and recognizing the right to asylum or granting subsidiary protection to the asylum seeker;
2) refusing the asylum application and ordering the alien to leave the territory of the Republic of Serbia within a specified timeline, unless he/she can claim residence on other grounds.

In the events specified by law, the Asylum Office shall adopt a conclusion suspending the asylum procedure, i.e. rejecting the asylum application.

The decision referred to in Paragraph 1 of this Article shall apply also to the refugee's family members who have not submitted individual asylum applications.

The Asylum Office shall pass the decision within 60 days from the date of the initiation of the asylum procedure, unless otherwise provided by this Law.

Underlined: The current Asylum Law regulates inconsistently the issue of the decisions made during the asylum procedure. In fact, some decisions are classified according to their procedural characteristics, while in some articles, the classification is done according to the qualitative properties of the grounds (reasons) for their adoption. Therefore, there is a need ot consider a solution that would regulate in a uniform manner the part of the law relating to the types of decisions and the grounds for their adoption. In the proposed solutions, for easier comprehension of the proposed amendments, we have not proposed a change of classification, assuming that the priority should be given to the necessary changes and the introduction of new grounds for the adoption of decisions.

RATIONALE

The current provisions specify rather vaguely that the procedure is suspended by a decision (Article 34, Paragraph 2), which by its nature can be a decision or a conclusion. Therefore, there is a need to regulate this issue more explicitly and consistently. One option is for both the situations (the suspension of the procedure

and the rejection of the asylum application) to prescribe the adoption of a conclusion, as provided by the LAP. The alternative is to stipulate the adoption of a "procedural decision" for both the suspension of the procedure and the rejection of the asylum application.
Source: *Pravo na azil: međunarodni i domaći standardi*, Ivana Krstić PhD and Marko Davinić PhD, Belgrade: Dosije studio, 2013, 324.

With respect to Paragraph 4, it did not specify explicitly the timeline for the adoption of the decision, referring instead to the subsidiary application of the LAP, and the Asylum Department adopted decisions within two months, deciding exclusively in separate investigation procedures (Article 208, Paragraph 1 of the LAP).

**Granting an asylum application**
**Article 28**

The Asylum Office shall issue a decision by virtue of which the right to refuge is recognized or subsidiary protection granted to an alien once it has established that the person who has filed an asylum application meets the requirements for being granted the right to refuge or subsidiary protection, if no reasons to deny the right to refuge exist.

**Rejecting an asylum application**
**Article 29**

The Asylum Office shall issue a decision rejecting the asylum application of an alien if it has established that the claim is unfounded or that there are statutory reasons for denying the right to asylum.

The decision referred to in paragraph 1 of this Article shall include a justification.

**Unfounded asylum applications**
**Article 30**

An asylum application shall be considered unfounded if it has been established that a person who filed the application does not meet the requirements prescribed for granting the right to refuge or subsidiary protection, and in particular:

1) if the asylum application is based on untruthful reasons, fraudulent data, forged identification papers or documents, unless the applicant can provide valid reasons for that;

2) if the statements given in the asylum application regarding facts of relevance to the decision on asylum contradict the statements made in an interview with the asylum

seeker in question or other evidence gathered in the course of the procedure (if, contrary to the statements given in the application, it has been established in the course of the procedure that the asylum application was submitted for the purpose of postponing deportation, that the asylum seeker has come for purely economic reasons and the like);

3) if the asylum seeker refuses to make a statement regarding the reasons for seeking asylum or if his/her statement is unclear or does not contain information indicating persecution.

**Reasons for denying the right to asylum**
**Article 31**

The right to asylum shall not be recognized to a person with respect to whom there are serious reasons to believe that:

1) he/she has committed a crime against peace, a war crime, or a crime against humanity, according to the provisions of international conventions adopted with a view to preventing such crimes;
2) he/she has committed a serious non-political crime outside the Republic of Serbia prior to entering its territory;
3) he/she is responsible for acts contrary to the purposes and principles of the United Nations.

The right to asylum shall not be recognized to a person who enjoys protection or assistance from some of the institutions or agencies of the United Nations, other than UNHCR.

The right to asylum shall not be recognized to a person to whom the competent authorities of the Republic of Serbia recognize the same rights and obligations as to the citizens of the Republic of Serbia.

**Submission of a new asylum application**
**Article 32**

An alien whose asylum application was previously refused in the Republic of Serbia may file a new application if he/she provides evidence that the circumstances relevant for the recognition of the right to refuge or for granting subsidiary protection have substantially changed in the meantime. If he/she fails to do so, the application shall be rejected**.**

PROPOSAL TO AMEND

Submission of a new asylum application

Article 32

An alien whose asylum application was previously refused in the Republic of Serbia may file a new application if he/she provides evidence that the circumstances relevant for the recognition of the right to refuge or for granting subsidiary protection have substantially changed in the meantime.

Deleted: If he/she fails to do so, the application shall be rejected.

**Rejection of asylum applications**
**Article 33**

The Asylum Office shall reject an asylum application without examining the eligibility of an asylum seeker for the recognition of asylum if it has established:

1) that the asylum seeker could have received effective protection in another part of the country of origin, unless he/she cannot be reasonably expected to do so in view of all the circumstances,
2) that the asylum seeker enjoys the protection of, or receives assistance from, an agency or a body of the United Nations Organization, other than UNHCR, or has been granted asylum in some other country;
3) that the asylum seeker has the citizenship of a third country;
4) that the asylum seeker can receive protection from a safe country of origin, unless he/she can prove that it is not safe for him/her;
5) that an asylum application, which the asylum seeker has submitted in another country that complies with the Geneva Convention was refused, and the circumstances upon which the application was based have not changed in the meantime, or if he/she has already filed an asylum application in another country observing the Geneva Convention;
6) that the asylum seeker has come from a safe third country, unless he/she can prove that it is not safe for him/her;
7) that the asylum seeker has deliberately destroyed a travel document, an identification paper or some other written official communication, which could have been of relevance to the decision on asylum, unless he/she can quote valid reasons for that.

Before issuing a decision on rejecting an asylum application, the Asylum Office shall question the asylum seeker with respect to all the circumstances which exclude the reasons for rejecting an asylum application referred to in paragraph 1 of this Article**.**

PROPOSAL TO AMEND

Rejection of asylum applications

Article 33

The Asylum Office shall reject an asylum application without examining the eligibility of the asylum seeker to be recognized asylum if it has established:

1) that the asylum seeker could have received effective protection in another part of the country of origin, unless he/she cannot be reasonably expected to do so in view of all the circumstances,
2) that the asylum seeker has the citizenship of a third country whose protection he/she did not request, unless he/she can quote valid reasons indicating persecution in that country;
3) that the asylum application that the asylum seeker submitted in another country that complies with the Geneva Convention was refused, and the circumstances upon which the application was based have not changed in the meantime;
4) that the asylum seeker has deliberately destroyed his/her travel document, identification papers or any other official communication that could have been of relevance for the decision on asylum, unless he/she can quote valid reasons for doing so.

In the event of paragraph 1, subparagraph 1, of this Article, the Asylum Office shall take into account the general circumstances in the relevant part of the country at the time of the adoption of the decision, as well as the asylum seeker's personal circumstances.

Before issuing a decision rejecting an asylum application, the Asylum Office shall interrogate the asylum seeker with respect to all the circumstances excluding the grounds for rejecting asylum applications referred to in paragraph 1, subparagraphs 1 to 5, of this Article.

RATIONALE

Paragraph 2 has been deleted, as the current law stiplates the same grounds for both denial (decision on refusal) and rejection.

Paragraph 3 – the wording "*whose protection he/she did not request unless he/she can quote valid reasons indicating persecution in that country*" is inserted. International protection should not be denied solely on the basis of the fact that the asylum seeker has the citizenship of a third country. Essentially, protection should not be denied in the cases where the asylum seeker has the citizenship of a third country that is not effective or when the asylum seeker would not be able to enjoy effective protection by his/her other country(countries).

Paragraph 4 has been deleted, stipualted as the grounds qualifying the application as manifestly unfounded.

Paragraph 5 has been revised and the wording "*or if he/she has already submited an asylum application in another country observing the Geneva Convention*" has been deleted; the fact of submitting an application alone does not necessarily mean that the person had the opportunity for his/her application to be assessed. Paragraph 6 has been deleted, stipulated as the grounds qualifying the application as inadmissible.

**Suspension of the procedure and restitutio in integrum**
**Article 34**

The procedure for granting asylum shall be suspended *ex officio* if an asylum seeker:

1) withdraws his/her asylum application;
2) despite having received a duly served summons, fails to appear for an interview or declines to make a statement, without providing a valid reason for doing so;
3) without a valid reason, fails to notify the Asylum Office of a change of address at which he/she resides within three days of the said change, or if he/she prevents the service of a summons or another written official communication in some other way;
4) leaves the Republic of Serbia without the approval of the Asylum Office.

In its decision to suspend the procedure, the Asylum Office shall set a time limit within which an alien who has no other grounds for residing in the Republic of Serbia must leave its territory, and if he/she fails to do so, he/she shall be forcibly expelled, in accordance with the law governing the stay of aliens.

An asylum seeker may, within three days of the date when the reasons for his/her failure to respond to the summons for an interview or to report a change of address in a timely manner ceased to apply, submit a proposal for restoration to the original condition (*restitutio in integrum*).

A decision on the proposal for restoration to the original condition shall be taken by the Asylum Office.

PROPOSAL TO AMEND

PROPOSAL BY BCHR

Court protection

Article 35

The decision by the Asylum Office on the asylum application shall be considered final. The decision may be contested in an administrative dispute. An appeal shall suspend the enforcement of the contested decision.

An asylum seeker may contest the final decision of the Administrative Court by submitting a judicial review application to the Supreme Court of Cassation.

An asylum seeker shall be exempt from the payment of the court fees in the proceedings before the Administrative Court and the Supreme Court of Cassation.

RATIONALE

Paragraph 1:

A direct judicial review of the first-instance decision has been introduced to ensure efficient and cost-effective proceedings, as well as the provision of a more effective legal remedy to asylum seekers.

Judges are independent and autonomous in their work and judicial control is more effective than administrative controls. The introduction of a direct judicial control in the asylum procedure will take less time and it will be more efficient. It would be necessary to establish a special court department within the Administrative Court that would specialize in refugee law.

Taking into account the criteria prescribed for the selection of judges, we believe that judges are more competent to review the legality of the decisions of the Asylum Office.
In addition, that would ensure compliance with the applicable EU standards, which will be a requirement in the coming period. In the course of this round of amendments, it is necessary to adopt as many applicable EU standards as possible to ensure that they are achieved efficiently. We believe that this is not an area that requires a step-by-step approach in achieving the standards, and that it can be done immediately by introducing all these changes at once. As noted above, these amendments would imply also the establishment of a specialized department, as well as special training for the acting judges. With that regard, assistance could be provided by international donors.

Direct judicial review is implemented in: Germany, Hungary, Austria, and the Czech Republic...
Austria has a specialized administrative court that decides in the asylum procedure.

The Directive on Asylum Procedures 2013/32/EC, in Article 46, and the still effective Directive on Asylum Procedures 2005/85/EC, in Article 39, stipulate that Member States need to ensure that asylum seekers have access to an effective remedy before court.

Procedure Directive 2013/32/EC

Article 46

The right to an effective remedy

1. Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the following:

(a) a decision taken on their application for international protection, including a decision:

(i) considering an application to be unfounded in relation to refugee status and/or subsidiary protection status;

(ii) considering an application to be inadmissible pursuant to Article 33(2);

(iii) taken at the border or in the transit zones of a Member State as described in Article 43(1)

(iv) not to conduct an examination pursuant to Article 39;

(b) a refusal to reopen the examination of an application after its discontinuation pursuant to Articles 27 and 28;

(c) a decision to withdraw international protection pursuant to Article 45.

2. Member States shall ensure that persons recognized by the determining authority as eligible for subsidiary protection have the right to an effective remedy pursuant to paragraph 1 against a decision considering an application unfounded in relation to refugee status.

Without prejudice to paragraph 1(c), where the subsidiary protection status granted by a Member State offers the same rights and benefits as those offered by the refugee status under Union and national law, that Member State may consider an appeal against a decision considering an application unfounded in relation to refugee status inadmissible on the grounds of insufficient interest on the part of the applicant in maintaining the proceedings.

3. In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance.

4. Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy pursuant to paragraph 1. The time limits shall not render such exercise impossible or excessively difficult.

Member States may also provide for an *ex officio* review of decisions taken pursuant to Article 43.

5. Without prejudice to paragraph 6, Member States shall allow applicants to remain in the territory until the time limit within which to exercise their right to an effective remedy has expired and, when such a right has been exercised within the time limit, pending the outcome of the remedy.

6. In the case of a decision:

considering an application to be manifestly unfounded in accordance with Article 32(2) or unfounded after examination in accordance with Article 31(8), except for cases where these decisions are based on the circumstances referred to in Article 31(8)(h);
b) considering an application to be inadmissible pursuant to Article 33(2)(a), (b) or (d);
(c) rejecting the reopening of the applicant's case after it has been discontinued according to Article 28; or
(d) not to examine or not to examine fully the application pursuant to Article 39,
a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon the applicant's request or acting ex officio, if such a decision results in ending the applicant's right to remain in the Member State and where in such cases the right to remain in the Member State pending the outcome of the remedy is not provided for in national law.
7. Paragraph 6 shall only apply to procedures referred to in Article 43 provided that:
(a) the applicant has the necessary interpretation, legal assistance and at least one week to prepare the request and submit to the court or tribunal the arguments in favour of granting him or her the right to remain on the territory pending the outcome of the remedy; and
(b) in the framework of the examination of the request referred to in paragraph 6, the court or tribunal examines the negative decision of the determining authority in terms of fact and law.
If the conditions referred to in points (a) and (b) are not met, paragraph 5 shall apply.
8. Member States shall allow the applicant to remain in the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory, laid down in paragraphs 6 and 7.
9. Paragraphs 5, 6 and 7 shall be without prejudice to Article 26 of Regulation (EU) No 604/2013.
10. Member States may lay down time limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.
11. Member States may also lay down in national legislation the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his or her remedy pursuant to paragraph 1, together with the rules on the procedure to be followed.

Taking into account that the Law on Administrative Disputes does not stipulate the automatic suspensive effect of the application, such effect of the application needs to be stipulated in the Asylum Law, as that is a standard that is required by the ECHR in respect to the remedies against the decisions whose enforcement could result in a violation of Articles 2 and 3 of the European Convention on Human Rights.

Paragraph 2:

In addition, the possibility to submit a judicial review application to the Supreme Court of Cassation has been stipulated as an extraordinary remedy, which is a precondition for addressing the Supreme Court of Cassation (Article 49, paragraph 2, subparagraph 1 of the Law on Administrative Disputes). Direct judicial review, or the

lack of possibility to appeal in an administrative dispute, will imply automatically that the procedural prerequisite for addressing the Supreme Court of Cassation is satisfied.

The Law on Administrative Disputes stipulates the following:

Terms and grounds for submission
Article 49
The party and the competent public prosecutor may submit a judicial review application (hereinafter: the Application) to the Supreme Court of Cassation against the final decision of the Administrative Court.
The Application may be submitted:
1) when it is stipulated by the law;
2) in the cases in which the court had full jurisdiction to decide;
3) in the matters in which the administrative procedure excluded appeal.
The Application may be submited for a violation of law, other regulation or a general act or a violation of the rules of procedure that could influence the decision in the matter.

Paragraph 3:

Taking into account that asylum seekers belong to particularly vulnerable groups that are potential welfare beneficiaries, it is necessary to stipulate that they are exempt from the payment of court fees, in order to facilitate their access to legal remedies.

**Time limit for lodging an appeal**
**Article 35**

An appeal against first-instance decisions issued in the asylum procedure shall be lodged within fifteen days of the date of receipt of the first-instance decision.

PROPOSAL TO AMEND
PROPOSAL BY GROUP 484
Proceedings before Administrative Court
Article 35

The submission of an appeal and the proceedings before the Administrative Court shall be subject to the provisions of the Law on Administrative Disputes ("The Official Gazette of the RS," no. 111/2009).

An appeal submitted with the Administrative Court shall not suspend the enforcement, unless otherwise provided by this Law.

An asylum seeker who has been granted asylum and a person who has been granted temporary protection shall be exempt from the payment of the costs of administrative dispute.

RATIONALE

Paragraph 1

Judicial review was not stipulated explicitly by the provisions of the Asylum Law.

Paragraph 2

As a rule, an application submited with the Administrative Court does not suspend the enforcement of the administrative act it contests and, consequently, taking into account the potential consequences for the asylum seeker (being returned to the country where he/she would face persecution or a substantial risk), it is necessary to stipulate the suspensive effect of the application in the asylum procedures.

Paragraph 3

Taking into account that asylum seekers belong to particularly vulnerable groups that are potential welfare beneficiaries, it is necessary to stipulate that they are exempt from the payment of court fees, in order to facilitate their access to legal remedies.

PROPOSAL TO AMEND

Abbreviated procedure

Article 35b

Upon the submission of the application, in accordance with the established facts and the circumstances, the Asylum Office may adopt a decision if:

1) the asylum application is inadmissible,

2) the asylum application is manifestly well-founded,

3) the asylum application is manifestly unfounded.

The provision of paragraph 1, subparagraph 3, of this Article shall not apply if the asylum application is submitted by an unaccompanied minor.

The Asylum Office shall adopt the decision within 30 days from the initiation of the asylum procedure.

In the event that the abbreviated procedure is not completed within the timeline specified in paragraph 3 of this Article, the provisions of Article 27, paragraph 4, of this Law shall apply.

RATIONALE

Almost all EU countries stipulate the abbreviated procedures and the so-called admissibility procedures. Such provisions arise from the Directive on Asylum Procedures 2013/32/EU. In addition, they stilpulate also the border or airport procedures.

One thing that is common to all of the above procedures is the obligation to respect the fundamental rules of procedure such as the right to legal aid, the possibility of a revision of the decisions by an independent authority, direct contact with the decision-maker, etc.

The proposed solution incorporates two types of procedures – the abbreviated procedure and the so-called admissibility procedure.

In this procedure, the decision is made without a hearing, and the principle of directness is guaranteed by the way in which the procedure for the submission of asylum applications is stipulated. In addition, this satisfies the requirements for the abbreviated procedure as specified by the Law on Administrative Procedure (Articles 139-148). Furthermore, the proposed solution is in accordance with Article 12 of the Directive on Asylum Procedures, laying down exceptions to a hearing in person.

PROPOSAL TO AMEND

Inadmissible applications

Article 35c

An asylum application shall be considered inadmissible if:

(1) the asylum seeker has been recognized as a refugee in another country, and has a possibility to avail himself/herself effectively of such protection;

(2) after the final and unappealable decision on refusal, that same person resubmitted the asylum application based on the same facts;

(3) the asylum seeker came from a safe third country and it can be reasonable expected that he/she would return to that country;

In the event referred to in paragraph 1, subparagraph 3, of this Article, the Asylum Office shall issue a certificate to the asylum seeker, notifying the competent authorities of the relevant third country, in the language of that country, that the merits of the application have not been examined. The asylum seeker may contest the application of the safe third country principle on the grounds that that country is not safe in

his/her case, and that, if he/she returned to the country, he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment, or that his/her application would not be considered.
If the safe third country fails to accept the alien, his/her asylum application shall be decided in accordance with this Law.

In the events referred to in paragraph 1 of this Article, the Asylum Office shall adopt a conclusion rejecting the asylum application.

If it is not able to establish with certainty the existence of the grounds referred to in paragraph 1 this Article, the Asylum Office shall take a statement from the asylum seeker in accordance with the provisions of Article 26.

RATIONALE

The grounds referred to in paragraph 1 are based primarily on the provisions of the Directive on Asylum Procedures 2005/85/EC, i.e. Article 33 and the revised Directive on Asylum Procedures 2013/32/EU).
The comparative solutions Hungary: http://www.asylumineurope.org/reports/country/hungary/asylum-procedure/procedures/admissibility-procedures
With respect to the guarantees relating to the application of paragraph 3, see the comment on Article 5a.

PROPOSAL TO AMEND

Manifestly unfounded asylum applications
Article 35d

An asylum application shall be manifestly unfounded if:

1) the asylum seeker, when submitting the application, without justifiable reasons, failed to provide the information on his/her identity, age, marital status, previous residence, travel routes, personal documents and the reasons for seeking asylum and previously submitted asylum applications;
2) the asylum seeker provided solely the information that is not relevant or is of minimal importance to the outcome of the procedure;
3) the asylum seeker provided inconsistent, contradictory, implausible facts that make the application unconvincing.
4) the asylum seeker came from a safe country of origin, unless he/she can prove that that country is not safe in his/her case.

In the event referred to in paragraph 1 of this Article, the Asylum Office shall adopt a decision rejecting the asylum application.

RATIONALE

In accordance with the UNCHR Executive Committee Conclusions No. 30 (XXXIV), the cases that are obviously "fake" or to use the term "manifestly unfounded" (no relation to the criteria for granting international protection) may be considered in the accelerated procedure. Similarly, an appeal or a judicial review procedure may be simplified in relation to those that are available in the general sense in the cases in which the asylum application was rejected. The Directive on Asylum Procedures 2013/32/EU, Chapter III). Comparative solution: the Croatian Asylum Law (Zakon o azilu RH), NN79/07, 88/10, 143/13, *Article 61.*

With respect to subparagraph 4 – UNCHR does not oppose to the use of the "safe country of origin" principle as long as it is used as a procedural mechanism to prioritize and/or decide in the accelerated procedure on the application in carefully defined situations. It is crucial that:

- the admissibility of each application is examined fully and individually, respecting the relevant procedural safeguards;
- each applicant is given an effective opportunity to contest the presumption of safety of the country of origin in his/her particular case;
- and that the applicant is ensured an effective remedy in the event of a negative decision.[128]

Compartive solution:

- Austria http://www.asylumineurope.org/reports/country/austria/asylum-procedure/procedures/accelerated-procedures;
- France: http://www.asylumineurope.org/reports/country/france/asylum-procedure/procedures/accelerated-procedures

PROPOSAL TO AMEND

Legal remedies in the abbreviated procedure

Article 35e

A decision adopted in the abbreviated procedure may be contested in an appeal to the Asylum Commission within 8 days from that date of the receipt of the decision.

The Asylum Commission shall adopt a decision within 15 days from the date of the appeal.

An appeal submited to the Administrative Court shall not suspend the enforcement of the decision.

[128] http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4bab55ea2

PROPOSAL TO AMEND

PROPOSAL BY BCHR

Legal remedies in the abbreviated procedure

Article 35e

A decision adopted in the abbreviated procedure may be contested in an appeal to the Administrative Court within 8 days from that date of the receipt of the decision.

The Administrative Court shall adopt a decision within 15 days from the date of the appeal.

An appeal submited to the Administrative Court shall suspend the enforcement of the decision.

PROPOSAL TO AMEND

Border and airport transit area procedures

Article 35f

Article 35 f (1)

When an alien who fails to satisfy the requirements for entry into the Republic of Serbia expresses his/her intention to seek asylum at a border crossing or in an airport transit area, the border police officer shall inform promptly the Asylum Office and UNCHR thereof and shall detain the alien for maximum 48 hours.

An alien who expresses his/her intention to seek asylum at a border crossing or in an airport transit area and fails to satisfy the requirements for entry into the Republic of Serbia shall be denied entry into the Republic of Serbia if the following conditions are satisfied:

1) at the border crossing, i.e. in the airport transit area, the alien is provided adequate accommodation and food
2) the asylum seeker has been given an opportunity to submit his/her asylum application in accordance with all the procedural principles stipulated by this Law
3) the asylum seeker's application is inadmissible (Article 35c) or manifestly unfounded (Article 35d), and the officer of the Asylum Office is able to adopt a decision within 48 hours from the moment of the detention.
4) the Administrative Court is able to decide upon the appeal against the decision of the Asylum Office referred to in subparagraph 3 within 15 days from the receipt of the appeal.

An asylum seeker who is detained at the border crossing or in the airport transit area shall be informed in his/her native language or in a language he/she can understand about the grounds for his/her detention. An asylum seeker at the border crossing or in the airport transit area shall be provided health care, an interpreter, free legal aid, contact with UNCHR and the guardian, if the asylum seeker is an unaccompanied minor or a person deprived of legal capacity.

Article 35 f (2)

If the Asylum Office is unable to decide upon the asylum application within 48 hours from the moment of detention at the border crossing, i.e. in the airport transit area, or if it establishes that the requirements referred to in Articles 35c and 35d are not satisfied, i.e. that the application is manifestly well-founded, the asylum seeker shall be granted entry into the Republic of Serbia.

The person referred to in paragraph 1 of this Article shall be subject to the provisions of this Law where it refers to the asylum procedure and the rights and obligations.

Article 35 f (3)

An alien upon whose application the Asylum Office has adopted the decision referred to in Article 35 f(1), paragraph 2, subparagraph 3, of this Law shall be banned entry into the Republic of Serbia in accordance with the regulations governing entry and stay of aliens.

The decision of the Asylum Office referred to in paragraph 1 of this Article may be contested in an appeal submited to the Administrative Court within 3 days from the date of receipt of the decision of the Asylum Office.

An appeal shall not suspend the enforcement.

The proceedings before the Administrative Court shall be urgent. If the Administrative Court fails to decide upon the appeal within 15 days from the receipt of the appeal, the Asylum Office shall issue the alien a certificate of intention to seek asylum with the instructions to report to an Asylum Centre within 72 hours of from the issuance of the certificate, and shall grant him/her entry into the Republic of Serbia.

The Asylum Office shall communicate promptly its decision referred to in paragraph 1 to the competent court that shall decide on the need to detain the alien at the border or in the airport transit area until the finality of the decision.

RATIONALE

There is a need to regulate more explicitly the border procedure, i.e. the airport transit area procedure, considering that from the entry into force of the Asylum Law, in practice, in very few cases, the intention to seek asylum has been recognized at a border crossing or at an airport. While UNCHR had the mandate to decide on the applications for asylum in Serbia, the number of expressed intentions to seek asylum was much higher (see Srbija kao zemlja azila, UNCHR, August 2012, paragraph 14, available at: http://goo.gl/eoQR0z).

Separate regulations on the border, i.e. airport procedures would ensure access to the asylum procedure and the protection from *refoulement*.

In addition, separately regulated border and airport procedures would allow the State to refuse entry to an alien until it is established *prima facie* that the person is a refugee, and to effectively return him/her to the country from which he/she came in accordance with the 1944 Convention on International Civil Aviation - Chicago Convention, which stipulates the obligation of airlines to return all persons who fail to satisfy the requirements for entry into the country to the country where they came from.

This Article is formulated based on the Croatian, German and Austrian regulations governing the asylum procedure.

Special border, i.e. airport procedures are implemented in: Belgium, Germany, Austria, Hungary, France, Croatia.

## V TEMPORARY PROTECTION

PROPOSAL TO AMEND

V TEMPORARY AND HUMANITARIAN PROTECTION

Currently, the Asylum Law does not recognize the institution of humanitarian asylum. Considering the current organization of the Law, and the way in which the institution of humanitarian asylum has been regulated, we believed that the best solution would be for temporary protection and humanitarian asylum to be regulated under the same Chapter of the Law.

### Temporary protection
### Article 36

In the case of a massive influx of persons from a country where their life, safety or freedom is threatened by generalised violence, external aggression, internal armed conflicts, massive violation of human rights or other circumstances that have seriously affected public order,

when it is not possible to carry out an individual procedure for granting the right to asylum due to the massive influx, temporary protection shall be accorded in line with the social, economic and other capacities of the Republic of Serbia. A decision on the provision of temporary protection shall be taken by the Government.

Temporary protection may also be accorded to those persons who lawfully resided in the Republic of Serbia at the time when the decision referred to in paragraph 1 of this Article was issued, but their residence right expired before the reasons for the provision of temporary protection ceased to apply, if other statutory requirements have been met.

The Asylum Office shall carry out the registration of persons enjoying temporary protection by applying measures referred to in Article 24, paragraph 1, subparagraphs 1), 2) and 3) of this Law.
The Asylum Office shall issue individual decisions on granting temporary protection, in accordance with the decision referred to in paragraph 1 of this Article.

PROPOSAL TO AMEND

Paragraph 4 is revised:

The Asylum Office shall issue a decision granting temporary protection for each person individually.

RATIONALE

In this paragraph, the legislature uses the term "individual decisions" to emphasize that they are adopted for each person individually. Such decisions belong to a group of individual administrative acts. The term "individual decisions" is not adequate, as it may imply that there are also "group" decisions, which is not the case. If an administrative act contains general legal norms (applying to an unlimited number of persons), it is not an administrative act, but an administrative regulation.
Source: Pravo na azil: međunarodni i domaći standardi, Ivana Krstić PhD and Marko Davinić PhD, Belgrade: Dosije studio, 2013,341.

Temporary protection is an extraordinary measure and may last for up to one year, and if the reasons for providing temporary protection continue to apply, it may be extended.
Aliens to whom temporary protection has been granted shall have the right to submit an asylum application**.**

PROPOSAL TO AMEND

Humanitarian asylum

Article 36a

Exceptionally, an alien may be granted humanitarian asylum when the requirements for granting the right to asylum or subsidiary protection are not satisfied, if there are special humanitarian grounds for granting asylum. The Asylum Office may grant an alien stay in Serbia on humanitarian grounds such as serious illness or disability, the need for treatment in Serbia, age, severe trauma, the risk of secondary victimization if returned to the country of origin, and other grounds that the Asylum Office considers justified.

The duration of humanitarian asylum shall be determined by the Asylum Office in each individual case.

RATIONALE

This Article specifies the conditions for granting humanitarian asylum and lists *exempli causa* the most common grounds from the comparative law for acquiring of this type of international protection.

We have inserted paragraph 2 specifying when and how humanitarian asylum is ceased. The grounds for the cessation of temporary asylum and its duration are consolidated in the document.

For further information see: The different national practices concerning granting of non-EU harmonized protection statuses produced by the European Migration Network, December 2010 available at: http://goo.gl/6lBlcf

**The cessation of temporary protection**
**Article 37**

Temporary protection shall cease upon the expiry of the period for which it was granted, or when the reasons for which it was granted have ceased to exist, which shall be decided by the Government.

Notwithstanding paragraph 1 of this Article, temporary protection may cease to apply to an alien on the basis of a decision taken by the Asylum Office, if it has been established that in his/her case reasons exist for which the right to refuge may be denied**.**

PROPOSAL TO AMEND

The cessation of temporary and humanitarian protection

Article 37

Temporary protection shall cease upon the expiry of the period for which it was granted, or when the reasons for which it was granted have ceased to exist, which shall be decided by the Government

Humanitarian asylum shall cease upon the expiry of the period for which it was granted, or when the grounds for which it was granted have ceased to exist, which shall be decided by the Asylum Office.

Notwithstanding paragraph 1 of this Article, temporary protection may cease to apply to an alien on the basis of a decision taken by the Asylum Office, if it has been established that in his/her case reasons exist for which the right to refuge may be denied.

RATIONALE

See the explanation regarding the change of the title of this Chapter.

Paragraph 2: the Article that is introduced aims to regulate the cessation of humanitarian asylum, an institution introduced for the first time in the Serbian asylum system.

## The rights and obligations of aliens granted temporary protection
## Article 38

An alien who has been granted temporary protection shall have the right:

1) to residence during the period of the validity of temporary protection;
2) to a personal document confirming his/her status and residence right;
3) to health care, in accordance with the regulations governing health care for aliens;

PROPOSAL TO AMEND

Subparagraph 4 is inserted:

4) The right to work for the duration of the validity of temporary protection in accordance with the regulations governing employment of aliens.

RATIONALE

The Directive on Temporary Protection, in Article 12, stipulates that persons enjoying temporary protection shall be allowed to perform independent and non-independent economic activities and to participate in the activities such as vocational training and acquiring practical work experience.

The Draft Law on Employment of Aliens recognizes persons who have been granted temporary protection as a special category of aliens and stipulates the specific conditions for their employment.

4) to free primary and secondary education in public schools, in accordance with a special regulation;
5) to legal aid, under the conditions prescribed for asylum seekers;
6) to freedom of religion, under the same conditions that apply to the citizens of the Republic of Serbia;
7) to accommodation, in accordance with a special regulation;
8) to affordable accommodation, in the case of handicapped persons.

An alien who has been granted temporary protection shall be equal in terms of obligations with persons whose right to refuge has been recognized.

PROPOSAL TO AMEND

Paragraph 2 is revised:

An alien who has been granted temporary protection shall be equal in terms of his/her obligations as persons who have been granted asylum.

RATIONALE

See the explanation of Article 42 - the use of a single term, particularly in the part specifying the rights and obligations, which includes both persons with refugee status and persons granted subsidiary protection.

PROPOSAL TO AMEND

The rights and obligations of aliens who have been granted humanitarian asylum

Article 38b

An alien who has been granted humanitarian asylum shall have the rights specified by the Asylum Office, which are guaranteed to persons who have been granted asylum, depending on the grounds for which he/she has been granted humanitarian asylum and on his/her personal circumstances.

An alien who has been granted humanitarian asylum shall be equal in terms of his/her obligations as persons who have been granted asylum.

RATIONALE

Ireland has regulated the rights of persons granted humanitarian asylum in this way and that is in line with the discretionary nature of this form of protection.

The rights of aliens who have been granted humanitarian asylum in other EU countries:

The right to education: Belgium, the Czech Republic, Germany, Italy, Slovakia, Portugal, Spain and Sweden;

The right to health care: the Czech Republic, Finland, Germany, Portugal, Slovakia, Spain and Sweden;

The right to social welfare: Finland, Germany, Malta, Portugal, Slovakia, Spain and Sweden;

The right to accommodation: Finland, Italy and Sweden;

The right to work: Finland, Portugal, Spain and Sweden;

The right to family reunification: Slovakia, the Czech Republic, Germany (conditional), Portugal and Sweden;

The right to travel documents: Finland, Malta and Slovakia.

## VI THE EXERCISE OF RIGHTS AND THE FULFILMENT OF OBLIGATIONS BY ASYLUM SEEKERS, REFUGEES AND PERSONS GRANTED SUBSIDIARY PROTECTION

general remark: there is need to consider the reorganization of the chapter on the exercise of the rights and obligations of asylum seekers, refugees, and persons granted subsidiary protection

### 1. The rights and obligations of asylum seekers (Introduced in order to improve the organization of Chapter VI)

### The right to reside in the Republic of Serbia, accommodation and basic living conditions
### Article 39

For the duration of the procedure, an asylum seeker shall have the right to reside in the Republic of Serbia and during that period, if necessary, he/she shall be entitled to accommodation at the Asylum Centre.

Upon admission to the Asylum Centre, all asylum seekers shall undergo a medical examination in accordance with a regulation passed by the Minister in charge of public health.

At the Asylum Centre, in addition to accommodation, the basic living conditions shall be provided to asylum seekers: clothes, food, financial assistance and other conditions, in conformity with special regulations and the principles of the asylum procedure.

If an asylum seeker possesses his/her own financial assets or if they have been provided to him/her in some other manner, he/she shall be obliged to co-finance the costs of accommodation at the Asylum Centre, and at his/her request, if there are no reasons for restriction of movement as defined in Article 47 of this Law, the Asylum Office shall allow him/her to reside outside the Asylum Centre**.**

**Health care**
**Article 40**

An asylum seeker and a person who has been granted asylum in the Republic of Serbia shall have equal rights to health care, in accordance with the regulations governing health care for aliens.

PROPOSAL TO AMEND

An asylum seeker shall have equal rights to health care, in accordance with the regulations governing health care for aliens.

Deleted: a person who has been granted asylum in the Republic of Serbia

**The right to free primary and secondary education and the right to welfare benefits**
**Article 41**

An asylum seeker and a person who has been granted asylum shall have the right to free primary and secondary education and the right to welfare benefits, in accordance with a special regulation.
The regulations pertaining to welfare benefits for asylum seekers and persons who have been granted asylum shall be passed by the Minister in charge of welfare.

PROPOSAL TO AMEND

Paragraph 2 is inserted:

To ensure the exercise of the right to primary and secondary education, Individual Education Plan shall be developed for asylum seekers in accordance with the Individualized Education Plan Rulebook ("Official Gazette of the RS," no. 72/09).

Paragraph 3 is revised:

The regulations pertaining to welfare benefits for asylum seekers shall be passed by the Minister in charge of welfare.

RATIONALE

Reception Directive 2013/33/EU

Article 14

Schooling and education of minors

1) Member States shall grant to minor children of applicants and to applicants who are minors access to the education system under similar conditions as their own nationals for so long as an expulsion

measure against them or their parents is not actually enforced. Such education may be provided in accommodation centres.

The Member State concerned may stipulate that such access must be confined to the State education system.

Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority.

2) Access to the education system shall not be postponed for more than three months from the date on which the application for international protection was lodged by or on behalf of the minor.

Preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the education system as set out in paragraph 1.

3) Where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the minor, the Member State concerned shall offer other education arrangements in accordance with its national law and practice.

We believe that the provision of paragraph 1 of the current Asylum Law does not need to be revised if its implementation complies with the standards arising from the above Article of the Reception Directive. Paragraph 2 has been introduced in order to provide guidelines for achieving the standards set out in paragraph 3 of the Directive, considering the fact that asylum seekers do not speak the Serbian language, and in order for them to exercize their right to education it is necessary to prepare special individual education plans that will help them to overcome the obstacles in communication and provide them education support.

With respect to paragraph 3, the amendments will ensure the harmonizaton with the proposal for the reorganization of the entire Chapter - the separation of the rights and obligations relating to asylum seekers and persons granted asylum. In addition, we underline the need to stipulate more explicitly the existing Rulebook on Social Welfare to ensure that social welfare enables asylum seekers to have a dignified life.

PROPOSAL TO AMEND

The right to work

Article 41 a

An asylum seeker shall acquire the right to work upon the expiry of three months from the date of the asylum application if the failure to adopt the first-instance decision on his/her application is outside of his/her fault.

The right referred to in paragraph 1 of this Article shall be exercized in accordance with the provision of the law governing employment of aliens in the Republic of Serbia.

RATIONALE

The right to work is guaranteed by the Reception Directive 2013/33/EU, in Article 15, which guarantees asylum seekers access to the labour market no later than 9 months from the date of the asylum application, in the event the first-instance decision upon the application has not been adopted outside of their fault. However, the Directive gives a possibility to Member States to provide more favourable conditions than those prescribed by the Directive (Article 4). Bearing in mind the timelines specified for the adoption of the decisions in this proposal, the timeline of 6 months appears to be more realistic.
The Draft Law on Employment of Aliens recognizes asylum seekers as a specific category of aliens and stipulates the specific conditions for their employment.

PROPOSAL TO AMEND

Special rights of unaccompanied minors and persons deprived of legal capacity
Article 41c

The guardian shall be appointed in accordance with the Family Law provisions.

In accordance with law, the guardian shall participate in the asylum procedure as the legal representative of the minor or the person deprived of legal capacity, and the minor, i.e. person deprived of legal capacity, shall be promptly informed thereof.

When necessary, the competent authorities shall initiate the search for the family members of unaccompanied minors in accordance with their best interest and in accordance with the guardianship plan.

In providing accommodation to unaccompanied minors, it shall be ensured that:

1) they are accommodated together with their adult relatives,
2) they are ensured accommodation in foster families; in specialized facilities for accommodation of minors or in other similar accommodation facilities suitable for minors;
3) unaccompanied minor asylum seekers who have completed 16 years of age may be accommodated in the Asylum Centres if that is deemed to be in their best interest;
4) minors who are related shall be accommodated together, in accordance with their best interest, and taking into account their age and maturity.

RATIONALE

The directives and regulations that make up the CEAS, starting with the Preambles, underline the obligation to respect the principle of the best interests of the child, which has been expanded to include a number of

guarantees for minors who seek asylum or enjoy some form of international protection. For further information see: *Right to asylum for unaccompanied minors in the European Union, Comparative study in the 27 EU countries*, France terre d'asile. http://www.frsh.de/fileadmin/beiboot/BB3/BB-3-12-Anlage.pdf

In addition, the proposed solution is in accordance with the Serbian Family Law, govering the institution of guardianship in Serbia.

PROPOSAL TO AMEND

Special obligations of asylum seekers

Article 41d

An asylum seeker shall be obliged:

1) to adhere to the measures for restriction of movement referred to in Article 52 of this Law, if they have been imposed;
2) to inform the Asylum Office in writing of any change of address within three days of such a change of address;
3) to abide by the House Rules, if he/she is accommodated at the Asylum Centre;
4) to respond to summons and cooperate with the Asylum Office and other competent authorities at all the stages of the asylum procedure;
5) to hand over to an authorized officer his/her identification papers, travel document and other documents, which can be of relevance for his/her identification;
6) to cooperate with authorized staff during his/her registration and medical examination;
7) to stay on the territory of the Republic of Serbia pending the completion of the procedure for granting asylum.
8) to leave the Asylum Centre after the final decision on asylum application has been taken.

In the case of non-compliance with the obligations referred to in paragraph 1 subparagraphs 3) and 8) of this Article, the authorized officer of the Asylum Centre shall inform the Asylum Office so that it can undertake measures from its sphere of jurisdiction.

RATIONALE

The contents of Article 47 have remained unchanged, and to ensure better organization of the rights and obligations, this Article is moved and becomes Article 41d.

## 2. The rights and obligations of persons granted asylum (Introduced in order to improve the organization of Chapter VI)

### The rights of refugees equal to those of the citizens of the Republic of Serbia Article 42

Persons whose right to refuge in the Republic of Serbia has been recognized shall have rights equal to those of the citizens of the Republic of Serbia with respect to intellectual property protection rights, free access to courts of law, legal aid, exemption from the payment of court fees and other fees payable to state organs, and the right to freedom of religion**.**

PROPOSAL TO AMEND

The rights of persons granted asylum equal to those of the citizens of the Republic of Serbia

Article 42

Persons whose right to asylum in the Republic of Serbia has been recognized shall have rights equal to those of the citizens of the Republic of Serbia with respect to intellectual property protection rights, free access to courts of law, legal aid, exemption from the payment of court fees and other fees payable to state organs, and the right to freedom of religion.

RATIONALE

The title of the Article has been changed

In the light of the revised Qualification Directive 2011/95/EU that came into effect in December 2013, there is a need for a significant revision of the Asylum Law, in the part specifying the rights guaranteed to refugees and persons granted subsidiary protection. Currently, the law guarantees certain rights solely to persons who have been granted asylum, but not to persons who have been granted subsidiary protection. It is difficult to find an objective justification for the situation when a person who is fleeing serious injuries should be given lesser rights than a refugee fleeing persecution.[129] The revised Directive establishes the standards and criteria for the identification of persons in need of international protection in the EU, and recognizes both "refugees" and "persons granted subsidiary protection" as "beneficiaries of international protection." Equalizing the guaranteed rights would result in a *de facto* uniform status for all persons granted international protection. By adopting this solution, the EU institutions and Member States, at least at the declarative level, have demonstrated their commitment to the respect of the international legal instruments guaranteeing the fundamental human rights, including those prohibiting discrimination.

[129] BATTJES, Hemme(2006), *European Asylum Law and International Law*, Leiden/Boston: Martin Nijhoff Publisher, 52.

**The rights of refugees equal to those of permanently residing aliens**
**Article 43**

Persons whose right to refuge in the Republic of Serbia has been recognized shall have rights equal to those of permanently residing aliens with respect to the right to work and rights arising from employment, entrepreneurship, the right to permanent residence and freedom of movement, the right to movable and immovable property, and the right of association**.**

PROPOSAL TO AMEND

Paragraph 1 is revised:

Persons who have been granted asylum shall have the rights equal to those of permanently residing aliens with respect to the right to work and rights arising from employment, the right to movable and immovable property, the right to freedom of movement, and the right of association.

Paragraph 2 is inserted:

Persons who have been granted asylum shall have the rights to adult education in connection to employment, professional development, and acquiring practical work experience under equal conditions as permanently residing aliens.

The right of persons granted asylum to residence

Article 43a

The right of residence in the Republic of Serbia shall be granted by the decision recognizing the right to asylum, i.e. subsidiary protection, and shall be proven by the identity card for persons who have been granted asylum.

A person who has been granted asylum shall be granted residence for a period of at least 3 years, with a possibility of renewal.

A person who has been granted subsidiary protection granted to stay for at least 1 year, with a possibility of renewal.

The family members of a person who has been granted asylum shall be granted residence under the same conditions referred to in paragraphs 2 and 3 of this Article.

RATIONALE

In Article 43, the proposed amendments are intended to eliminate certain imprecisions (entrepreneurship – is implied by the right to work and the right to employment), i.e. illogical provisions (the right to permanent residence under equal conditions as permanently residing aliens). "The formulation used by the legislature that *persons granted asylum should have equal rights as permanently residing aliens in terms of permanent residence and freedom of movement* is contradictory in terms of the sequence and it is not clear. It is contradictory in terms of the sequence considering that if an alien has been granted permanent residence,

after he/she satisfied the requirements specified in Article 37 of the Law on Foreigners, [130] then what right to permanent residence of permanently residing aliens does this relate to? This provision is unclear as it could be questioned whether the wording that persons who have been granted asylum *have the rights equal to those of permanently residing alines in terms of the right to permanent residence* means that they must satisfy the requirements for permanent residence that are prescribed for all other aliens (Article 37) or, by having been granted asylum in the Republic of Serbia and by having been issued an identity card by the Asylum Office, they automatically obtain the status of permanently residing aliens."[131]

The Paragraph 2 that is inserted ensures that this provision is harmonized with the Qualification Directive 2011/95/EU, Article (2).
Article 43a ensures the harmonization with Article 24 of the Qualification Directive 2011/95/EU.
Similar solutions are found in the comparative practice, the Croatian Asylum Law (Zakon o azilu Republike Hrvatske, NN79/07, 88/10, 143/13, Article 41).

[130] Law on Foreigners, Article 37:
Permanent residence can be granted to a foreigner who:
1) by the date of submitting the application for permanent residence in the Republic of Serbia has stayed uninterruptedly until the date of application for permanent residence for more that five years pursuant to the temporary residence permit;
2) has been married to a citizen of the Republic of Serbia or to a foreigner with permanent residence for at least three years;
3) is minor with temporary residence in the Republic of Serbia if one of the parents is citizen of the Republic of Serbia or a foreigner with permanent residence permit, with a consent of another parent;
4) originates from the territory of the Republic of Serbia.
Exceptionally from provisions of the para 1 of this Article, a permanent residence permit can begranted to another foreigner who is approved temporary residence, if that is imposed by reasons of humanity or is in the interests of the Republic of Serbia.
A foreigner whose temporary residence in the Republic of Serbia was granted for the purposesfrom the Articles 30 and 31 of this Law, half of the time spent in the Republic of Serbia is calculated at the time necessary for approval of permanent residence from the para 1 point 1) of this Article.
Pursuant to the para 1 point 1) of this Article, anuninterrupted stay is considered also a stay with a repeated absence from the Republic of Serbia of up to ten months or a single absence of up to six months in the period of five years.
Marriage in line with the para 1 point 2) of this Article, is marital community at the territory of the Republic of Serbia.
Parent in line with para 1 point 3) of this Article is also considered each person legally equalizedwith a parent.
Time that a foreigner with approved temporary residence spent in imprisonment is not calculated as time necessary for permanent residence permit.
A foreigner who was approved a permanent residence is equal in rights and obligations with thecitizens of the Republic of Serbia, except regarding those rights and obligations he is excluded pursuant to the Constitution and law.
The detailed conditions for approval of permanent residence are prescribed by the Minister competent for internal affairs.
[131] Pristup pravila za azilante u Republici Srbiji, Ratko Bubalo, Humanitarian Center for Integrations and Tolerance, September 2013.

## The right of refugees to accommodation
## Article 44

To persons whose right to refuge or subsidiary protection has been recognized, accommodation shall be provided commensurately with the capacities of the Republic of Serbia, but not for longer than one year from the final decision on status recognition.

PROPOSAL TO AMEND

The right of persons granted asylum to accommodation

Article 44

RATIONALE

Explanation: the title of the Article has been changed.

See the comment on Article 42.

PROPOSAL TO AMEND

Health care

Article 44a

A person who has been granted asylum in the Republic of Serbia shall have equal rights to health care, in accordance with the regulations governing health care for aliens.

The right to free primary and secondary education and the right to social welfare benefits

Article 44 b

A person who has been granted asylum shall have the right to free primary and secondary education and the right to social welfare benefits, in accordance with a separate regulation.

In order to ensure the right to free primary and secondary education, an Individual Education Plan shall be developed for persons who have been granted asylum in accordance with the Rulebook on Individual Education Plan ("The Official Gazette of the RS," no. 72/09).

The regulations governing social welfare benefits for persons who have been granted asylum shall be adopted by the Minister in charge of social policy.

RATIONALE

See the explanation of the amendments to Article 41.

**Exemption from reciprocity**
**Article 45**

After residing in the Republic of Serbia for three years from the date of the recognition of the right to refuge, a refugee shall be exempt from possible reciprocity measures in respect of the rights due to him/her according to the law**.**

**The integration of refugees**
**Article 46**

The Republic of Serbia shall, commensurately with its capacities, create conditions for the inclusion of refugees in its social, cultural and economic life, and enable the naturalization of refugees**.**

PROPOSAL TO AMEND

The integration of persons granted asylum

Article 46

Paragraph 1 is revised:

The Republic of Serbia shall, commensurately with its capacities, ensure the conditions for the inclusion of persons who have been granted asylum in its social, cultural and economic life, and enable their refugee naturalization.

Paragraphs 2 and 3 are inserted:

The duration of residence of persons who have been granted asylum in the Republic of Serbia for the purposes of acquiring the right of citizenship shall be calculated in accordance with the provisions of the Law on Citizenship.

The need to develop an individual integration plan for persons who have been granted asylum shall be assessed in each individual case, and particularly in terms of the acquisition of the Serbian language, vocational education, qualification training or requalification, and learning about Serbian history, culture and the constitutional arrangements in the Republic of Serbia.

The funds required for the implementation of the plan referred to in paragraph 4 of this Article shall be provided in the budget of the Republic of Serbia.

RATIONALE

See the comment on Article 42.

Qualification Directive 2011/95/EU, Article 34: „In order to facilitate the integration of beneficiaries of international protection into society, Member States shall ensure access to integration programmes which

they consider to be appropriate so as to take into account the specific needs of beneficiaries of refugee status or of subsidiary protection status, or create pre-conditions which guarantee access to such programmes."

In addition, this solution would require the revision of the Law on Migration Management, which, in Article 14, similarly as the current Asylum Law, refers solely to the integration of refugees. If the above amendment of the Asylum Law is adopted, the potential "contradiction," until the revision of the Law on Migration Management would be resolved, in theory, based on the legal principle that a new law derogates the previous law (*lex posterior derogat legi priori*), and therefore the right to integration can also be stipulated for persons who have been granted subsidiary protection.

Underlined: "International law imposes an obligation on the States to regulate the extenuating circumstances for the naturalization of refugees precisely because citizenship is defined as the right to have rights, i.e. citizenship is a legal basis for accessing many other human rights. That is why it is important *to insist on the consistent implementation of the obligations of the State to prescribe the extenuating circumstances for persons who have been recognized the refugee status by the State concerned*, as that is also a precondition for their full integration. Without naturalization there can be no full integration of refugees."[132] To this end, it is necessary to stipulate in the transitional and final provisions the revision of the Law on Citizenship to facilitate the procedure for obtaining citizenship for persons who have been granted the refugee status.
Paragraph 3: The integration challenges can be overcome only if refugees are recognized as individuals, and not as a part of a homogenous group covered by the same integration plan that is envisaged. That is why, in accordance with the integration plan that is specified by the Law on Migration Management, it is crucial to develop an integration plan for each individual person who has been granted asylum, considering his/her personal circumstances, background, sex, social environment he/she comes from, education, etc. Considering that the Law on Migration Management does not specify explicitly what is implied by integration, stipulating only that a person who has been granted the right to asylum is to be ensured the inclusion into the cultural, social and economic life (Article 16), it would be a good solution to specify at least the guidelines for integration (acquisition of the Serbian language, vocational education, qualification training or requalification, and learning about Serbian history, culture and the constitutional arrangements in the Republic of Serbia).

## The right to family reunion of a person whose right to refuge has been recognized Article 48

A person whose right to refuge has been recognized shall have the right to reunite with his/her family members.

[132] Pristup pravila za azilante u Republici Srbiji, Ratko Bubalo, Humanitarian Center for Integrations and Tolerance, September 2013.

At the request of the person referred to in paragraph 1 of this Article, the Asylum Office shall also grant the right to refuge to his/her family members who are outside the territory of the Republic of Serbia, unless there are statutory reasons to deny them that status.

PROPOSAL TO AMEND

The right of persons who have been recognized the right to asylum to family reunification

Article 48

A person whose right to refuge has been recognized shall have the right to reunite with his/her family members.

At the request of the person referred to in paragraph 1 of this Article, the Asylum Office shall also grant the right to refuge to his/her family members who are outside the territory of the Republic of Serbia, unless there are statutory reasons to deny them that status.

**The right to family reunion of a person granted subsidiary protection**
**Article 49**

A person who has been granted subsidiary protection shall have the right to family reunion in accordance with the regulations governing the movement and stay of aliens**.**

Article 48 becomes Article 47 , while Article 49 is deleted, and Article 50 becomes Article 49

The title of Article 47 is changed – see the explanation for Article 42

**The family reunion of a person granted temporary protection**
**Article 50**

The competent authorities may, in justifiable cases, allow family reunion and also grant temporary protection to family members of a person enjoying temporary protection in the Republic of Serbia**.**

Underlined: To improve the organization, the Article regulating family reunification for persons granted temporary protection should be integrated with the Articles stipulating the rights and obligations of persons granted temporary protection.

PROPOSAL TO AMEND

The obligations of persons granted asylum

Article 50 a

A person who has been granted asylum shall respect the Constitution, the laws, and other regulations in force in the Republic of Serbia.

RATIONALE

The Asylum Law does not include a provision stipulating the obligations of persons who have been granted the refugee status or subsidiary protection, although the section regulating the institution of temporary protection, in Article 38, paragraph 2, referred to the appropriate application of the provisions on the obligations of persons who have been granted asylum.

The proposed solution is in accordance with Article 2 of the Geneva Convention - General provisions: "Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order."

## VIII RESTRICTION OF MOVEMENT

### Reasons for restriction of movement
### Article 51

The movement of asylum seekers may be restricted by a decision of the Asylum Office, when it is necessary for the purpose of:

1) establishing identity,
2) ensuring the presence of an alien in the course of the asylum procedure, if there are reasonable grounds to believe that an asylum application was filed with a view to avoiding deportation, or if it is not possible to establish other essential facts on which the asylum application is based without the presence of the alien in question;
3) protecting national security and public order in accordance with the law.

PROPOSAL TO AMEND

Reasons for restriction of movement

Article 51

The movement of asylum seekers may be restricted by a decision of the Asylum Office, when it is necessary for the purpose of:

1) establishing identity;
2) preventing unauthorized entry into the territory of the Republic of Serbia;
3) ensuring the presence of an alien in the course of the asylum procedure, if there are reasonable grounds to believe that an asylum application was filed with a view to avoiding deportation, or if it is not possible to establish other essential facts on which the asylum application is based without the presence of the alien in question;
4) protecting national security and public order in accordance with the law.

RATIONALE

We have inserted subparagraph 2, prescribing new grounds for restriction of movement to ensure that this Article is harmonized with the border, i.e. airport transit area procedures.

**Measures for restriction of movement**
**Article 52**

Restriction of movement shall be implemented by:

1) ordering accommodation at the Reception Centre for Aliens under intensified police surveillance;
2) imposing a ban on leaving the Asylum Centre, a particular address and/or a designated area.

Restriction of movement shall last for as long as the reasons referred to in Article 51 of this Law apply, but not for longer than three months.

Notwithstanding the above, when restriction of movement was imposed for the reasons referred to in Article 51, subparagraphs 2) and 3) of this Law, restriction of movement may be extended for another three months.

An appeal against a decision on imposing or extending the measure referred to in paragraph 1 subparagraph 1) of this Article shall be decided upon by the competent district court**.**

PROPOSAL TO AMEND

Paragraph 4 is revised:

An appeal against a decision on imposing or extending the measure referred to in paragraph 1 subparagraph 1) of this Article shall be decided upon by the competent high court.

The provisions of Article 53 of the Law on Police (The Official Gazette of the Republic of Serbia no. 101/05) shall apply accordingly to the procedure of passing decisions on appeals referred to in paragraph 4 of this Article.

The provisions of Article 53 of the Law on Police (The Official Gazette of the Republic of Serbia no. 101/05,63/2009 – decision USSi 92/2011) shall apply accordingly to the procedure of passing decisions on appeals referred to in paragraph 4 of this Article.

An appeal against a decision on restriction of movement shall not have suspensive effect.

**Non-compliance with restriction of movement**
**Article 53**

An asylum seeker who has violated the ban referred to in Article 52, paragraph 1, subparagraph 2), of this Law, may be ordered to stay at the Reception Centre for Aliens**.**

## IX THE CESSATION OF ASYLUM AND THE EXPULSION OF AN ALIEN

**The cessation of the right to refuge**
**Article 54**

The right to refuge shall cease for the following reasons:

1) if a person has voluntarily re-availed him/herself of the protection of his/her country of origin;
2) if, having lost his/her citizenship, a person has voluntarily re-acquired it;
3) if a person has acquired a new citizenship, and thus enjoys the protection of the country of his/her new citizenship;
4) if a person has voluntarily returned to the country he/she left or outside which he/she has remained owing to fear of persecution or ill-treatment; or
5) if a person can no longer, because the circumstances that led to his/her being granted protection have ceased to exist, continue to refuse to avail him/herself of the protection of his/her country of origin.

PROPOSAL TO AMEND

Paragraph 2 is inserted:

In the event referred to in paragraph 1, subparagraph 5, of this Article, the Asylum Office shall establish weather the change of circumstances is of such a significant and non-temporary nature that the person's fear of persecution can no longer be regarded as well-founded.

RATIONALE

The Qualification Directive 2011/95/EU, Article 10 (2)

The identical solution is found also in the comparative practice, the Croatian Asylum Law (Zakon o azilu Republike Hrvatske, NN79/07, 88/10, 143/13, Article 63).

The cessation of protection in accordance with the provisions of paragraph 1 subparagraph 5) of this Article shall not apply to a person who is able to give compelling reasons, arising out of past persecution or ill-treatment, for refusing to avail him/herself of the protection of his/her country of origin.

PROPOSAL TO AMEND

The cessation of subsidiary protection

Article 54a

Subsidiary protection shall cease when the circumstances that served as a basis for granting such subsidiary protection have changed to such extent that that the protection is no longer required.

In the event referred to in paragraph 1, the Asylum Office shall establish weather the change of circumstances is of such a significant and non-temporary nature that the person who was granted subsidiary protection will no longer face the risk of serious injuries, death penalty or execution, torture, inhuman or degrading tratment, or that his/her life, safety and freedom are no longer threatened by generalized violence caused by external aggression or internal armed conflicts or massive violation of human rights.

RATIONALE

The current Asylum Law does not stipulate explicitly the issue of the cessation of subsidiary protection. The existing solution referres to the application of the provisions of the Asylum Law governing the cessation of the right to asylum by analogy. Bearing in mind that the grounds for obtaining asylum or subsidiary protection are not identical, there is a need to specify explicitly the grounds for the cessation of the right to subsidiary protection, similarly as the grounds for the cessation of the refugee status, which are stipulated. For further information see: the Qualification Directive 2011/95/EU stipulates separately the issues of the cessation of the refugee status (Article 14) and subsidiary protection (Article 19).

## Revoking a decision on granting asylum
## Article 55

The Asylum Office shall ex officio revoke a decision on granting asylum if it is established that the reasons referred to in Article 54 of this Law apply, as well as in other cases defined by law**.**

PROPOSAL TO AMEND

Revoking a decision on granting asylum

Article 55

The Asylum Office shall ex officio revoke a decision on granting asylum if it is established that the reasons referred to in Article 54 and Article 54 a of this Law apply.

RATIONALE

Deleted: similarly as in the other events specified by law.

**The cessation of asylum due to cancelling a decision on granting asylum**
**Article 56**

The Asylum Office shall ex officio cancel a decision on granting asylum if it is subsequently established:

1) that a decision on granting asylum was taken on the basis of falsely presented facts or of concealment of facts by an asylum seeker and that, due to the above reason, at the time of the submission of the asylum application he/she was not eligible for being granted of asylum, and
2) that there exist reasons for which, on the basis of the law, he/she would have been denied the right to refuge, had these reasons been known at the time of the submission of the asylum application**.**

PROPOSAL TO AMEND

Paragraph 3 is inserted:

Prior to adopting a decision on annulment of the decision on granting asylum, the Asylum Office shall inform the person of the grounds for the annulment and shall give him/her an opportunity to make a written statement describing the reasons why the decision should not be annulled.

RATIONALE

The solution proposed in Article 56, paragraph 3, is taken over as a positive example from the comparative practice of the Republic of Croatia (*the Law on Asylum*, NN79/07, 88/10, 143/13, Article 63, paragraph 3). In addition, it is in accordance with the principle of directness (Article 17 of the Asylum Law), as well as with the principle of ensuring access to a hearing referred to in Article 9 of the Law on General Administrative Procedure.

**The expulsion of an alien**
**Article 57**

An alien whose asylum application has been refused or rejected, or whose asylum procedure has been suspended, and who does not reside in the country on some other grounds, shall be obliged to leave the Republic of Serbia within the time limit specified in that decision.

The time limit within which an alien shall be obliged to leave the Republic of Serbia shall not be longer than within 15 days of the receipt of the final decision referred to in paragraph 1 of this Article.

If an alien fails to voluntarily leave the Republic of Serbia within the time limit specified, and also in the case referred to in Article 25 paragraph 3, of this Law, he/she shall be forcibly

expelled in accordance with the provisions of the law governing the movement and stay of aliens.

Pending his/her expulsion from the Republic of Serbia, an alien referred to in paragraph 3 of this Article may be placed at the Reception Centre for Aliens.

PROPOSAL TO AMEND

Paragraph 1 is revised:

An alien whose asylum application has been refused or rejected, or it has been decided that his/her asylum procedure is suspended, i.e. due to the cessation resulting from the annulment or suspension of the decision on granting asylum, i.e. temporary protection, and who does not have the right to reside in the country on any other grounds, shall leave the Republic of Serbia within the timeline specified in that decision.

The remaining paragraphs 2,3,and 4 are deleted and a new paragraph 2 is inserted:

The alien referred to in paragraph 1 of this Article shall be subject to the provisions of the Law on Foreigners ("The Official Gazette of the RS," no. 97/2008).

RATIONALE

The current Asylum Law does not specify the events in which decisions are adopted on revoking or anulling the decision on granting asylum, i.e. temporary protection.

Taking into account that in the above events these persons are treated as aliens in terms of their status, it is not necessary to specify further the procedure for their removal, as such events are already stipulated by the Law on Foreigners.

## X PERSONAL DOCUMENTS

### Types of personal documents
### Article 58

To a person who has expressed an intention to seek asylum, or filed an asylum application, and to a person who has been granted asylum, the Ministry of the Interior shall issue the following personal documents:

1) a certificate for a person who has expressed an intention to seek asylum;
2) an identity card for an asylum seeker,
3) an identity card for a person granted asylum, and
4) a travel document for refugees.

A person who was issued a document referred to in paragraph 1, subparagraphs 1), 2) and 3) of this Article, shall be obliged to carry it with him/her and produce it at the request of an authorized public officer.

The form and the content of the documents referred to in paragraph 1 of this Article shall be prescribed by the Minister.

PROPOSAL TO AMEND

Subparagraph 4 is revised:

A travel document for a person granted asylum.

RATIONALE

See the explanation for Article 42. In addition, given that there is an obligation to issue biometric passports for these persons as well, it would be more cost-effective to specify an integrated form.

**Certificate for a person who has expressed an intention to seek asylum**
**Article 59**

A certificate shall be issued to a person who has expressed an intention to seek asylum, on a prescribed form, which may not serve as an identification document.

A certificate shall also be issued to the family members accompanying a person who has expressed an intention to seek asylum.

PROPOSAL TO AMEND

Certificate for a person who has expressed an intention to seek asylum

Article 59

A certificate for persons who have expressed their intention to seek asylum shall be issued in a prescribed form including a photograph of the holder, and shall serve as an identification document until the issuance of the identification card for asylum seekers.

A certificate shall also be issued to the family members accompanying a person who has expressed an intention to seek asylum.

RATIONALE

See the explanation for the Article stipulating the implementation of the recording activity (Article 25).

**Identity card for an asylum seeker**
**Article 60**

After registration, the Asylum Office shall issue to an alien an identity card for asylum seekers on a prescribed form, which shall serve as an identification document and as a residence permit in the Republic of Serbia pending the completion of the asylum procedure.

It shall be specifically indicated in the identity card for an asylum seeker whether the alien has submitted an asylum application or not.

The identity card referred to in paragraph 1 of this Article shall also be issued to family members accompanying an asylum seeker**.**

PROPOSAL TO AMEND

Paragraph 1 is revised:

Within three days from the date of the asylum application, the Asylum Office shall issue to the asylum seeker an identity card in the prescribed form, which shall serve also as an identification document and a permit of residence in the Republic of Serbia, pending the completion of the asylum procedure.

The identity card referred to in paragraph 1 of this Article shall also be issued to family members accompanying an asylum seeker.

RATIONALE

In terms of the identity card, the non-compliance with the Reception Directive 2013/33/EU is reflected in the failure to specify the timeline, considering that, in accordance with the provisions of the Directive, that period is three days from the date of the asylum application (Article 6).

Paragraph 2 is deleted, and paragraph 3 remains unchanged.

**Identity card for a person granted asylum**
**Article 61**

The Asylum Office shall issue identity cards on a prescribed form to persons over 15 years of age who have been granted asylum in the Republic of Serbia.

An identity card issued to a person who has been granted the right to refuge shall be valid for a period of 5 years, and in the case of persons granted subsidiary or temporary protection, for a period of 1 year**.**

PROPOSAL TO AMEND

Paragraph 2 is revised:

An identity card issued to a person who has been granted the right to refuge shall be valid for a period of at least 3 years, and in the case of persons granted subsidiary or temporary protection, for a period of at least 1 year.

RATIONALE

The proposed changes have been introduced to ensure compliance with Article 43a, governing the right of persons who have been granted asylum to residence.

**Travel document for refugees**
**Article 62**

At the request of a person over 18 years of age who has been granted the right to refuge in the Republic of Serbia, the Asylum Office shall issue a travel document on a prescribed form, valid for a period of 2 years, in accordance with the law.

In exceptional cases of a humanitarian nature, the travel document referred to in paragraph 1 of this Article shall also be issued to persons enjoying subsidiary protection who do not possess a national travel document, with a validity period of up to 1 year**.**

PROPOSAL TO AMEND

Travel document for a person granted asylum

Article 62

At the request of a person over 18 years of age who has been granted asylum in the Republic of Serbia, the Asylum Office shall issue a travel document on a prescribed form, valid for a period of 2 years, in accordance with the law.

RATIONALE

In terms of changing the title of the Article, see the explanation for Article 42. Also, see the explanation in relation to the amendments to Article 58, paragraph 1, subparagraph 4.

Paragraph 2 is deleted.

**Return of personal documents**
**Article 63**

The personal documents referred to in Article 58, paragraph 1, subparagraphs 2), 3) and 4) shall be returned to the Asylum Office upon the completion of the procedure, the revocation of status, or in the case of replacement due to their worn-out or damaged condition**.**

**XI KEEPING RECORDS**
**Article 64**

The Ministry of the Interior shall keep records on:

1) registered persons;
2) persons seeking asylum in the Republic of Serbia;

3) persons who have been granted the right to refuge or persons granted subsidiary protection;
4) persons granted temporary protection;
5) persons whose movement has been restricted in accordance with the provisions of Articles 51 and 52 of this Law;
6) temporarily seized foreign identification papers, and
7) identification papers issued in accordance with this Law.

The Commissariat for Refugees shall keep records on persons accommodated at the Asylum Centre.

The manner of keeping and the content of the records referred to in paragraph 1 of this Article shall be prescribed by the Minister, and the manner of keeping and the content of the records referred to in paragraph 2 of this Article shall be prescribed by the state official in charge of the Commissariat for Refugees.

The data on the persons referred to in paragraph 1 of this Article shall be collected, used and kept in accordance with the regulations governing personal data protection.

PROPOSAL TO AMEND

Subparagraph 1 is inserted:

the persons who have expressed their intention to seek asylum;

Subparagraph 2, which becomes subparagraph 3, is revised to read:

3) the persons who have submitted an asylum application;

Subparagraph 5 is inserted:

5) the persons who have been granted humanitarian asylum;

PROPOSAL TO AMEND

PROPOSAL BY BCHR

With respect to paragraphs 2 and 3:

Depending on the competence model, if the accommodation is placed under the competence of the MoI, the records of the persons placed in accommodation need to be adjusted.

Underlined: Depending on the way in which the asylum procedure will be regulated, there would be a need for certain adjustments of the bylaws regulating the procedures for collection and maintenance of records and/or registers.

## XII TRANSITIONAL AND FINAL PROVISIONS

### Article 65

The provisions of this Law shall be interpreted in accordance with the Geneva Convention, Protocol and the generally accepted rules of international law.

Underlined: Consider perscribing this Article at the level of a principle, i.e. in the part pertaining to the application of the law on the procedure.

### Article 66

Within 60 days of the coming into effect of this Law, the Government shall appoint the Chairman and members of the Asylum Commission referred to in Article 20 of this Law.

Within 60 days of the coming into effect of this Law, the Government shall establish a list of safe countries referred to in Article 2 of this Law.

PROPOSAL TO AMEND

PROPOSAL BY BCHR

Depending on the second-instance competence model, there would be a need to adjust this paragraph - if the model of the direct court jurisdiction is adopted, paragraph 1 needs to be deleted.

### Article 67

Within 60 days of the coming into effect of this Law:

1) the Minister in charge of internal affairs shall issue regulations on the content and format of the asylum application and personal documents forms referred to in Article 58 of this Law, on the method of keeping records of and registering asylum seekers referred to in Articles 23 and 24 of this Law, and on the method of keeping and the content of records referred to in Article 64 of this Law;
2) the state official in charge of the Commissariat for Refugees shall issue an act on the internal organization and job classification at the Asylum Centre, as well as regulations governing the conditions of accommodation, the House Rules, the provision of basic living conditions and keeping records of persons accommodated at the Asylum Centre;
3) the Minister in charge of social policy shall issue regulations on welfare benefits for asylum seekers and/or persons granted asylum;
4) the Minister in charge of health care shall issue a regulation on medical examinations referred to in Article 39 paragraph 2 of this Law, performed upon admission to the Asylum Centre.

The adoption of the bylaws on the implementation of this Law needs to be harmonized with the legal amendments.

**Article 68**

On the day of the commencement of the implementation of this Law, the provisions of the Asylum (*The Official Gazette of the Serbia and Montenegro* no. 12/05) and the provisions of Articles 44 through 60 of the Law on the Movement and Stay of Aliens (*The Official Gazette of the Socialist Federal Republic of Yugoslavia* nos. 56/80, 53/85, 30/89, 26/90, 53/91 and *The Official Gazette of the Federal Republic of Yugoslavia* no. 68/2002) shall cease to have effect.

**Article 69**

Asylum procedures initiated before the commencement of the implementation of this Law shall be completed pursuant to the provisions of this Law.

**Article 70**

This Law shall enter into force on the eighth day from the day of its publication in the *Official Gazette of the Republic of Serbia*, and shall be implemented as of April 1, 2008.

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