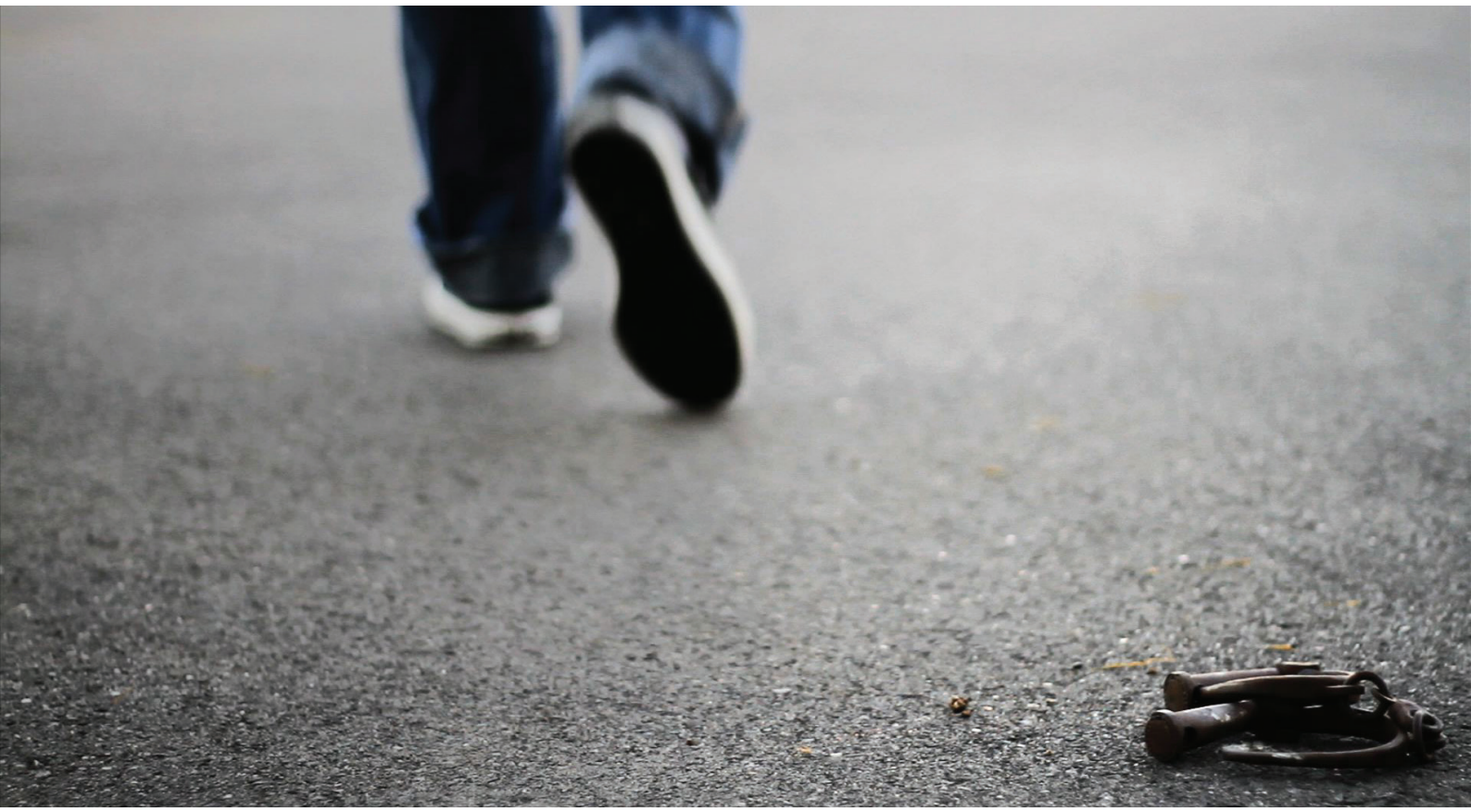

CHALLENGES OF FORCED MIGRATION IN SERBIA

A Second Look at the Issue of Asylum and Readmission

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

CHALLENGES OF FORCED MIGRATION IN SERBIA

A Second Look at the Issue of Asylum and Readmission

The publication is part of the project Networking and Capacity Building for More Effective Migration Policy in Serbia, implemented by Group 484 with support of the Royal Norwegian Embassy in Belgrade and in partnership with the Belgrade Centre for Human Rights and the Belgrade Centre for Security Policy. The content of the report is the sole responsibility of its authors and Group 484.

Belgrade, January 2013

Publisher:
Group 484, Pukovnika Bacića 3, 11000 Belgrade

Issuer:
Vladimir Petronijević

Proofreading (Serbian):
Group 484

Translation (English):
Nataša Grba Singh i Angelina Misina

Design and Layout:
Saša Đorđević

Print:
300

Printing:
Copy Planet

ISBN:
978-86-86001-58-0

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INTRODUCTION

This publication is part of the continuous efforts of Group 484 to contribute to the development and promotion of the migration policy in the Republic of Serbia. It is the third report in a row that has the challenges of forced migration in Serbia in its title (the first one was published in June 2011, the second one in August 2012, and the third one, the one in front of you, in January 2013).

We have been continuously dealing with the issue of asylum and readmission, believing that the issue is complex and important, particularly in the context of efforts to carefully link the migration management, social development and inclusion of marginalised groups in the local and wider community.

The publication consists of two main parts: "Reception of Asylum Seekers in the Republic of Serbia" and "Between Reintegration and Secondary Displacement: return of KiM minority members Western Europe". What they have in common is an attempt to present the authentic facts about the position of particular groups of forced migrants, (un)realised rights they are entitled to, and activities undertaken by the state, various national and international stakeholders, as well as significant shortcomings of the procedures that should mitigate the hardship of their position. Both texts offer an insight into the less examined, specific topics important to the issue in question.

The report is based on the work of two working groups that brought together representatives of 16 relevant civil society organisations: ASTRA - Action against Trafficking in Human Beings, Balkan Centre for Migration and Humanitarian Activities, Belgrade Centre for Security Policy, Belgrade Centre for Human Rights, Centre for Youth Integration, Asylum Protection Centre, Ecumenical Humanitarian Organisation, Group 484, Humanitarian Centre for Integration and Tolerance, Initiative for Development and Cooperation, International Aid Network, NEXUS - Vranje, Novi Sad Humanitarian Centre, NGO Aurora, Praxis and Roma Women's Centre Bibija. A representative of the Social Inclusion and Poverty Reduction Team also participated in the work of one of the groups. Both groups carried out a series of field monitoring activities and interviews.

In the preparation of the publication, the data from the monitoring were used, as well as the contributions and comments of members of the group for asylum and the group for readmission, but the final shape of the reports was decisively influenced by the working groups' coordinators. This process was guided by the effort to look at things objectively and to respect actual circumstances and thus the proposed solutions strive to be practical and constructive.

The list of those we owe our gratitude to is very long. Our special thanks go to the Royal Norwegian Embassy in Belgrade, which supported the project Networking and Capacity Building for More Effective Migration Policy in Serbia, and consequently the publishing of this report. Our gratitude then goes to everyone we spoke to, and who provided us with valuable information. We would like to thank local institutions and government agencies that responded to our inquiries and letters and enabled the implementation of a number of important visits. We owe special gratitude to people who shared their stories and hardships with us, and also to colleagues from other civil society organisations that were involved in the project activities.

Chapter 1:

RECEPTION OF ASYLUM SEEKERS IN THE REPUBLIC OF SERBIA

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Nota bene

In the second half of December 2012, after more than four years of the functional asylum system in the Republic of Serbia, first refugee statuses were granted. Upon the decisions of the Department of Asylum, asylum applications were adopted of an Egyptian and two Libyans. The layers of the Asylum Protection Centres represented these persons in the asylum procedures, as their proxies.

The granted refugee status is a significant progress in the development of the asylum system and the establishment of the practice of justification of asylum claims with full consideration of all the international and regional norms and standards for the protection of persons who seek asylum in the territory of the Republic of Serbia.

INTRODUCTION

In the last few years, the Turkish-Greek border has been one of the main entry points for illegal migrants originating from Asia, Africa and the Middle East to Europe. Most of the migrants go through Greece and continue their journey to one of the countries of western and northern Europe, often using the Serbia – Macedonia route. These are people who have left their country of origin for several reasons. Some of them are in fear of persecution, fleeing armed conflicts, grave breaches of human rights, social (customary) norms, as well as economic and social conditions in their countries. Regardless of the reasons, they travel together and use the same routes and modes of movement. They use Greece because of the "openness" of the route and the developed illegal channels for border crossing.

The Republic of Serbia is the first country in the region that have experienced an increased number of registered irregular migrants as a result of the situation in Greece, but also the number of people who have expressed intention to seek asylum. In Serbia, this trend was observed in 2010 while the countries in the region recorded such a growth in 2011 and some in 2012. According to the information given in the EC 2012 Progress Report for the FYR of Macedonia, 740 asylum claims were filed in 2011, which is an increase compared to 180 claims in 2010.[1] In the Republic of Croatia, 290 people filed for asylum in 2010, 933 a year later and 721 by August this year.[2] In Montenegro, the number of asylum seekers is five times higher this year than the previous one. According to the Asylum Office, 240 people sought asylum in 2011 while 1,319 people were registered by mid-November, 2012.[3] In Bosnia and Herzegovina the number of applications did not drastically change, 2011 - 41 applications (46 people);[4] 2010 - 38 applications (64 people),[5] but starting from 2012 a substantial increase in the number of irregular migrants has been identified, and in the first six months, their number increased by more than 100 percent compared to the same period last year.[6]

Judging by the statistics, Serbia is also the country in the region that undergoes the biggest pressure of mixed migratory flows caused by the permeability of the Turkish - Greek border.

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[1] The Former Yugoslav Republic of Macedonia 2012 Progress Report of the EC, October 10, 2012, accessed: December 7, 2012.

[2] The number of asylum seekers in Croatia has increased, Al Jazeera Balkans, August 22, 2012, accessed: December 10, 2012.

[3] Asylum seeker is costing the state 10 euro a day, Pobjeda , November 22, 2012, accessed: December 7, 2012.

[4] Under certain conditions, individual asylum applications could be submitted as one case (e.g. members of one family). In such cases, one decision is issued and encompasses more people.

[5] Bosnia and Herzegovina 2012 Progress Report of the EC, October 10, 2012, accessed: December 7, 2012.

[6] Increasingly more illegal migrants in Bosnia and Herzegovina , Večernje Novosti, July 28, 2012, accessed: December 7, 2012

In 2011, there were about 9,500 irregular migrants registered,[7] while the intention to apply for asylum was expressed by 3,132 people. In the period January 1 – October 30, 2012, 4.232 measures were imposed to foreign nationals for illegally crossing of the state border, while in the first nine months 1,806 people applied for asylum.[8]

Faced by the mixed migration flows, the RS authorities are urged to establish a balance between the interests of the country to control and monitor migration flows, and on the other side to provide international protection to persons in need by observing international norms and standards. The reception of the persons should be ensured in a safe and dignified manner with full respect of all international standards of human rights and refugee protection.

Countries are obliged to accept refugees on their territory: in this regard reception includes the prohibition of rejection of refugees at the borders without following the procedure for determining refugee status and treatment of persons who seek asylum. Normally the living conditions in accommodation centres for asylum seekers are taken into account, as well as the access to legal assistance and information, especially at the borders, the length of the procedures, access to education, employment and health care, etc.

According to the UNHCR,[9] the reception of asylum seekers at the level of each country should meet at least the following standards:

- espect for human dignity and applicable international human rights protection standards;
- ensuring access to government and nongovernment bodies in order to meet basic needs (food, clothing, shelter, health care);
- respecting the gender and age of asylum seekers, particularly children (especially children separated from their parents or unaccompanied children) in the reception procedures and especially taking into account the needs of victims of sexual violence, traumas and torture, as well as other vulnerable categories of asylum seekers;
- compliance with the principle of family unity, particularly in terms of accommodation;
- ensuring access to UNHCR.[10]

The intention of this document is to primarily show the practical aspects of the asylum system in the RS in the domain of reception, but its certain segments provide an overview of the legislative framework in order to highlight the shortcomings and emphasise good examples in the activities of the competent authorities. Having in mind that the reception standards often vary depending on the functioning of certain phases of the procedure for the examination of asylum claims, their review is briefly presented. Additionally, the most acute shortcomings of the procedures for examining of asylum claims were analysed in order to provide a more complete picture of the possibilities for achieving asylum protection in the Republic of Serbia.

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[7] The Republic of Serbia 2012 Progress Report of the EC, October 10, 2012, accessed: December 7, 2012, accessed: December 7, 2012.

[8] Source: Ministry of Interior of the Republic of Serbia, Minister's Office, 01-11453/12-3, November 29, 2012

[9] UNHCR, Conclusion on reception of asylum seekers in the context of individual asylum system, No. 93 (LIII)-2002, October 8, 2002, para b)v.

10 Source: The development of the asylum system in Croatia, Goranka Lalic Novak, Social Science Polytechnic in Zagreb, 2010

1. THE CONSTITUTION OF THE REPUBLIC OF SERBIA, INTERNATIONAL AND REGIONAL NORMS AND STANDARDS[11]

The Republic of Serbia is a Contracting State to the UN Convention relating to the Status of Refugees of 1951 and the Protocol relating to the Status of Refugees of 1967[12] and is thus obliged to respect and implement the provisions of these treaties.[13] Serbia has also ratified many international treaties that are a source of international human rights law, which are directly or indirectly relevant to the treatment of asylum seekers. The international human rights law complements the international protection provided by the 1951 Convention and the 1967. Protocol and in many situations provides broader protection. The most important among them are the International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, The Convention on the Rights of the Child, etc. Due to the way the European Court of Human Rights has interpreted various provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, there are now serious jurisprudence of the Court which sets important standards in the protection of asylum seekers and refugees, mainly related to the prohibition of expulsion *(non-refoulement)*, interpretation of certain terms and verification, restriction of liberty of asylum seekers, family unity, as well as the effects of appeal against the refusal of asylum claims. The International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the jurisprudence of their supervisory bodies is important primarily for the prohibition of expulsion. The conclusions of the Committee (CPT), which monitors compliance with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, is of importance in terms of facilities where asylum seekers and irregular migrants are accommodated.

The Constitution of the Republic of Serbia[14] in Article 16, Paragraph 2 provides that "the generally accepted rules of international law and ratified international treaties[15] are an integral

[11] Due to its limited scope, this document will refer to the universal and European system of human rights protection primarily as a basis for the formulation of recommendations that should contribute to improving the protection of asylum seekers. In addition, some instruments for the protection of human rights will be briefly presented.

[12] SFRY ratified this Convention on September 29, 1959, and the Protocol relating to the Status of Refugees on October 11, 1967. The Federal Republic of Yugoslavia assumed all its international obligations as a successor to SFRY in March 2000, and Serbia is its successor through the State Union of Serbia and Montenegro.

[13] The Convention and Protocol relating to the Status of Refugees do not regulate in detail the process of granting asylum or refugee status determination procedure. The Convention itself does not guarantee an individual the right to access the territory of a Contracting State, nor obliges any state to accept any individual or grant him/her permanent residency. The Convention deals with the legal status of only those persons who have already been admitted to the territory of the Contracting State. Asylum is mentioned in the Preamble to the Convention. The countries that have ratified the Convention relating to the Status of Refugees are obliged to protect all persons within their territory, which correspond to the definition of a refugee under the Convention. The Convention defines who is and who is not considered a refugee, how the refugee status could be lost, legal status of refugees, their rights and obligation, and obligations of the state, primarily in cooperation with the UN High Commissioner for Refugees (UNHCR)

[14] "Official Gazette of RS", no. 98/2006

[15] The generally accepted rules of the international law encompass general international customs, and the ratified international treaties encompass agreements and conventions that have been ratified.

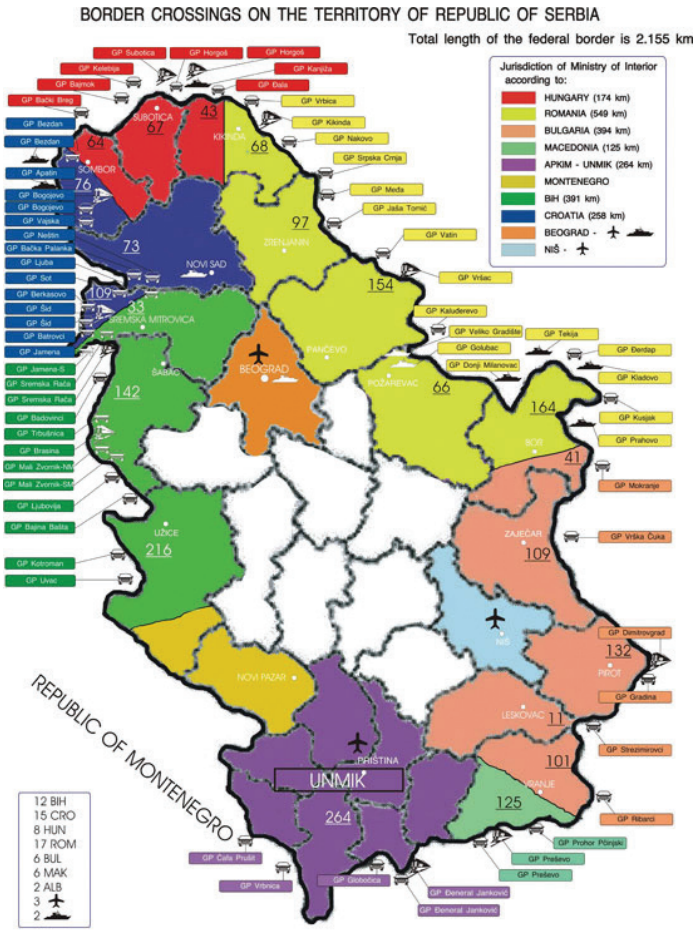
part of the legal order of the Republic of Serbia and are applied directly". Accordingly, the international norms and standards are legally binding for the Republic of Serbia and provide a framework for establishing a system to protect these people.

The RS Constitution, as the supreme law, also contains a number of other relevant regulations. Significant are the provisions dealing with human and minority rights and freedoms.[16] The catalogue of human rights under the Constitution provides for the right to asylum, and Article 57 provides that "any foreign national with reasonable fear of prosecution based on his race, gender, language, religion, national origin or association with some other group, political opinions, shall have the right to asylum in the Republic of Serbia".

2. ASYLUM SEEKERS' ACCESS TO TERRITORY

2.1. State Borders and Competent Authorities

The Republic of Serbia is bordered by seven countries (the Republic of Hungary, Romania, the Republic of Bulgaria, the Republic of Macedonia, the Republic of Albania, Montenegro, Bosnia and Herzegovina and the Republic of Croatia) and the overall border length is 2,531.8 km. There are 89 established border crossings for international and cross-border transport.



Source: Ministry of Interior of RS

[16] See more: Protection of rights of migrants in the Republic of Serbia, a manual for civil servants and employees of local government, the International Organization for Migration - Mission in Serbia, Ivana Krstic PhD, Belgrade 2012, page 23

The Border Police Directorate (BPD), which operates under the Ministry of Interior of the Republic of Serbia (RS MoI) is responsible for the direct organisation and performance of the control of crossings and the state border security.[17] It is a single and centralised service, hierarchically organised at the central, regional and local level. At the central level, the Directorate realises the above mentioned function through the Border Department, Department for Aliens, Department for Combating Transborder Crime and Criminal Intelligence Service, while at the regional level, it operates through regional centres of border police established towards each neighbouring country (7 regional centres). At the local level, border police stations perform the state border crossing control and state border security.[18]

To enter the Republic of Serbia, irregular migrants/asylum seekers predominantly use about a hundred kilometres of the Macedonian-Serbian border, whose total length is 283 km.[19] They try and manage to enter the Republic of Serbia by train, highway or through the "green" border zone. A number of immigrants found at the border crossing in an attempt of illegal entry are returned to Macedonia.[20] To leave the Republic of Serbia, besides the border area with Hungary, they increasingly use the border with Croatia and with Bosnia and Herzegovina. Faced with this trend, the authorities of the Republic of Serbia and the neighbouring countries have signed agreements and protocols that establish closer cooperation between border services. In addition to mechanisms for sharing information, conducting joint training, mixed border controls of persons and goods have been established, as well as mixed patrols along the common state borders. After the signing of the Joint Declaration on the steps necessary to effectively combat illegal migration among Serbia, Hungary and Austria, in order to further improve the control of the Hungarian-Serbian border, the Agreement between the Government of the Republic of Serbia and the Government of Hungary has been concluded on border control in road, rail and water transport.[21]

In February 2012, Protocol on the implementation of mixed patrols along the common border with the Republic of Macedonia was signed, as well as the Plan on training police officers for the implementation of mixed patrols. In the period July-October 2012, 23 mixed patrols were implemented, including 12 in the territory of the Republic of Serbia and 11 in the territory of the Republic of Macedonia.[22] Each of the mentioned countries have also concluded agreements on the return and/or reception of persons who do not or no longer fulfil the conditions for entry or residence in the territory of another country (readmission agreements), and the actions of countries in accordance with the agreements affect the movement of third country nationals in this part of Europe.[23]

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[17] Article 9 of the Law on the Police ("Official Gazette of RS", no. 101/2005, 63/2009, 92/2011) prescribes the types of police obligations (including the border protection and the tasks prescribed by regulations relating foreigners)

[18] Responses to the Questionnaire of the European Commission, Chapter 24 - Justice, Freedom and Security, p. 26

[19] On the part of the border with the Republic of Macedonia the control is performed by members of the international KFOR troops stationed in Kosovo in accordance with the UN Security Council Resolution 1244.

[20] They seek asylum in Serbia and then disappear, Politika, June 15, 2012, accessed: December 10, 2012.

[21] Law on Ratification of the Agreement between the Government of the Republic of Serbia and the Government of Hungary on border control in road, rail and water transport, "Official Gazette" no. MU 4-12

[22] Source: Ministry of Interior, Minister's Office, 01-11453/12-3, November 29, 2012

[23] Like other countries of the Western Balkans, the Republic of Serbia signed the agreement with the European Community on the readmission of persons residing in its territory in 2007, followed by signing of implementation protocols for the implementation of the mentioned Agreement. The implementation

During the implementation of mixed patrols, 4 Pakistani nationals were detected in illegal border crossing from the Macedonian territory to the territory of the Republic of Serbia, and were handed over to the Macedonian border authorities in the expedited procedure and in accordance with the Readmission Agreement.[24]

2.2. Treatment at the Border Line through Legislation and Practice

In addition to regulations governing the conditions and procedures for exercising the right to asylum in the Republic of Serbia,[25] treatment at the border line is also prescribed by relevant regulations governing the entry, movement and residence of foreigners, the provisions of the Law on State Border Protection,[26] as well as a number of other laws, the Criminal Code,[27] the Law on Minor Offences,[28] the Law on General Administrative Procedure (LAP),[29] etc.

Article 11 of the Law on Foreigners[30] provides that a foreigner will be denied entry into the territory if he/she does not have a valid travel document or visa if required, does not have enough resources for support during his/her stay in the Republic of Serbia, if he/she is in transit and does not meet the conditions for entry in the third country, if a protective measure of expulsion or security measure of deportation is in force or his/her residence permit has been cancelled, does not have a confirmation on immunisation and comes from the epidemic-affected areas, if requested by the reasons of protection of public order or security, if kept in relevant records as an international transgressor, and if there is a reasonable doubt that his/her stay will not be used for the intended purpose.

protocol with Hungary was signed in December 2009. When it comes to cooperation between the RS and BiH, the Agreement on readmission and acceptance of persons who do not or no longer fulfil the conditions for entry and residence in the territory of another state is implemented, as well as the protocol for the implementation of the mentioned Agreement. From the moment the Protocol entered into force on December 27, 2007 until November 1, 2012 a total of 172 requests were received, and the RS authorities gave their approval for the reception of 125 persons. The Agreement with the Republic of Croatia was signed on readmission of persons whose entry or stay is illegal, and its Protocol, which was ratified on March 11, 2010 and entered into force on June 1, 2010. From the beginning of Agreement implementation of the agreement until January 11, 2012 a total of 223 requests were received and the approval was given for 50 people. When it comes to cooperation with the Republic of Macedonia, the Agreement on the readmission of persons whose entry or stay is illegal is applied, and the Protocol for the implementation of Agreement, which entered into force on October 1, 2011. Source: Ministry of Interior, Minister's Office, the Bureau for Information of Public Interest, 01 no: 11597-12/3, November 27, 2012. The request sent by the Belgrade Centre for Human Rights

[24] Source: Ministry of Interior, Minister's Office, 01-11453/12-3, November 29, 2012

[25] Law on Asylum "Official Gazette of RS", no. 109/2007

[26] "Official Gazette of RS", no. 97/2008

[27] "Official Gazette of RS"", no. 85/2005, 88/2005- corr., 107/2005, corr. 72/2005 and 111/2009

[28] "Official Gazette of RS", no. 101/2005, 116/2008 and 111/2009

[29] "Official Gazette of FRY", no. 33/97 and 31/01, Law on Amendments to the Law on General Administrative Procedure, Official Gazette of RS 30/10

[30] Law on Foreigners, "Official Gazette of RS", no. 97/2008

With regard to the entry of foreigners in the territory of Serbia, in the case of an attempt of illegal entry at the border crossing, the regulations governing this issue are conflicting with each other, which leads to the practices that call into question the respect of the Constitutionally guaranteed right to asylum in the Republic of Serbia. According to the Law on Foreigners entering the country without valid travel documents or visas if required, will be denied.[31] According to the Law on State Border Protection, a foreigner will be punished for trying to cross the state border at the border crossing without a valid travel document or other documents required for crossing the state border.[32] In practice, misdemeanour proceedings are not initiated for an offense prescribed by the Law on State Border Protection.[33] Although at first glance it appears that the practice in which misdemeanour charges are not filed against a foreigner and sanctions are not imposed on him/her is a favourable situation for a foreigner, in essence, in terms of the right to asylum, he/she is brought to the unfavourable position. A foreigner formally has the right to appeal[34] against the entry denial to the territory of Serbia, since it is not explicitly provided that the appeal is not allowed,[35] but it is very difficult to exercise this right in practice.[36] The reason for this is the fact that the foreigner is immediately returned to the territory of the country from which he/she has tried to enter the Republic of Serbia, as well as the circumstance where the decision is communicated only orally and entered in the passport. The foreigner who has been denied entry to the territory of Serbia does not receive a written copy of the decision on the entry denial, but it is only entered in the foreigner's passport.[37] This contains neither the reasons the decision has been passed nor a legal remedy, and basically is a way of issuing an oral decision on someone's rights.[38]

> "The Aliens Act of the Republic of Croatia, Article 35, provides that an alien has the right to appeal against the entry denial within eight days, which does not postpone enforcement. The introduction of a special form on the entry denial is foreseen. The appeal is submitted to the Ministry of Interior, through the competent diplomatic mission or office".[39]

[31] Article 11, Paragraph 1, Item 1 of the Law on Foreigners

[32] Article 65, Paragraph 1, Item 1 of the Law on State Border Protection

[33] Field visit to the Regional Centre with Macedonia BPD MoI RS, June 14, 2012

[34] The right to appeal is guaranteed by the Constitution as a category of basic human right: "Everyone has the right to an appeal or other legal remedy against any decision on their rights, obligations or lawful interests".

[35] Article 12, Paragraph 2.LAP "The law may only exceptionally prohibit filing of an appeal in specific administrative matters, provided that the protection of rights and legal interests of the parties, i.e. the protection of legality, is otherwise ensured"

[36] Article 12, Paragraph 2 LAP

[37] Article 11, Paragraph 2, the Law on Foreigners

[38] The provisions of the Law on Foreigners refer to the implementation of the Law on General Administrative Procedure (LAP), but in practice the provisions of this Law are not applied consistently. The fact that the foreigner does not receive a written copy of the decision on the entry denial is not in line with the LAP since such a manner of decision-making can only be applied in the administrative matters of lesser importance which meets the request of a party, or in the case of taking extremely urgent measures to ensure public peace and safety or to prevent imminent danger to human life, health or property. Articles 203 and 204 of the Law on Administrative Procedure.

[39] Source: The development of the asylum system in Croatia, Goranka Lalic Novak, Social Science Polytechnic in Zagreb, 2010.

A foreigner who wishes to apply for asylum can express intention at the border or in the police station anywhere in the territory of the Republic of Serbia. If the border authorities are not adequately trained and prepared and fail to recognise that it is a person who is in need of international protection, they will be denied access to the territory, and such an action will directly result in denying access to asylum procedures. Additionally, it may cause violations of the prohibition of forced return.

Non-refoulement[40]

Article 33 of the UN Convention Relating the Status of Refugees prohibits expulsion or denial according to which no Contracting State will expel or return by force, by any means, a refugee to the border of the territory where his/her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.

The obligation to respect *non-refoulement* serves as the basis for the exercise of all rights guaranteed under the UN Convention Relating to the Status of Refugees. Without it, everything else has less significance.[41] Whether it is the prevention of crossing the border to refugees, or their return after they have managed to cross the border or even their expulsion after they have been allowed to stay in the territory, the problem is more or less identical. Regardless of the case and regardless of the status, refugees must not be returned to a country where their life or freedom could be threatened.[42]

The Law on Asylum and the Law on Foreigners contain articles of nearly identical content (Article 6 of the Law on Asylum and Article 47 of the Law on Foreigners) and provide that no person (foreigner) can be deported or returned to a territory where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.

It is crucial that the third paragraph of the mentioned articles stipulates that no person should be expelled or involuntarily returned to a territory where there is a risk of being subjected to torture, inhuman or degrading treatment or punishment, and this article thus complies with Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

[40] Except in the context of access to territory, the principle of *non-refoulement* with respect to current practices of the competent authority is of special importance with regard to the application of the concept of safe third country. See more in Section V Access to Effective Protection

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

[42] Ibid, p. 60

The existing practice of denying entry into the territory of Serbia favours individuals who illegally enter the territory of Serbia outside the border crossing compared to those who try to do so, also in an illegal, but socially less dangerous way, through the border crossing.

The Law on Foreigners provides that a person who unlawfully[43] enters the Republic of Serbia, along with the fine, can be imposed a protective measure of expulsion of a foreigner from the territory of the Republic of Serbia.[44] Denial of entry into the territory of the Republic of Serbia has a similar effect as a protective measure of expulsion of a foreigner from the territory of the Republic of Serbia,[45] a protective measure of expulsion of a foreigner or cancellation of residence. In contrast to the measures preceded by the implementation of some of the procedures prescribed by the Law on Asylum and the Law on Foreigners, where a foreigner/potential asylum seeker has the opportunity to prove eligibility for the enjoyment of certain rights or the opportunity to prove that he/she has not violated provisions of the laws in the procedure prescribed by law, with the entry denial, such an opportunity is practically non-existent.

In the context of access to territory and asylum procedures, the situation at Belgrade Airport, as a border crossing for air transportation deserves special attention. "The Border Police Directorate claims that no person who has been refused entry at the airport has expressed intention to seek asylum in Serbia."[46] In the period the UNHCR had a mandate for refugee status determination procedure (1976-2008), more than ten people a year expressed intention right at the airport.[47] In addition, the UNHCR and nongovernmental organisations that provide free legal aid services have no access to the transit zone, and so it is not possible to determine whether any such persons have existed, i.e. whether there have been cases of violation of the prohibition of forced return.

The main characteristic of persons seeking asylum in the Republic of Serbia and the persons identified as irregular migrants is that they enter the territory of the Republic of Serbia by crossing the border line outside border crossings, often using the services of smugglers. The Law on Foreigners and the Law on State Border Protection prescribe what is considered illegal border crossing[48] and illegal entry,[49] and at the same time stipulate an infringement liability of

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[43] Article 10 provides that an unlawful entry in the Republic of Serbia is considered: 1) An entry out of place and time determined for crossing of state border; 2) Entry by avoiding border control; 3) Entry by use of someone else's, unlawful, i.e. false travelling or other document) Entry by giving false data to border police) Entry in the course of duration of protective measure of expulsion of foreigners from the territory of the Republic of Serbia, security measure of expelling foreigners from the country or measure of residence rescinding.

[44] Article 84, Paragraph 2 of the Law on Foreigners

[45] In the period January 1 – October 2, 2012, magistrates' courts imposed 543 protection measures of removal from the territory of the Republic of Serbia. By far the largest number of the measures was imposed by the Magistrates Court in Presevo - 499

[46] Serbia as a country of asylum; Observations on the situation of asylum seekers and beneficiaries of international protection in Serbia, UNHCR, August 2012, page 6, accessed: December 10, 2012.

[47] Ibid.

[48] State border can, as a rule, be crossed only on border crossings with a valid travelling document or another document regulated by law for crossing the border, in time which has been scheduled for traffic on state border and in accordance with the purpose of border crossing (Article 10, Paragraph 2)

[49] Article 10 provides that an unlawful entry in the Republic of Serbia is considered: 1) An entry out of place and time determined for crossing of state border; 2) Entry by avoiding border control; 3) Entry by use of someone else's, unlawful, i.e. false travelling or other document; 4) Entry by giving false data to border police; 5) Entry in the course of duration of protective measure of expulsion of foreigners

any individual for illegal crossing of the state border of the Republic of Serbia and unlawful entry. If the conditions foreseen in the provisions of these laws are fulfilled, members of the (border) police take action against these people and refer them to the territorially competent magistrates. In the period January 1 – October 30, 2012, 4.232 actions were taken against foreign nationals for committing the offense of illegal crossing of the state border (Article 84, Paragraph 1, Item 1 of the Law on Foreigners[50] and Article 65, Paragraph 1, Item 1 of the Law on State Border Protection). Citizens of Afghanistan (1.546) and Pakistan (908) are among those with the highest number of actions taken.[51]

Border Police Regional Centre at the border with the Republic of Macedonia (BPRC Macedonia)

The Regional Centre at the Macedonian border, based in Cakanovac, Presevo municipality is composed of three border police stations – Rujan, Bujanovac and Trgoviste, as well as three border crossings for traffic: Presevo, Prohor Pčinjski and Goleč. Areas of responsibility covering these police stations are: Rujan - 28.5 km of area of responsibility, Bujanovac - 40.3 km and Trgovište – 44.5 km.
"The degree of state border vulnerability" is the highest in Rujan, followed by the area of responsibility of Bujanovac and the lowest is in Trgovište. The Regional Centre provides foot patrols, car patrols and ambushes near the border line.

In 2011, 264 criminal charges were filed against foreign nationals who had illegally crossed the border, and in the first half of 2012 against 104 persons. During 2012, BPRC with Macedonia filed 6 criminal charges for the offence of "illegal state border crossing and smuggling of people" under Article 350 of the Criminal Code of the Republic of Serbia.[52]

In 2011 there were 365 foreign nationals who were denied entry into the Republic of Serbia, and in the first six months of 2012, entry was denied to 61 people. They were mostly the citizens of Macedonia, Turkey, Pakistan and Afghanistan.

Intention to apply for asylum before officers of RC with Macedonia in 2011 was expressed by 30 people (12 people from Afghanistan, 15 from Pakistan, and 3 from Palestine), while in the first half of 2012 the number was much lower - only two persons originating from Pakistan.

from the territory of the Republic of Serbia, security measure of expelling foreigners from the country or measure of residence rescinding.

[50] A fine of 10,000 to 50,000 dinars shall be imposed on a foreigner who: 1) unlawfully enters the Republic of Serbia (Article 10 of this Law);

[51] Ministry of Interior of RS, Minister's Office, 01-11453/12-3, November 29, 2012

[52] "Official Gazette of RS"", no. 85/2005, 88/2005 - corr., 107/2005, corr. 72/2005 and 111/2009

Foreigners who illegally cross the state border communicate with the border police using the application form in different languages. Most of them speak English or French. Persons who express intention to seek asylum are referred by the border police to the asylum centres in Bogovadja and Banja Koviljaca. Police drives them to the bus or train station and give them further instructions. If needed, medical help is provided by the Health Centre in Presevo.

The main problems in the operation of the Regional Centre are the lack of personnel and material and technical resources for border control (the Centre has only one car with a thermal imager and if needed an additional vehicle is borrowed. The range of these vehicles is 5-6 kilometres, and the Centre does not have a fixed thermal imaging).[53]

3. ACCESS TO ASYLUM PROCEDURE

At the border, and usually after they have entered the territory of Serbia irregular migrants/asylum seekers have their first contact with police officers. Accordingly, police officers generally carry out the identification procedure. It is critical to determine whether the person in question wants to seek international protection. Furthermore, the identification procedure should determine the age of the person (in the context of the treatment of juveniles), whether the person travels alone or accompanied. If accompanied by other people the procedure should determine the nature of that relationship and whether it could have some negative consequences, primarily in terms of the risk of human trafficking.[54] During the initial contact, an interpreter is rarely provided, as well as the presence of representatives of other government bodies, while representatives of nongovernmental organisations that provide free legal aid or are devoted to the protection and realisation of rights of these vulnerable groups are denied access. Their absence significantly hinders detection of facts that may be relevant to assess whether it is intention to apply for asylum, and to make decisions about the ways they should be treated.

Depending on whether the person is recognised as an asylum seeker, i.e. whether he or she have expressed intention or has been identified as irregular migrant, further action against him/her differ, as well as their legal status and applicable legal framework.

3.1. Expression of Intention to Apply for Asylum

A foreigner who wants to seek asylum in Serbia can express intention in writing or orally at the border or in contact with the authorities anywhere in the territory of the Republic of Serbia. Such a request must be recorded by the police officers, after which they are issued a certificate that serves as a proof that they have expressed intention to seek asylum and ensures them legal residence in the territory of Serbia during the subsequent 72 hours. During this period,

[53] Field visit to the Regional Centre at the border with Macedonia BPD MoI RS, June 15, 2012

[54] See more: Challenges of Forced Migration in Serbia: human rights of asylum seekers and returnees based on the readmission agreement, p. 12-16. Group 484, Belgrade, July 2012.

the person is required to report to the Asylum Office[55] or the Asylum Centre - in Banja Koviljaca or Bogovadja.

In the period January 1 – September 30, 2012 the total of 1.806 foreign citizens expressed intention to seek asylum in the Republic of Serbia. The largest number of people expressed intention in regional police stations -1.526, at the border - 253, at the units for accommodation of unaccompanied minor foreign nationals - 23 and at the Reception Centre for Foreigners - 4.[56]

According to the procedure, prescribed by the Law on Asylum, the expression of indentation is not considered to be a formally submitted request for the right to asylum. The asylum procedure is initiated by filing an asylum application to the authorised officer of the Asylum Office.[57]

3.1.1. Treatment of Magistrates' Courts[58] and the Principle of Impunity for Illegal Entry or Stay

Magistrate judges must be trained to recognise the intention of migrants to seek asylum, primarily to provide these people with the access to the procedure for obtaining the right to asylum and the set of rights guaranteed during the procedure, but also to avoid violations of the principle of impunity for illegal entry or stay or people who express intention to seek asylum.[59]

The principle of impunity for illegal entry or stay

The Convention relating to the Status of Refugees, Article 31 provides that Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense envisaged by article 1 of the Convention, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. In the spirit of this provision is also the principle of impunity for illegal entry stipulated by Article 8 of the Law on Asylum, which states that a person seeking asylum will not be punished for their illegal entry or stay in

[55] Asylum Office has not yet been formally established and the activities within its competences are performed by the Asylum Department, a special unit within the Department for Foreigners of the MoI Border Police Directorate of RS. When it comes to the state body competent to act in the first instance under the Law on Asylum, it is most often the Asylum Office. For easier explanation of the procedure prescribed by the Law on Asylum, the Asylum Office will be referred to in further text.

[56] Ministry of Interior of RS, Minister's Office, 01-11453/12-3, November 29, 2012

[57] With the exception of recording, the Asylum Office is in charge of the implementation of all actions in the first instance procedure (registration, hearing and the first-instance decision). More on the stages of the first-instance procedure: Challenges of Forced Migration in Serbia: the human rights of asylum seekers and returnees based on the readmission agreement Group 484, Belgrade, July 2012.

[58] Data obtained on the basis of request for access to public information sent to magistrates courts by the Belgrade Centre for Human Rights

[59] The Progress Report for Serbia 2012 also emphasises the need to develop the expertise of judges in the field of asylum, accessed: December 11, 2012.

the Republic, provided that immediately apply for asylum and provide a valid justification for their illegal entry or stay.

Temporary benefit by reference to Article 31 must be guaranteed to all persons applying for refugee status, until and unless it is determined they are not refugees according to the Geneva Convention of 1951.

The Law on State Border Protection and the Law on Foreigners stipulate infringement liability of any individual for illegally crossing the state border and staying of foreigners[60] in the Republic of Serbia. The Law on State Border Protection, Article 65 provides that offenders can be fined (ranging from 5,000 to 50,000 dinars) or sentenced to imprisonment (3 to 30 days). The Law on Foreigners, Article 85 Paragraph 1 Item 3 provides that a fine ranging from 6,000 to 30,000 dinars will be imposed on a foreigner who illegally resides in the Republic of Serbia.

In the period January 1 – October 1, the total of 2.442 foreigners were convicted before magistrates' courts in Serbia,[61] for the violation of Article 65 Paragraph 1 Item 1 of the Law on State Border Protection and Article 85 Paragraph 1 Item 3 of the Law on Foreigners.[62]

For the specified period, only three people applied for asylum during misdemeanour proceedings. In all three cases, proceedings were conducted by the Magistrates' Court in Kikinda and were suspended after the expressed intention.

A good practice example could be a decision passed by the Magistrates' Court in Presevo in 2009. The decision suspended the proceedings against persons from Afghanistan who had committed a violation of Article 65 Paragraph 1 Item 1 of the Law on State Border Protection and Article 106 Paragraph 1 Item 4 of the Law on foreigners.[63] During the hearing, "it was determined that the defendants had entered Serbia in order to claim asylum". It should be particularly emphasised that in the reasoning of the issued decision the judge not only referred to the provisions of the Law on Asylum, which provide that a person seeking asylum will not

[60] Illegal stay in the Republic of Serbia is considered a presence in its territory without a visa, residence permit or other legal grounds.

[61] Not counting the Magistrates' Court in Vranje that have not responded to our request for access to public information.

[62] For violation of Article 65 Paragraph 1 Item 1 of the Law on State Border Protection 1,940 (the highest number of judgements for illegal border crossing has been rendered by the magistrates' courts in Subotica (654) and Sremska Mirovica (611). A number of judgments has been rendered before the magistrates courts in Kikinda (164), Sombor (138), Prokuplje (97) and Presevo and Leskovac respectively (92); for violation of Article 85 Paragraph 1 Item 3 of the Law on Foreigners 478 (the highest number of judgments has been rendered by the Magistrates Court in Presevo (192). The court in Belgrade should be mentioned where during this period 100 judgements were rendered to sentence foreign nationals for illegal stay in the territory of the Republic of Serbia); for violation of Article 65 Paragraph 1 Item 1 of the Law on State Border Protection and the violation of Article 85 Paragraph 1 Item 3 of the Law on Foreigners a total of 24 people were convicted, mostly before the Magistrates Court in Nis (17) (in terms that one person violated the provisions of the Law on Foreigners and the Law on State Border Protection). At the moment the courts were responding to the request, 163 procedures were pending.

[63] "Official Gazette of SFRY", no. 56/80, 53/85, 30/89, 26/90 and 53/91, "Official Gazette of FRY", no. 24/94, 28/96 and 68/02, "Official Gazette of Serbia and Montenegro", no. 12/05 and "Official Gazette of RS", no. 101/05 and 109/07

be penalised for illegal entry or stay in the Republic of Serbia, provided they apply for asylum, but also to the provisions of the UN Convention relating the Status of Refugees, Article 31 (not to impose penalties for unlawful entry or stay) and Article 33 Paragraph 1 *(non-refoulement)*.[64]

In some cases, judges of magistrates' courts do not recognise intention to seek asylum, which results in a violation of the principle of impunity and denial of access to the asylum procedure. After examining the judgments made by the magistrates' courts to persons the Belgrade Centre for Human Rights had interviews with "it was noted that all of them had an almost identical factual description and explanation, which calls into question whether the court had examined all the circumstances of the case, and whether it carefully and conscientiously examined the evidence".[65] Moreover, some of the interviewed irregular migrants said that they had told the magistrate judge they wanted to seek asylum in the Republic of Serbia, but the judge told them that "they first must serve the imprisonment, and only then can seek asylum".[66]

The reasoning of the judgment of the Administrative Court of the RS[67] lists the facts from the case file: "For illegally entering the country G.J.A and his wife were imposed by an on-duty magistrate with a fine and the protective measure of expulsion from the RS territory, with a prohibition of return for a period of two years. After that, they went to the Asylum Centre in Banja Koviljaca where they applied for asylum in the Republic of Serbia."

Magistrates' courts are obliged to consistently apply the provisions of the Law on Misdemeanours, above all the provisions relating to the use of language, translation into a language that the person understands with the assistance of a court interpreter, and the provisions that enforce the obligation to truthfully and completely establish the facts that are relevant to decision making, and to ensure that ignorance and illiteracy of the person is not at the expense of their rights.[68] "Failure of the authorities to provide the party with an opportunity to use their language with an assistance of an interpreter is such a major violation of the rules of procedure, which could affect the final decision".[69] According to the data obtained from courts, persons against whom misdemeanour proceedings are conducted and who did not understand any of the official languages are provided an interpreter, or a judge, court clerk or member of the group of foreigners against whom the proceedings are conducted, could speak English or other language to communicate.

3.1.2. Penitentiary–correctional Institutions that Accommodate Foreigners

In the period January 1 – October 1, 2012, penitentiary – correctional institutions of the Republic of Serbia accommodated 2.749[70] foreigners convicted for violation of the provisions of the Law on Foreigners and the Law on State Border Protection. The largest number of foreign

[64] Decision to suspend the proceedings in the Magistrates Court of Presevo, downloaded from: www.azil.rs

[65] Position of asylum seekers in Serbia (July–October 2012), Belgrade Centre for Human Rights, p. 9.

[66] Ibid

[67] Administrative Court of RS 1 У 3554/11, judgement rendered on October 6. 2011.

[68] Source: Challenges of Forced Migration in Serbia: the human rights of asylum seekers and returnees based on the readmission agreement, p. 9, Group 484, Belgrade, July 2012.

[69] Supreme Court of Serbia, У.645/67.

[70] This number is certainly higher, given that we Vranje District Prison, located in the border area, has not responded to our request for access to information of public importance. The Belgrade District Prison has also not responded to our request.

nationals was from Afghanistan (718) and Pakistan (714), while a significant number of foreigners come from Algeria (270), Syria (120), Palestine (107), Tunisia (102), Bangladesh (90) and Morocco (70). The largest number of foreigners stayed in the District Prison in Subotica, 1,533, in the Penitentiary–correctional Institute in Sremska Mitrovica 325 foreigners, in the Penitentiary–correctional Institute in Nis 220 persons and the Penitentiary-correctional Institute in Padinska skela-Belgrade 211.[71]

In the District Prison in Subotica, where most people serve their sentence, they have no possibility to use the services of an official interpreter, but the detainees who speak foreign languages and the prison staff are used as interpreters. Consequently, the question is raised as to the quality of available information about the enjoyment of the guaranteed rights and the procedures for their realisation.

"Directors of the institutions say that none of the sentenced foreigners sought asylum during their stay in the penitentiary-correctional institution",[72] which may be due to several factors: the quality of available information regarding the asylum protection (how to achieve asylum and its justification), level of qualification of the institution's staff to recognise intention of the person, but also the absence of intention of the people to seek asylum in the Republic of Serbia. .

3.1.3. Reception Centre for Foreigners[73]

Under the provisions of the Law on Foreigners, a foreigner who cannot be forcibly removed immediately, whose identity is not possible to determine or who do not have a travel document, as well as in other cases stipulated by law, will be ordered by the competent authority to stay in the Reception Centre for Foreigners of the MoI of RS, which is the stay under close police surveillance. The time spent in the Reception Centre for Foreigners cannot be longer than 90 days, and only exceptionally, under the condition that the foreigner's identity has not been determined, that he/she intentionally interferes forced removal and that during the forced removal procedure he/she has filed for asylum, the stay may be extended for up to 180 days.

In the process of forced removal, intention to seek asylum in the Republic of Serbia was expressed by 6 foreigners: 2 citizens of Pakistan, 1 Algerian citizen, 1 citizen of Palestine, 1 citizen of Somalia, and 1 Tunisian national.[74] The average time spent in the Reception Centre for Foreigners is 24 days for persons who have expressed intention to seek asylum, and the reason for their extended stay is the lack of capacities of asylum centres.[75] The positive thing is that the authorities in Serbia do not detain asylum seekers for the duration of the asylum procedure, although there are grounds for it in the Law on Asylum.[76]

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[71] Data obtained on the basis of requests for access to public information, submitted to penitentiary - correctional institutions by the Belgrade Centre for Human Rights

[72] Position of asylum seekers in Serbia (July – October 2012), Belgrade Centre for Human Rights, p. 10

[73] Challenges of Forced Migration in Serbia: the human rights of asylum seekers and returnees based on the readmission agreement, Group 484, Belgrade, July 2012.

[74] Source: Ministry of Interior of RS, Minister's Office, 01-11453/12-3, November 29, 2012

[75] Ibid.

[76] Article 51 of the Law on Asylum prescribes that the movement of asylum seekers may be restricted in three cases for the purpose of: 1) establishing identity; 2) ensuring the presence of a foreigner 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 foreigner in question; 3) protecting national security and public order in accordance with the law. Movement restriction measures may

It should be emphasised that the RS Constitution in Article 39, Paragraph 3 prescribes the conditions under which a foreigner can be expelled from the territory of the Republic of Serbia: "An alien may be expelled only under decision of the competent authority, 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 for reasons of race, sex, religion, national origin, nationality, membership of a particular social group, political opinions, or serious violations of the rights guaranteed by the Constitution"

3.1.4. Asylum Centres[77]

According to the established practice, the Asylum Office employees take necessary actions (registration, examination and application) solely in the case of persons who have expressed intention to seek asylum and have been accommodated in one of the two asylum centres. The persons who are, due to the lack of accommodation facilities, located outside of these centres are denied access to the asylum procedure and the protection from deportation. Since the beginning of August there have been between 90 and 195 people in front of the Asylum Centre Bogovadja on daily basis.[78] They are people who have expressed intention to seek asylum, but also people in irregular status. Among foreign citizens who do not have confirmation of the expressed intention and illegally reside on the territory of Serbia, there are those who argue that at the police station in Valjevo they could not obtain the confirmation as well as those who have the confirmation on the expressed intention, but with the expired deadline of 72 hours and therefore they no longer have a legal basis for their stay. "Although asylum seekers who apply to the Asylum Centre can get a document from the Commissariat for Refugees and Migration, as the authority responsible for the operation of asylum centres (but not from the Asylum Office), the document is not recognised by other government authorities and it must be often extended (every two or three days)".[79]

In the Conclusion on reception of asylum seekers in the context of individual asylum system, the UNHCR states that asylum seekers have the right to documentation reflecting their status of asylum seekers, which is a temporary residence permit, and should be valid until the end of the status determination procedure.[80]

3.1.5. Access to Asylum Procedure of Unaccompanied Minor Foreign Nationals – Institution for Education of Children and Adolescents in Belgrade and Niš[81]

The Republic of Serbia lacks the formally prescribed procedure for age estimation of people. If without personal documents, their age is determined on the basis of their statements. Practice

include (1) ordering accommodation at the Reception Centre for Foreigners in Padinska Skela under intensified police surveillance; 2) imposing a ban on leaving the Asylum Centre, a particular address and/or a designated area.

[77] More in the Section Right to accommodation and basic living conditions

[78] In the period September 8 – November 26, 2012, Group 484 distributed food on daily basis (one meal a day) to individuals who are currently outside of the Asylum Centre Bogovađa. Distribution of food is carried out within the project "Urgent food aid for asylum seekers in the Asylum Centre Bogovađa" supported by the Foundation for Open Society-Serbia.

[79] Serbia as a country of asylum; Observations on the situation of asylum seekers and beneficiaries of international protection in Serbia, UNHCR, August 2012, page 10

[80] UNHCR, Conclusion on reception of asylum seekers in the context of individual asylum systems, No. 93 (LIII)-2002, October 8, 2002, para b)v.

[81] More in the Section Right to Accommodation and Basic Living Conditions

shows that even in case of doubt about the accuracy of the statements about their age, the authorities treat them as if they are juveniles.[82] When officers of police departments or police stations record the presence of unaccompanied minor foreigners in the territory of the Republic of Serbia, they are obliged to promptly notify the territorially competent centre for social work that appoints the temporary guardian to the minor.[83] After that, the largest number of registered minors, accompanied by the temporary guardian, is referred to the institutions for education of children and adolescents in Belgrade and Nis, which are composed of separate units for accommodation of unaccompanied minor foreign nationals. If a minor expresses intention to seek asylum immediately during registration with the MoI officers, he/she can be sent directly to one of the asylum centres.

According to the police records, in the period January 1 – September 30, 2012 intention was expressed by a total of 338 foreign unaccompanied minors (327 boys and 11 girls). In the period January 1 – October 1, 2012, the Institution for Education of Children and Adolescents in Belgrade accommodated 38 unaccompanied minors and 24 of them expressed intention to seek asylum, while the unit in Niš accommodated a total of 41 unaccompanied minors in the same period, and 39 of them sought asylum.

Obstacles to access to the procedure and realisation of rights are identical for foreign minors as for the general population of irregular migrants/potential asylum seekers. In the first place, it refers to the lack of translation services. The situation in the unit in Belgrade is better, in terms of translation services, access to information and the possibility for consultations with representatives of nongovernmental organisation that provide free legal assistance to unaccompanied minors. NGO APC provides translation services for guardians upon request. At least once a week, a lawyer, psychologist and educator visit the units, and the Institution and guardians have everyday access to the information and the possibility of legal, psychological and educational consultations conducted by APC. In Nis, for the purpose of translation, employees try to manage in different ways, by hiring interpreters for the English language, communicating with the help of beneficiaries who speak foreign languages, etc. The minors obtain information about their status, rights and obligations from employees in the legal department of the Institution. Consultations with nongovernmental organisations that provide free legal assistance are available to them only after coming to the asylum centre, since there are no nongovernmental organisations specialised in the provision of free legal aid in asylum procedure in the south of Serbia.

An unaccompanied minor, a citizen of Syria, was arrested by the border police when crossing the Serbian - Bulgarian border together with two adults in early June 2012. The adults were punished in the misdemeanour proceeding while the minor was transferred to the Institution for Education of Children and Adolescents in Nis. He stayed in the Institution on June 10-14, 2012. Since he did not express intention to seek asylum, the police and the Centre for Social Work Dimitrovgrad deported him to Bulgaria. The information collected from employees of the Police Station - Dimitrovgrad, CSW - Dimitrovgrad and the Institution for Education of Children and Adolescents - Nis indicates that this minor

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[82] Serbia as a country of asylum; Observations on the situation of asylum seekers and beneficiaries of international protection in Serbia, UNHCR, August 2012, page 15, accessed: November 10, 2012.

[83] The legal basis for the determination of a guardian arises from the provisions of the Family Law (Article 132, Paragraph 4) and the Law on Social Protection (Article 41) and the Law on Asylum (Article 16).

could not be established communication with as he spoke only a special dialect of Arabic. This case points to the key problem – the lack of interpreters to establish communication with minor foreigners so that minor foreigners could say whether they want to seek asylum.[84]

4. ACCESS TO EFFECTIVE PROTECTION

Determination of the justification of the asylum application is implemented in a two-instance administrative procedure. For the parts of asylum procedures that are not regulated by the Law on Asylum, the regulations governing general administrative procedure are applied. The judicial protection of asylum seekers is also foreseen, and thus it is possible to initiate administrative proceedings against the second instance decision. Since 2008, when the Republic of Serbia took over the jurisdiction over the asylum procedure from the UNHCR, not a single person has been granted refugee status, and subsidiary protection has been granted in only five cases.

Jurisdiction for almost all actions of the first instance[85] is that of the Asylum Office, and for actions in the second instance, upon appeals on decisions made by the Asylum Office, is that of the Asylum Commission as an independent RS Government body.

4.1. Procedural Guarantees

The Law on Asylum contains a number of principles which explicitly provide some procedural guarantees - the principle of immediacy, the principle of information and free legal assistance, as well as the principle of free translation.

The existence of translation services is a basic minimum standard that must be met in order to ensure fair and effective procedure for granting asylum.[86] For almost all languages asylum applicant will be provided translation into the native language, the language in which they can follow the proceedings, but the costs of translation are still not funded from the budget of the Republic of Serbia, but are borne by the UNHCR. Asylum seekers may also hire an interpreter of their choice and at their own expense, but to our knowledge asylum seekers in Serbia have never used this legal option. Translation services are provided during the registration, examination and applying for asylum.

The Law on Asylum (Article 14) particularly emphasises that in accordance with the principle of gender equality, the asylum seeker will be provided a translator or interpreter of the same sex, except when it is impossible or fraught with difficulties disproportionate to the authority conducting the asylum procedure. In practice, unfortunately, this principle is not respected, and exclusively male interpreters are engaged, although in Serbia, at least for the languages most commonly used in the proceedings, Arabic and Farsi, interpreters of both sexes could be engaged.

[84] Source: Report: Position of asylum seekers in Serbia (January – June 2012), Belgrade Centre for Human Rights

[85] See more: Challenges of Forced Migration in Serbia: the human rights of asylum seekers and returnees based on the readmission agreement, Group 484, Belgrade, July 2012

[86] Of great importance is the provision of the Law which states that the obligation to provide free translation services and the use of sign language and the availability of materials in Braille and other accessible formats.

The competent state authorities have a duty to inform asylum seekers about the asylum procedure, as well as their rights and obligations during the procedure. Informing obligation refers primarily to the competent authority conducting the procedure, which is in line with the principle of providing services to a party under Article 15 of LAP, which provides for the obligation of the competent authority to ensure that the ignorance and illiteracy of the party and other participants in the proceedings should not be at the expense of the rights they are entitled to under the law.

Nongovernmental organisations that provide legal assistance to asylum seekers in Serbia are trying to provide as much information as possible about the asylum system in Serbia to individuals who have expressed intention to seek asylum, as well as about the grounds for granting asylum, competent institutions and their basic rights and obligations during the procedure.

A very important right guaranteed by various documents of the Council of Europe and the UNHCR is the right to legal aid.[87] An asylum seeker can use free legal aid and representation by the UNHCR and nongovernmental organisations whose aims and activities are aimed at providing legal aid to refugees (Article 10 of the Law on Asylum). In Serbia, free legal aid[88] is provided to asylum seekers by NGO Belgrade Centre for Human Rights,[89] as a local partner of the UNHCR in Serbia and NGO Asylum Protection Centre.[90] As a rule, persons accommodated in asylum centres are represented by one of two nongovernmental organisations that provide legal assistance and any written official communication in the procedure is delivered to an asylum seeker or his/her legal representative in person (Article 13 of the Law on Asylum).

In accordance with the principle of representation of unaccompanied minors and legally incompetent persons who have no legal representative, the territorially competent centres for social work, before applying for asylum, appoint them with a guardian.[91] The Law on Asylum expressly provides for the right of asylum seekers to contact authorised UNHCR officials at all stages of the asylum procedure (Article 12), and this right is not denied to persons accommodated in asylum centres.

The law stipulates the principle of immediacy and provides that an authorised officer of the Asylum Office will personally "interrogate" the asylum seeker one or more times, in the shortest possible time, in order to verify his/her identity, the grounds for the asylum request, his/her move after leaving the country of origin, and whether the person has already applied for asylum in another country. The interview is attended by legal representatives and a translator, and if needed, representatives of the UNHCR office. The interrogation of an unaccompanied minor or legally incompetent person without a legal representative must be attended by the guardian, and these provisions are consistently respected in practice.

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[87] The conclusion of the Executive Committee of UNHCR no. 8 (XXVIII) of 1971 on determining refugee status; Article 5 of the EU Directive on minimum conditions for the reception of asylum seekers in Member States; CoE Recommendation no. 1236 on the right to asylum, etc.

[88] The field of legal aid provision in Serbia is still mostly unregulated by law, and the discussion on the text of the Law is currently underway. More information at http://www.mpravde.gov.rs/lt/articles/pravosudje/atlas-pravosudja-republike-srbije/besplatna-pravna-pomoc.html, an

[89] See more: www.azil.rs

[90] See more: www.apc-cza.org

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

4.2. Duration of the Procedure

In addition to the practice that the implementation of actions in the first instance proceedings is conditioned by providing accommodation for persons in asylum centres, the problem is also the lack of precisely prescribed period in which certain actions must be completed. The deadline for registration[92] and the issuance of identity cards for asylum seekers is not prescribed. So far, the MoI practice has been to issue identity card only at the time of formal asylum application and exclusively to persons accommodated in asylum centres. The period between expressing intention and obtaining identity cards could be several weeks, which reflects poorly on the exercise of the rights of asylum seekers, in the first place the right to freedom of movement.

The asylum procedure is initiated by filing an asylum application to the authorised officer of the Asylum Office. Application should be submitted in the prescribed form in time scheduled by the Office in advance for each person individually. Formally, the procedure starts from the time the application has been filed. From that moment, the period of 60 days for passing the first-instance decision starts. The deadlines for performing the actions prior to the procedure inevitably affect the moment in which the first instance procedure will be completed, and it often happens that it takes several months from the moment intention is expressed to the first-instance decision.

Table 1: Number of asylum seekers by stages of the first-instance procedure, from the moment of expressing intention to issuing the first-instance decision, data for the period January 1 –September 30, 2012

Number of recorded asylum seekers	1806
Number of registered asylum seekers	465
Number of asylum applications	261
Number of the issued first-instance decision of the Asylum Office	42(57)*

*Every asylum seeker in Serbia files individual request for asylum. Under certain conditions, the Office may decide that certain asylum requests (for example, people from the same family) are combined in one case, and it is then obliged to conduct interrogation with each individual asylum seeker. For each case, after the procedure, the Office issues a single decision, and hence a decision may encompass several individuals.

4.3. Implementation of the Third Safe Country Concept

The Asylum Office may issue a decision granting asylum to a foreigner and recognising him/her the right to asylum. It may grant subsidiary protection, or issue a decision to refuse the asylum application and require from the foreigner to leave the territory of the Republic of Serbia within a certain deadline. In the cases specified by law, the Asylum Office decides on suspending the procedure for granting asylum.[93] Furthermore, the Asylum Office staff may decide

[92] The by-law, whose adoption is foreseen in the Law on Asylum, and which will regulate the manner of recording and registration of asylum seekers has not yet been adopted.

[93] To distinguish expression of intention and formal application for the realisation of the right to asylum

on the rejection of the asylum claim. When the Asylum Office issues a decision to reject the asylum request, it does not go into the essence of the request, i.e. does not examine whether the asylum seeker meets the requirements for recognition of the right to asylum or not. In the period January 1 – September 30, 2012, 42 decisions were issued on the rejection of asylum applications, for 57 persons. There were no other decisions. The rejection was based on the safe third country concept.[94]

According to the Law on Asylum, safe third country is a country from the list of countries determined by the Government. In general, it is a country that adheres to international principles of refugee protection enshrined in the Convention relating to the Status of Refugees of 1951 and the Protocol of 1967, in which the asylum seeker stayed or passed through shortly before the arrival in the territory of RS, and where he/she had the opportunity to apply for asylum, and would not be exposed to persecution, torture, inhuman or degrading treatment or return to the country where his of her life, safety or freedom would jeopardised. It actually leads to the situation where a person should be returned to the country from which he/she has arrived, and which has been declared safe by the Decision of the Government of RS[95] and to file the asylum request in that country.

The question of whether a country is "safe" is not a generic question that can be answered for any asylum seeker under any circumstances (as based on "the list of safe third countries"). The country may be "safe" for asylum seekers of specified origin and "unsafe" for those with other backgrounds.[96]

The Asylum Office should not reject the asylum application before it examines the person seeking asylum relating the circumstances that preclude the reasons for the asylum application rejection. It is essential for this concept to be applied to the circumstances of each individual case, i.e. that each applicant is able to prove that a particular country cannot be considered safe in the particular case. It should be particularly emphasised that the burden of proof does not rest solely with the applicant. In the verdict *M.S.S v. Belgium and Greece*, the European Court of Human Rights pointed out *...that the Court does not agree that because it had not been said in the interview, the Office for Foreigners was not aware of the fears of the applicant in the event of his return to Greece*.

Serbia is one of the countries that have introduced the concept of safe third country into their systems by adopting a fixed list of countries that are considered safe.[97] The decision of the

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has an impact on decision making, specifically the decision to cancel the procedure. Asylum Office decides on the procedure cancelation, when the asylum seeker give up asylum claim or simply leave the residence, as well as in other cases stipulated by the Law on Asylum. The decision to terminate the procedure is also made by the Asylum Office in situations where a formal request has not been submitted, or if only the action recording and/or registration is carried out, and the person in question is no longer available to the competent authorities. (After the registration, the person has not reported to the competent authorities and/or left one of the asylum centres).

[94] Safe third country is the country from the list of countries determined by the Government, which adheres to international principles of refugee protection enshrined in the Convention relating to the Status of Refugees of 1951 and the Protocol of 1967, in which the asylum seeker stayed or passed through just before the arrival to the RS territory and in which he had the opportunity to apply for asylum, and where he/she would not have been exposed to persecution, torture, inhuman or degrading treatment or return to the country where his or her life, safety or freedom would be threatened.

[95] The Decision of the Government of the Republic of Serbia on establishing the list of safe countries of origin and safe third countries, Official Gazette of RS, no. 67/2009

[96] EXCOM , Note on International Protection, UN doc. A/AC. 96/914, July 7, 1999, para 20

[97] There are those that have fixed lists of countries considered to be safe, and those that estimate the

Government of the Republic of Serbia on safe countries of origin and safe third countries was issued in 2009 and has not since been updated.[98] All countries in the region are declared as safe third countries, and the list includes some of the countries that due to grave violations of human rights should not be considered safe, such as Tunisia, Belarus[99] and Greece,[100] as well as Turkey, which has imposed reservations to the Protocol to the Convention related the Status of Refugees of 1967. Following the decision of the European Court of Human Rights in the case *M.S.S v. Belgium and Greece*, a significant number of EU countries have suspended the practice of returning asylum seekers to Greece[101] using the Dublin Regulation.[102] Moreover, in December 2009, the UNHCR announced its official position advising the governments not to return asylum seekers to Greece under the Dublin Convention or on any other grounds.[103]

The provisions of the Law on Asylum governing the adoption of the list of safe countries need to be urgently changed to avoid a situation where legal documents of the Republic of Serbia "provide a possibility" for state agencies to implement practices that violate international obligations of the Republic of Serbia. Until the change is implemented, the competent authorities should, with full respect for the jurisprudence of the European Court of Human Rights and other international standards, determine in each individual case whether a country on the list can still be considered a safe third country. The need to implement such a practice is also emphasised by the Serbian Constitutional Court which states that the prohibition of expulsion and other relevant provisions of the Law on Asylum "suggest that the list of safe third countries, among others things, is formed based on the reports and conclusions of the Office of the High Commissioner for Refugees. Furthermore, this Court concludes that the reports of the organisation contribute to the correction of actions of the competent authorities of the Republic of Serbia in the implementation of the Law on Asylum, in the sense that the asylum application will not be rejected even if the person is coming from a safe third country from the list of the Government, if that country applies the asylum procedure in a manner contrary to the Convention."[104]

"safety" of a certain country at a time when the assessment is needed in order to solve a concrete case.

[98] Belgrade Centre for Human Rights has filed an initiative to assess compliance of the Decision of the Government of the Republic of Serbia on establishing the list of safe countries of origin and of third safe countries with the Constitution, generally accepted rules of international law and ratified international treaties.

[99] Report: Position of asylum seekers in Serbia (January – April, 2012), Belgrade Centre for Human Rights

[100] During 2011, the European Court of Human Rights, in the case of *M.S.S v. Belgium and Greece* established that the asylum procedure is inefficient and systematically violates the human rights of asylum seekers. *M.S.S. v. Belgium and Greece*, Application no. 30 696/09, Grand Chamber judgment of January 21, 2011.

[101] See more: Joint Submission of the International Commission of Jurists (ICJ) and of the European Council on Refugees and Exiles to the Committee of Ministers of the Council of Europe in the case of *M.S.S. v. Belgium and Greece* (Application no. 30696/09), May 2012

[102] Dublin II has replaced the Dublin Convention of 1990, which has set the criteria in relation to the responsibility of EU member states for the examination of an asylum application. The main objective of Dublin II is to swiftly determine which country is responsible for examining an asylum application and to prevent abuse of the asylum procedure by filing a request of one person in a number of countries. See: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R0343:EN:NOT

[103] UNHCR, Observations on Greece as a country of asylum, December 2009

[104] Decision in the case U–1286/2012, of March 29, 2012, available at: http://www.azil.rs/documents/category/odabrane-presude.The decision of the Constitutional Court in the case of the constitutional complaint filed by APC against the implementation of the safe third country concept in the asylum pro-

In the verdict Jamaa Hirsi and Others v. Italy,[105] the European Court of Human Rights noted that ...*the existence of domestic laws and ratified international treaties guaranteeing respect for fundamental rights is insufficient to provide adequate protection against the risk of inadequate treatment where, as in this case, reliable sources refer to the cases from practice in which the authorities perform or tolerate this inappropriate treatment and that are clearly contrary to the principles of the Convention*.

The concept of safe third country poses a serious risk to the institute of asylum and the basic principle of *non-refoulement*. The country that returns an asylum seeker to "safe third country" is exposed to violation of the principle of *non-refoulement* directly or indirectly if the third country returns a refugee to the country where his / her life or freedom would be threatened on account of his / her race, religion, nationality, membership particular social group or political opinion or at risk to be subjected to torture, inhuman or degrading treatment.[106]

The primary responsibility to ensure protection lies with the country where the application has been submitted, i.e. the one that returns the asylum seeker to "safe third country", but the focus remains on the situation in the country in which the person is referred to and possible violation of his or her rights in that country. In applying the concept of safe third country that responsibility implies ensuring guarantees that the country to which the asylum seeker will to be returned will accept to examine the justification of the asylum claim and that in that country the asylum seeker will enjoy effective protection against *refoulement* where he or she is not threatened by a real risk of serious human rights violations.

According to the UNHCR, the following criteria should be met for the implementation of the safe third country concept:

- Asylum seekers must be protected from deportation and must be treated in accordance with the accepted international standards, specified, among others, in the 1951 Convention, and so the third country must be safe for asylum seekers.

- Security must be also provided by the practice of the third country, and the formal commitments that the country has taken.

- An asylum applicant must have a real connection or close links with the third country. Such a link has to be stronger than the one with the country in which he/she seeks asylum, so that it is fair and reasonable to require from such a person to apply for asylum in that country. An asylum applicant must transit through that country, although according to the UNHCR, the transit itself does not constitute such a link or connection. The wishes of asylum seekers in terms of the country in which they wish to submit application should be taken into account in the maximum extent possible.

- Third country must explicitly declare that it accepts the asylum seekers on its territory and that the asylum application should be examined in the fair procedure.[107]

The European Council on Refugees and Exiles (ECRE), in a document presenting the views on

cedure and the practice of the Administrative Court

[105] Hirsi Jamaa and Others v. Italy, Application no. 27765/ 09 , judgement of February 23, 2012

[106] See more: Challenges Forced Migration in Serbia: the situation of refugees, internally displaced persons, returnees and asylum seekers, Group 484, Belgrade, June 2011.

[107] UN High Commissioner for Refugees, Considerations on the "Safe Third Country" Concept, July 1996, p 3, http://www.unhcr.org/refworld/docid/3ae6b3268.html

the concept of "safe third country", also states that the strict criteria are necessary to qualify a country as a safe one. These criteria should at least include: (1) ratification and implementation - without territorial reserves - of the Geneva Convention of 1951 and other international instruments that protect human rights, such as the Convention against Torture, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, (2) accessible, fair and efficient procedure for the realisation of the right to asylum; (3) agreement to readmit the applicant and assess the claim, (4) willingness and ability to provide protection while the person is in the refugee status.

4.4. Right to Effective Remedy

In the Recommendation R (98) 13 of the Council of Europe, countries are encouraged to provide an effective remedy to asylum seekers whose applications for refugee status have been refused and who may be subjected to expulsion to the country that they claim they will be subjected to torture or inhuman or degrading treatment or punishment.

The Asylum Commission is responsible for the second-instance procedure, as an independent government body consisting of 9 members with the four-year term. The term of the Commission elected in 2008 expired on April 17, 2012, and the then outgoing government did not appoint new members. At the meeting of the Government of the Republic of Serbia held on September 20, 2012 members of the Asylum Commission were appointed in the new term.[108]

An appeal against the first-instance decision of the Asylum Office is submitted to the Asylum Commission within 15 days of receipt of the decision. The deadline to issue the second-instance decision is 60 days from the date of receipt of the appeal and in accordance with the Law on Administrative Procedure the appeal does not postpone enforcement.

In the case of J*abari v. Turkey*, the European Court of Human Rights emphasised that g*iven the irreversible nature of the damage that could ensue if the risk of torture or abuse is realised, and the importance given to Article 3, the notion of an effective remedy under Article 13 requires an independent and thorough examination of the appeal ...and the possibility of suspending the implementation of the measure impugned.*[109]

Since the appointment of new Commission members, 47 appeals have been received against the first instance decisions and 5 complaints filed to initiate administrative dispute. Timely response has been provided to all the appeals. 21 decisions have been issued to the submitted appeals, 12 first-instance decisions confirmed, 9 cancelled, and in three cases, the explanation of the first-instance body has been requested. Other cases are pending.[110] In its work, the Commission strictly observes the time limits for issuing decisions.

A significant number of first-instance decisions that were appealed against have been cancelled since the appointment of the second term of the Asylum Commission. The largest number of decisions has been cancelled due to "deficiencies in the first-instance procedure identified by the second-instance authority by examining the contested decision, which was not

[108] A major step forward in the development of the asylum system is the fact that the Government of the Republic of Serbia, by accepting the initiative of eighteen civil society organisations, has appointed Ivana Krstic PhD, Associate Professor at the Faculty of Law, University of Belgrade, as a member of the Asylum Commission.

[109] *Jabari v. Turkey*, Application no. 40035/98, judgement of November 7, 2000, Paragraph 50.

[110] Interview with Jovo Puletić, President of the Asylum Commission and Bojan Andjelkovic, a member of the Asylum Commission, November 2012

pointed to by the appeal".[111] It was emphasised that the second-instance decisions were not issued by default, but after careful consideration of each case.

As previously mentioned, the procedure also provides for judicial protection of asylum seekers, in a way that it is possible to initiate administrative dispute against the second-instance decision. Decisions of the Asylum Commission are impugned before the Administrative Court of Serbia, which decides in the panel of three judges. The problem with the ability to initiate an administrative dispute against the second-instance decision is the absence of the suspensive effect of the appeal. There is a real risk that asylum seekers are sent back to countries where their human rights might be compromised, and that the responsible court in Serbia has not questioned the legality of decisions of the administration bodies. The Administrative Court has not so far been engaged in the meritorious decision-making, but merely questioned the procedural correctness of the procedure for granting asylum or legality of the decision. Only in one case, the Court has issued a meritorious decision.[112] In 2011 and 2012, the Administrative Court did not bring any judgment to grant the appeal. In 2011, the Administrative Court issued 8 decisions, in the first six months of 2012, 2 appeal claims were refused.[113]

5. ACCESS TO RIGHTS OF ASYLUM SEEKERS[114]

The rights of asylum seekers, refugees and persons granted subsidiary protection are laid down in the sixth chapter of the Law on Asylum. During the procedure for the realisation of the right to asylum, the rights to residence, accommodation, basic living conditions, health care and education are guaranteed. The Law on Asylum provides that with respect to scope, content and type of rights and obligations of asylum seekers, the persons who have been granted asylum, subsidiary or temporary protection are subjected to the regulations governing the movement and residence of foreigners (Article 3).

5.1. Right to Accommodation and Basic Living Conditions

The Republic of Serbia is obliged to provide asylum seekers with accommodation and basic living conditions in asylum centres until the final decision on the asylum application is issued. By-laws closely regulate all the issues related to accommodation in the centres.[115] Officially, the capacities of the centres are the following: Banja Koviljača 84, Bogovađa 150, although the centres sometimes accommodate 20 - 30 more people.

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[111] Ibid

[112] Decision no. U 8\3815/11, of July 7, 2011.

[113] Report: Position of asylum seekers on Serbia (January – June, 2012), Belgrade Centre for Human Rights

[114] The Law on Asylum foresees that 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 the Law (Article 3).

[115] Regulations on medical examinations of persons seeking asylum upon arrival at the Asylum Centre, Official Gazette of RS, no. 93/2008; Regulations on housing conditions and the provision of basic living conditions at the Asylum Centre, Official Gazette of RS, no. 31/2008; Regulations on social assistance for persons who seek or have been granted asylum, Official Gazette of RS, no. 44/2008; Regulations on the manner of keeping records and the content of records of persons accommodated at the Asylum Centre, Official Gazette of RS, no. 31/2008; Regulations on House Rules at the Asylum Centre, Official Gazette of RS, no. 31/2008.

In the period January 1 – October 1, 2012, the asylum centres accommodated a total of 1.602 persons.

The Asylum Centre in Banja Koviljača accommodated 214 persons, including 145 adults (129 males, 16 females) and 69 children (58 males and 11 females). Out of the total number of registered children, 40 were unaccompanied.

The Asylum Centre in Bogovađa accommodated 848 people, including 726 adults (578 males, 148 females) and 122 minors (71 males and 51 females).

A person can be placed in the centre if previously recorded (registered) and sent to the MoI. The largest number of asylum seekers comes to the centres alone, upon the instructions of the competent authority before which they have expressed their intention to seek asylum. Unaccompanied underage foreigners are transported to the centres. The Regulations on housing conditions and the provision of basic living conditions in the Asylum Centre provides that persons are received on weekdays between 8:30 and 16:30. Consistent implementation of this provision in practice could cause problems to persons who independently organise transport to the centres. There is also an obligation prescribed for asylum seekers who have their own financial resources to bear the cost of their accommodation, or they can be approved accommodation outside the asylum centre. It is unclear how the authorities determine that it is a person who has his/her own funds and thus is obliged to bear a part of the costs.

The Republic of Serbia has been facing the problem of lack of accommodation facilities for asylum seekers since the beginning of 2011. At that time it was obvious that the existing capacity of the Asylum Centre in Banja Koviljača was not enough. The situation was somewhat mitigated by opening the Asylum Centre in Bogovađa in mid 2011.[116] However, two years later it is apparent that over time, the situation further deteriorated. Since the beginning of August, every day between 90 and 195 people have lived in front of the Asylum Centre Bogovađa.[117]

These are the people who have expressed intention to seek asylum, but also people in an irregular status. They are mostly men, aged 20 to 40, but in short periods women and minors have stayed outside the centre. In such situations, women and minors have priority in the reception, and for them the authorities have secured adequate accommodation in the centre. Vulnerability of persons residing outside the centre is somewhat mitigated by actions of nongovernmental organisations which have for a long time acquired food, hygiene packs and clothing.

In a situation of full accommodation capacities, the Centre has no obligation to receive and accommodate a person referred to the Centre. It should be emphasised that under the provisions of the Law on Asylum, and especially Article 39 Paragraph 1, the competent authorities are obliged to provide accommodation to every asylum seeker. In any case, they cannot be left

[116] See more: Challenges of Forced Migration in Serbia: the human rights of asylum seekers and returnees based on the readmission agreement, Group 484, Belgrade, July 2012, accessed: November 10, 2012.

[117] In the period September 8 – November 26, 2012, Group 484 distributed food on daily basis (one meal a day) to individuals who are currently outside of the Asylum Centre Bogovađa. Distribution of food is carried out within the project "Urgent food aid for asylum seekers in the Asylum Centre Bogovađa" supported by the Foundation for Open Society-Serbia.

to themselves. Due to the current situation around the centre and the forthcoming winter, the Asylum Centre Bogovađa has announced a call for homeowners from the local communities of Bogovađa and Donji Lajkovac, to rent extra living space to the Commissariat for Refugees and Migration so that they could accommodate asylum seekers in the facilities. The Commissariat would pay the owners 50 euro a month per person in dinars.[118]

Being aware of the limited capacities, the RS government has issued a decision to open a new centre. The second half of 2011 was marked by speculation about the possible location of the new centre. The RS Government and the relevant authorities have never officially disclosed the location. However, in May 2012, the information emerged in public about the plans to build a new asylum centre in the vicinity of Mladenovac, which led to protests of residents in the municipality of Mladenovac. Previously, members of the Mladenovac Assembly, at its session held in late April, had voted not to allow "any shelter for asylum seekers" to be built in the territory of the municipality. During September, the Commissariat for Refugees and Migration conducted a survey on the opinions of citizens of Lajkovac, Mladenovac and Loznica about asylum seekers. The survey was conducted on a sample of 1,200 respondents and the most negative attitude towards asylum seekers was expressed by residents of the Mladenovac municipality.[119]

With regard to accommodation, people in the asylum centres are provided with: bed with bedding, access to sanitary facilities, heating, electricity and water, means of personal hygiene and sanitation in the facility. As prescribed by the Law on Asylum, along with the accommodation basic living conditions are provided, such as: food (three meals a day, an extra meal for people with special medical needs), clothing, personal hygiene kits, etc. Within the Centre, asylum seekers have additional contents available (TV room and a playroom for children, sports facilities).

In terms of the conditions and ways of accommodation of asylum seekers, the principles of non-discrimination, family unity, gender equality and care for persons with special needs are respected. Although the Law does not explicitly stipulate, separate accommodation is provided for unaccompanied women.

The centres are of an open type and the asylum seekers do not have any restrictions on freedom of movement. Asylum seekers are allowed to leave the territory of Loznica and Lajkovac, and any absence of more than 24 hours must be previously reported to the director of the Asylum Centre. The information on the reported absence is forwarded to the Asylum Office by the authorised person (director of the Centre). In case the person fails to notify the authorities about his/her absence from the Centre for more than 24h, or does not return within the notified period, he/she loses place in the asylum centre. There is no prescribed procedure for leaving the centre after a negative decision on the asylum application has been issued. Persons are informed on the obligation to leave the centre and the reasons for leaving.

5.1.1. Right to Medical Care

During the reception in asylum centres a medical examination is required, in accordance with regulations issued by the minister in charge of health. During the examination, asylum seekers are informed that they can have voluntary and confidential counselling and testing for HIV/AIDS, as well as testing for syphilis.

[118] Source: Stojan Sjekloća, Director of the Asylum Centre Bogovađa, December 19, 2012.

[119] Presentation: Situation in the field of asylum, Ivan Gerginov, Working meeting with trustees of the Commissariat for Refugees and Migration, Lepenski vir, December 12-14, 2012.

An asylum seeker and a person who has been granted asylum in the Republic of Serbia have equal rights to health care, in line with the regulations governing the health care of foreigners (Article 40 of the Law on Asylum). Article 238 Paragraph 1 of the Law on Health Care stipulates that the term "foreigners" implies foreign citizens, persons without citizenship and those recognised as refugees or granted asylum in accordance with international and domestic law, permanently residing or temporarily staying in the Republic of Serbia. This Article prescribes the manner of exercising medical care of refugees from the former Yugoslavia and Paragraph 3 states that the funds provided for this purpose are from the budget of the Republic of Serbia. The lack of provisions that would explicitly stipulate that the funds for medical care to asylum seekers are also provided from the budget creates problems in the operation of health care institutions. The Ministry of Health has sent letters to health centres in Banja Koviljača and Bogovađa to inform medical workers about the provision of medical care to asylum seekers. "Since then, asylum seekers have been treated in these health centres, and the expenses are still paid by the health centres because the Ministry of Health does not cover them".[120] The mentioned health centres primarily carry out a medical examination which is mandatory for asylum seekers prior to admission to the asylum centres. If there is a need for a specialised medical service asylum seekers are sent to Loznica Lajkovac, Valjevo, and sometimes to Belgrade. Within the medical programme implemented by UNHCR with the support of the Danish Refugee Council, asylum seekers may be provided with necessary medicines and specialised medical supplies and equipment, such as glasses or crutches, which are prescribed by the local doctor, on an ad hoc basis. Asylum seekers are entitled to free dental care. There is good cooperation between the UNHCR and employees in health centres in B. Koviljača and Bogovađa.

5.2. Accommodation and Basic Living Conditions during the Reception of Unaccompanied Minor Asylum Seekers

"Unaccompanied minor is a foreigner who has not attained 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 in the Republic of Serbia" (The Law Asylum, Article 2)

If authorised police officers determine, by examining the documents or by personal testimony that a person is minor and ascertain that he/she is unaccompanied, from that point there is an obligation to urgently notify the territorially responsible centres for social work (CSW) as guardianship bodies. According to the established procedure, CSW has jurisdiction to issue a decision to appoint a temporary guardian and it is done under urgent procedure. By issuing the decision, conditions are met for the minor, accompanied by a person appointed as a temporary guardian, to be referred to the institutions in charge of their reception - one of two units for accommodation of unaccompanied foreign minors operating within the Institution for Education of Children and Adolescent in Belgrade and Nis. If it is a minor who in the first contact with the authorities expressed intention to seek asylum, such a person may be referred to one of two asylum centres - in Banja Koviljača and Bogovađa. However, due to the limited accommodation capacities of the institutions responsible for reception, it often happens that the centres are forced to find appropriate accommodation for a specific period. Centres for social work have different practices in such situations and they all resort to ad hoc solutions. CSW most commonly use accommodation capacities of Reception Centre for Foreigners,[121] and the

[120] Interview with Olivera Vukotić , UNHCR and Vesna Bura Jovanović ,DRC ,June 29, 2012.

[121] There are reception centres for children and youth in five institutions: Institution for Education of Children and Adolescents in Belgrade, Nis and Knjazevac, Centre for the Protection of Infants, Children and Youth, Belgrade, Home for Children and Youth "Spomenak" Pančevo, Department of the Centre for Social Work "Mladost" Kragujevac. The total capacities in all the Institutions are 80.

Reception Unit for Minors,[122] while others use facilities intended to provide social protection services to other vulnerable groups. For example, CSW Novi Sad refers the unaccompanied minors to the Safe House in Novi Sad, which provides care for neglected and abused children. According to the existing capacities of the units, it is possible to accommodate 22 unaccompanied minors – 12 in the unit in Belgrade and 10 in Nis. Formally, they both receive only minor foreign males between the age of 7 and 18. The procedure upon the reception consists of a medical examination, appointing a guardian, informing them of their rights and house rules during their stay. CSW Voždovac (Belgrade Unit) and CSR Nis (Nis Unit) are territorially responsible for appointing guardians. The employees working in the institutions are appointed as guardians. During their stay in the units minors may leave the premises only accompanied by a guardian or an employee.

Although the units are responsible for primary reception that includes the procedures for the implementation of which 10 to 12 days is required, the reality is, however, quite different. The average length of stay of the minors who express intention to seek asylum in the Niš unit[123] is about 20 days, and in the Belgrade unit is two months.[124] The lack of accommodation capacities of asylum centres also affects the functioning of the units as minor foreigners who express intention to seek asylum and who are in the units have to stay there much longer.

There have been improvements in functioning of the units,[125] but the challenges and problems they face in their work are still numerous. The biggest problem is the lack of funds for specific purposes (special food, fuel for transport to the centres for asylum, clothing, documents, necessary medical examinations), which puts at risk particularly the minors, but also other beneficiaries and employees, "If they arrive with some disease or it is developed during their stay, all the necessary measures are taken. We then address the Ministry of Health for help and advice."[126]

The situation in the Institution in Nis is far worse. The Committee against Torture of the Council of Europe[127] has pointed to the need for the conditions to be improved and called upon Serbian authorities to continue with the renovation programme. "The director is aware of the need to provide a separate area for underage asylum seekers, which will consist of a bathroom and three rooms, i.e. two bedrooms and a common area. The project has been developed but it is not implemented due to the lack of funds (the estimated price for the renovation is about 8 000 euro)."[128] The positive thing is that the UNHCR Office in Serbia will allocate certain funds to improve the functioning of the Nis Unit.

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[122] There are reception units for minors, as organisational units, in nine institutions: in all three institutions for children and youth, Centre for the Protection of Infants, Children and Youth in Belgrade, Home for Children and Youth "Miroslav Antic-Mika" Sombor, Home for Children and Youth "Dusko Radovic" Nis, Home for Children and Youth "Spomenak" Pancevo, Home for Children and Youth "Jefimija" Krusevac, Home for Children and Youth "Kolevka" Subotica.

[123] Source: The Institution for Education of Children and Adolescents Nis, in response to the letter sent for the purpose of collecting information necessary for the preparation of this report, November 2012

[124] Source: The Institution for Education of Children and Adolescents Belgrade, in response to the letter sent for the purpose of collecting information necessary for the preparation of this report, November 2012

[125] See more :Underage Asylum Seekers in Serbia: on the verge of dignity, Group 484, Belgrade 2011

[126] Ibid

[127] Report of the RS Government on the CPT visit, January 14, 2012, accessed: November 11, 2012

[128] Position of asylum seekers in Serbia (January – June 2012), Belgrade Centre for Human Rights, p 8.

The reception procedure in asylum centres is different compared to adults, only with regard to the obligation of appointing a guardian for unaccompanied minors. Employees of the territorially responsible CSW (Asylum Centre Banja Koviljača - CSW Loznica and Asylum Centre Bogovađa - CSW Ljig, Lajkovac Department) issue decisions and appoint guardians, employees in CSW. Unaccompanied minors who express intention to seek asylum are being appointed temporary guardians three times until the asylum procedure is initiated. "This practice of going from one to another guardian does not guarantee effective and quality guardianship of minor asylum seekers, and make it difficult, or even impossible, to establish a relationship of trust between the child and guardian".[129] The role of the guardian appointed after admission to the centre is mainly related to fulfilment of the obligations of the asylum procedure and occasional visits to the Asylum Centre.

During their stay in the asylum centre, minors are free to move outside the centre, and if they want to leave Banja Koviljača or Bogovađa they must have the consent from the guardian. The procedure for reporting absences longer than 24 hours is the same as for the adults. The absence must be reported to the asylum centre director.[130]

Encouragingly, the unaccompanied foreign minors are not referred to the Reception Centres for Foreigners of the MoI which is under close police surveillance.

5.2.1. Right to Education

According to the UNHCR "the conditions at the asylum centre are not ideal for unaccompanied minors seeking asylum. Although the asylum centres have certain activities for younger children, there are no appropriate courses and programmes for school-age children and teenagers."[131] Three times a week for three hours, a teacher comes to the Asylum Centre in Banja Koviljača and works with children, while in the Asylum Centre in Bogovadja there is kindergarten that operates as a pre-school institution. Among other things, the nursery teachers teach the children Serbian. The Law on Asylum provides that asylum seekers are entitled to free primary and secondary education, but in practice this possibility is not used, primarily because of the language barrier. In this school year, two minor asylum seekers from the Asylum Centre Bogovađa have been included in the regular school system in the Republic of Serbia as they have sufficient knowledge of the Serbian language.[132] At the asylum centres and the Institution for Education of Children and Adolescents in Belgrade, NGO APC organises weekly psychological, cultural, creative and hygienic workshop, conducts individual psychological counselling and provides psychological support with a special emphasis on working with women and children asylum seekers.

CONCLUSION

Adequate conditions for the reception of asylum seekers during examination of the justification of their asylum claims are an essential part of any asylum system. They are essential to ensure that asylum seekers are prepared for both possible outcomes of the procedure for

[129] Serbia as a country of asylum; Observations on the situation of asylum seekers and beneficiaries of international protection in Serbia, UNHCR, August 2012, page 15, accessed: November 10, 2012.

[130] Source: Commissariat for Refugees of RS, in response to the letter sent for the purpose of collecting information needed for this report, November 2, 2012.

[131] Ibid

[132] Source: Ivan Gerginov, Deputy Commissioner for Refugees of RS, interview conducted on November 2, 2012.

the realisation of the right to asylum, integration in the host country after the recognition of the status and dignified return if it is determined that they do not deserve international protection.[133] At the same time, adequate reception conditions are a prerequisite for the fair and efficient procedure.[134]

In assessing the current practice of reception in the Republic of Serbia it has to be taken into consideration that the Republic of Serbia started developing the asylum system a little more than four years ago and that at the same time it was faced with an influx of a large number of asylum seekers. The reform processes that should be undertaken in order to establish a system that meets at least the minimum standards for the reception of asylum seekers are easier to implement with presence of a relatively small number of asylum seekers. Additionally, the definition of standards, interpretation of the provisions of laws and their implementation is mainly based on the best practices of countries that have been developing their systems for several decades. The emphasis on the foregoing facts does not seek to justify or diminish the obligation of the Republic of Serbia to fully comply with all international standards for the protection of asylum seekers, but to contribute to more objective view of the existing practice of reception in the Republic of Serbia.

We believe that the current system of reception has its flaws, but at the same time there are many modalities for its improvement, provided that there is clear political will to actually implement it. The purpose of this document is to encourage a constructive discussion on the current practice in the reception of asylum seekers. At the same time, our contribution is given in the form of recommendations since the civil sector is the actor that has an active and constructive role and willingly takes over a certain part of responsibility for the establishment of mechanisms of reception based on international and regional standards.

The main priority is to increase accommodation capacities for all persons who apply for asylum in the Republic of Serbia by opening another asylum centre. In the meantime, it is necessary to establish a mechanism for accommodation of all persons who apply for asylum in order to prevent a number of asylum seekers being forced to find accommodation independently, or to stay in the open due to lack of finances. Additionally, it is necessary to ensure that all asylum seekers obtain documents necessary for verifying their status, which are the grounds for legal residence in the territory of Republic of Serbia. At the same time, it is necessary to initiate activities that would be aimed at sensitising the local population in order to create conditions for local communities to actually accept asylum seekers.

RECOMMENDATIONS:

In relation to the legal framework:

- In the further development of the legislation it is necessary to ensure adequate protective mechanisms related to the access to territory and asylum system and in this regard, it is necessary to lay down deadlines for actions to be carried out prior to the formal submission of the asylum claim.

- It is necessary to promptly review the Decision of the Government of the Republic of Serbia on the establishment of the list of safe countries of origin and safe third countries.

[133] ECRE. Comments on the Amended Commission Proposal to recast the Reception Conditions Directive (COM(2011) 320 final), September 2011.

[134] Towards Fair and Efficient Asylum Systems in Europe, European Council for Refugees and Exiles (ECRE), September 2005

Additionally, it is necessary to amend the provisions of the Law on Asylum relating to the obligation of adopting the list of safe third countries so as to lay down the criteria by which it would be decided how often and in what way the list will be revised. In the process of revising the list, it is necessary to ensure the obligation of consultations with relevant international and nongovernmental organisations dealing with the protection of human rights and protection of rights of refugees.

- It is necessary to adopt a regulation that would explicitly provide that the funds for health care of asylum seekers will be provided from the state budget.

In relation to the treatment of asylum seekers:

- The person who seeks asylum at the border should not be prohibited or denied entry on the basis of interviews with the border police. As a form of guarantee, it is desirable to introduce a certain supervisory mechanism of non-state bodies, the so-called border monitoring.

- The UNHCR and nongovernmental organisations that provide free legal assistance should be ensured access to the transit zone at Belgrade "Nikola Tesla" airport.

- It is necessary to increase the accommodation capacities of units and create adequate conditions for the reception of minor foreign females and the renovation of the unit operating within the Institution for Education of Children and Adolescent in Nis.

- It is desirable to ensure the presence of independent and competent interpreters: in the process of identification, wherever possible, especially in situations where it is clear that the person is an unaccompanied minor; in misdemeanour proceedings given the far-reaching consequences that may arise in the case of inadequate translation - breach of international obligations of impunity of asylum seekers for illegal entry and/or stay and denial of the right to asylum.

- It is necessary to ensure that migrants in the penitentiary-correctional institutions are informed in a language they understand about their rights, above all the possibility to apply for asylum, and it is especially important to provide funds for the purpose of translation in the units for accommodation of unaccompanied foreign minors. Additionally, it is necessary that underage foreigners accommodated in the Niš unit are informed about their status, rights and obligations by the people specialised in working with children migrants and familiar with the asylum system in RS.

- In accordance with Article 3 of the Convention on the Rights of the Child, in all actions concerning unaccompanied minors, the best interests of the child must be taken into account. The best interest of the child implies taking into consideration all provisions of the Convention on the Rights of the Child and other provisions of international legal norms and standards.

- It is necessary to create conditions for minor asylum seekers (unaccompanied) in asylum centres to have access to educational workshops and (integration) programmes for all ages.

Training and capacity building of institutions:

- It is necessary to continuously improve capacities of all stakeholders that participate in the examination of asylum claims - Asylum Office, Asylum Commission, Administrative Court

of the Republic of Serbia, as well as nongovernmental organisations that provide free legal aid to asylum seekers, given that the quality of the examination procedure depends on all of these actors;

- It is desirable to intensify training of border police and officials at the airport, as well as police officers dealing with migration and foreigners, in order to ensure asylum seekers the access to asylum system and the respect of the principle of non-refoulement;

- It is necessary to conduct additional training of magistrate judges, in order to improve their qualifications for the recognition of the need for asylum protection;

- It is desirable to conduct training for persons who work in the penitentiary-correctional institutions about the reasons that can be the basis for granting refugee status and about the RS authorities responsible for the procedures.

Chapter 2:

BETWEEN REINTEGRATION AND SECONDARY DISPLACEMENT:

return of KiM minority members from Western Europe

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INTRODUCTION

More than 200,000 people left their homes in Kosovo and sought refuge in central Serbia following the withdrawal of Serb security forces from Kosovo in 1999. Of this number, the majority were Serbs and Roma, followed by Montenegrins and Bosnians. Upon finding themselves in the hardship of internal displacement, a certain number of them went to Western countries to seek asylum. Some succeeded in obtaining refugee status under the 1951 Convention and some were permitted to stay for humanitarian reasons. The majority, though, were granted temporary protection, which in the meantime was terminated, or had their asylum applications rejected after a lengthy procedure which in some cases took several years to complete.

A certain number of individuals were returned to Serbia on the basis of internal flight alternative.[1] UN High Commissioner for Refugees – UNHCR published a document stating its views and recommendations with respect to the application of the said concept in order to return people originating from Kosovo to central Serbia, as the safe part of the country of origin, as 2004, then again in 2005, 2006 and 2009.[2] In UNHCR's view, members of minority communities from Kosovo should not be returned either directly to Kosovo, where they would be at risk of persecution, nor to central Serbia, where they would have to face the precarious conditions of internal displacement.

Following Kosovo's self-proclaimed independence in 2008 and recognition of Kosovo as an independent state by nearly all Western European countries, some of the countries, who had prior to that followed the UNHCR recommendation to refrain from applying the internal flight alternative to individuals from Kosovo, started returning people originating from Kosovo to central Serbia with the explanation that they, as Serbian nationals, can avail themselves of the protection of that state and therefore can no longer receive international protection.[3] The Convention Relating to the Status of Refugees, in Article 1A(2), Para. 2, states that persons who can avail themselves of the national protection of another country of which they are nationals should be excluded from international protection.[4] UNHCR underlines the need to differenti-

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[1] *Internal Flight Alternative* (or Relocation Principle): A factual determination that an asylum-seeker could have avoided persecution in his country of origin by relocating to another part of the same country. This term is not favoured by UNHCR as it is often used to limit access to status determination procedures or to deny refugee status. (UN High Commissioner for Refugees, UNHCR Master Glossary of Terms, June 2006, Rev.1)

[2] UNHCR, The possibility of applying the internal flight or relocation alternative within Serbia and Montenegro to certain persons originating from Kosovo and belonging to ethnic minorities there, August 2004; UNHCR, Position on the Continued International Protection Needs of Individuals from Kosovo, March 2005; UNHCR's Position on the Continued International Protection Needs of Individuals from Kosovo, June 2006; UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Individuals from Kosovo, November 2009.

[3] Source: The Norwegian Directorate of Immigration (UDI), Asylum Department, by email on 3 December 2012; see also: Group 484, Challenges of Forced Migration, 2011.

[4] Article 1A (2) para. 2: "In the case of a person who has more than one nationality, the term "the country of hisnationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national."

ate between the application of the clause relating to dual and multiple nationalities, and owning citizenship in the legal sense and a real possibility to receive protection of the respective country.[5]

"All applicants' asylum applications are considered separately. After the recognition of Kosovo's independence, all applications by Kosovo Serbs and Roma are rejected, in accordance with Article 1A(2), Para.2, of the UN Convention Relating to the Status of Refugees. Considering that they are Serbian nationals, it is considered that they are safe in Serbia. All applications by the other minorities are also rejected. A stay permit can be issued for humanitarian reasons, for example, if the applicant suffers from a severe mental illness that cannot be treated in Kosovo or from specific psychological disorders of a specific degree of severity."[6]

If Western countries determine that these people should not be sent back directly to Kosovo, they have an option of returning them to central Serbia, as the other country of their nationality. This situation is peculiar in that such a change of circumstances in the country of nationality allowing for termination of international protection or not allowing persons to claim international protection was not envisaged in the Convention on the Status of Refugees, nor does there exist relevant guidelines as to what to do in cases where these persons do have access to protection in a part of their country, after the secession of another part of that country in which such protection was previously not available.

Members of ethnic minority communities from Kosovo that are being returned from Western Europe to Serbia, represent one of the most vulnerable groups among a wide range of vulnerable groups and require particular attention. They were at least twice forced or obliged to leave their homes, first when they abandoned Kosovo, and for a second time when they left their new homes in European countries that provided them temporary or other forms of time-limited protection. However, for some of them, the return from the Western European countries does not necessarily mean "the end of the refugee cycle," but actually the beginning of a new cycle of migrations towards the countries in which they stayed for a certain period of time, or a re-return into internal displacement in the central Serbia or in the territory of Kosovo an Metohija.

This paper serves as a reminder of an exceptionally rich legal theory and jurisprudence in this area, which is a result of the work of the leading refugee law theoreticians and renowned international organisations. Without any intent on dwelling on the sovereign right of the states to decide on the issues of granting or cessation of international protection, this paper draws attention to the important views and considerations in line with the concept of protection and full respect for all human rights in the context of sustainable return. On the other side, the paper also points to numerous problems in accessing rights faced by returnees and members of the minority communities from Kosovo in their place of permanent, i.e. temporary, residence, and consequently to the secondary displacement phenomenon, as a consequence of limited access to rights in their previous place of residence.

[5] There will be cases where the applicant has the nationality of a country in regard to which he alleges no fear, but such nationality may be deemed to be ineffective as it does not entail the protection normally granted to nationals. In such circumstances, the possession of the second nationality would not be inconsistent with refugee status. UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status, HCR/IP/4/REV.1., New edition, Geneva, January 1992 - UNHCR 1997.

[6] Source: The Norwegian Directorate of Immigration (UDI), Asylum Department, by email on 3 December 2012

1. REVIEW OF RELEVANT LEGAL AND THEORETICAL CONSIDERATIONS

1.1. Internal Protection Alternative

Many countries around the world invoke the possibility of an internal flight alternative[7] in order to deny refugee status to individuals who face the risk of being persecuted, as defined in the Convention Relating to the Status of Refugees, in a part, but not in all of the territory of their country of origin.

The obligation to provide international protection deriving from the Convention is therefore considered only as a surrogate protection, designed compensate for the lack of protection against persecution on individual or collective basis in the country of origin. If an asylum seeker is shown to actually have access to effective protection in his/her own country, his/her refugee status should not be recognized, because international refugee law is designed to provide only back-up source of protection for persons whose safety or freedom is seriously threatened.[8]

The 1951 Convention Relating to the Status of Refugees made no reference to internal protection alternative; nowadays, however, there is no doubt that this concept is well entrenched in legal systems of the states parties to the Convention. In the Joint Position of Council of the EU of 1996, the interpretation of the refugee definition included a reference to the internal protection alternative.[9] The EC 2004 Directive on minimum standards for the refugee qualification, in its Article 8 leaves open the possibility for member states to determine that a person is not in need of international protection if he/she can receive internal protection in a part of his/her own country.[10] It follows that even the persons who face flagrant risks, but who can obtain meaningful protection in a part of their country of origin, are not eligible for refugee status under the 1951 Convention.

The source most widely referred to as a customary and classic formulation of this principle is paragraph 91 of the UNHCR Handbook of 1979, which reads as follows:

> "The fear of being persecuted need not always extend to the whole territory of the refugee's country of nationality. Thus in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country. In such situations, a person will not be excluded from refugee

[7] In this text we consider "internal protection alternative" to be an accustomed phrase used to denote returning persons to the safe part of a country. That is why it is written without quotation marks, with a few deliberate exceptions. The same approach was applied to its synonyms: internal flight alternative and relocation principle.

[8] James C. Hathaway and Michelle Foster, Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination, UNHCR, 2001, p. 2.

[9] Joint Position Defined by the Council of the European Union on the Basis of Article K.3 of the European Union Treaty on the Harmonized Application of the Definition of the Term "Refugee" in Article 1 of the 1951 Geneva Convention Relating to the Status of Refugees', OJ 1996 L63/2, March 1996.

[10] Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304, 30/09/2004.

status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so."[11]

Although there is no doubt that UNHCR hoped that the paragraph 91 would discourage countries from excluding persons from refugee status "merely" because they can claim internal protection, in practice the cited formulation often leads to unfounded denials of protection.[12]

Further guidelines regarding appropriate application of the internal protection alternative UNHCR offered in March 1995 in its Information Note on Article 1 of the 1951 Convention. The emphasis was placed on the need for an "effective internal flight alternative", which would exist only where the proposed region is "accessible in safety and durable in character' and where the conditions in the region correspond to basic human rights instruments.[13] This protection-oriented approach was even more highlighted in an overview published later that year by UNHCR Bureau for Europe. This document underlined that "protection must actually be available for the person in question in the alternative location and it must be meaningful". While continuing to insist on the criterion of "reasonableness" set out in the Handbook as part of internal flight alternative standards, UNHCR for the first time provided some concrete guidelines on the essential elements of a "reasonableness" assessment. The reasonableness test includes the factors such as provision of basic civil, political, social and economic rights, taking into consideration subjective circumstances of the asylum seeker and even the "depth and the quality of the fear itself ".[14]

The "reasonableness" test in practice allows decision makers to consider applications by asylum claimants in the light of their own view of what represents "reasonable" behaviour. Even the UNHCR Position Paper of 1999 suggests only an open-ended list of questions and themes issues states may choose from in assessing reasonableness. Decision makers are thus required to make their own individual assessments as to what is 'reasonable' in a particular case.[15] It is said that the claimant's personal profile will be important and that factors to be considered might include but are not limited to age, sex, health, family situation and relationships, ethnic and cultural group, political and social links and compatibility, social or other vulnerabilities, language abilities, educational, professional, and work background, and any past persecution suffered and its psychological effects.[16]

While decisions in Denmark, the Netherlands, and the United Kingdom have generally held that the presence of family in the proposed internal relocation site is not necessary, other decisions, especially in states like Canada, Finland, Switzerland, and New Zealand, have insisted on the relevance of family and other social networks. Similar differences are evident in respect of other factors of the 'reasonableness' test. The Danish Council of State, for example, holds that the prospect of the deterioration of an asylum seeker's socio-economic status is not the reason preventing an internal flight alternative from being recognized and the Danish Refu-

[11] 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 1988.

[12] James C. Hathaway and Michelle Foster, op. cit. p. 5.

[13] Ibid.

[14] UNHCR, Regional Bureau for Europe, An Overview of Protection Issues in Western Europe: Legislative Trends and Positions Taken by UNHCR, European Series, Vol 1, No 3, September 1995.

[15] Bill Frelick, Down the Rabbit Hole: The Strange Logic of Internal Flight Alternative, World Refugee Survey 22, 1999, mentioned in: James C. Hathaway and Michelle Foster, op. cit. p. 23.

[16] UNHCR, Relocating Internally as a Reasonable Alternative to Seeking Asylum – The So-Called "Internal Flight Alternative" or "Relocation Principle", 1999.

gee Appeals Board is unlikely to take account of socio-economic factors in deciding whether an internal option is reasonable. The Canadian Federal Court has denied the relevance of the potential for economic prosperity in assessing the viability of an internal protection alternative. Conversely, German and Swiss courts sometimes insisted on the relevance of economic or financial hardship in assessing the adequacy of an internal flight alternative. Similar differences are evident in respect of language skills. While courts in New Zealand have held that a lack of relevant language skills does exclude the possibility internal relocation, courts in Switzerland and Canada have held that the ability to speak the language of the relocation alternative is highly relevant.[17]

In 2003 UNHCR issued its "Guidelines on International Protection", as a legal guidance for relevant government authorities and UNHCR staff in the determination of refugee status. The purpose of the guidelines was to consolidate practice employed by decision-makers in different states in respect of internal protection alternative. According to the Guidelines, the concept of internal flight alternative is not a stand-alone concept, or an independent test in the determination of refugee status, and it was not thoroughly analysed in the 1951 Convention. In this respect, this concept may certainly be taken into account in the determination of refugee status, but may not be used as basis for or as the only evidence when making a decision regarding an asylum application.[18]

In making a decision on the appropriateness of an internal protection alternative in a particular case, the Guidelines propose a two-tier analysis: the relevance test and the reasonability test. The relevance test includes the questions such as: is the area of relocation practically, safely, and legally accessible; is the agent of persecution the State itself or a non-State agent; would the asylum claimant be exposed to a risk of being persecuted or other serious harm upon relocation. The reasonability test includes assessment of security and safety conditions in the proposed relocation area, respect for human rights in that field and chances for economic survival in order to determine whether a person could live in that location without facing undue hardship.[19]

The minimum acceptable level of legal rights intrinsic to the notion of "protection" is definitely open to debate. It might be argued that "protection" requires a government normally to be able to provide all of the basic international human rights. On this basis reference would be made, at a minimum, to the obligations contained in the International Bill of Human Rights and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The UN "Guiding Principles on Internal Displacement" of 1998 offer a helpful recapitulation of substantial human rights, framed by specific references to dilemmas facing persons who are forced to relocate within their own country (and those who are excluded from the international protection on grounds of internal protection alternative). There is therefore a logical need to define the minimum standard of affirmative protection in the proposed internal protection alternative by reference to similar norms.[20]

On the other hand, this is because there is no consensus that any risk to even a substantial, internationally protected human right is equal to a risk of "being persecuted". While first level human rights – the non-derogable civil and political rights (freedom from torture, for exam-

[17] James C. Hathaway and Michelle Foster, op.cit. p. 24.

[18] UNHCR, Guidelines on International Protection No. 4: Internal Flight or Relocation Alternative Within the Context of Article 1A (2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, HCR/GIP/03/04, 23 July 2003.

[19] Ibid.

[20] Ibid.

ple) – are almost universally recognized, a more nuanced analysis of the relevance of second level (derogable civil and political rights) and third level (economic, social, and cultural rights) is needed. Some authors treat these rights as amounting to persecution. For that reason, the authors of the internal protection alternative approach set out in the "Michigan Guidelines",[21] determined that reference could instead be made to the rights contained in the Refugee Convention's definition of "protection". Since the purpose of internal protection alternative analysis is to determine whether an internal site may be deemed as providing a sufficient answer to the applicant's well-founded fear of being persecuted so that the protection in an asylum State may not be required, then there is a logic to measuring the sufficiency of internal flight alternative "protection" in relation to the actual protective obligations of asylum states. The required standard is not respect for all human rights, but provision of the rights codified as the 1951 Convention's endogenous definition of "protection" in Articles 2 through 33. Generally, these standards impose a duty of non-discrimination against citizens or other residents of the asylum country and refugees in relation to a set of socio-economic rights, including access to courts, access to employment, access to social assistance, freedom of religion, freedom of movement and access to primary education.[22]

Reference to the internal standard of 'protection' under the Convention was criticized on the basis that there are difficulties with a consistent application of Articles 2 through 33 to the internal protection analysis. However, it is important to understand that the internal protection alternative approach does not suggest a literal application of Articles 2 through 33 in considering internal protection. This approach suggests that decision makers seek inspiration from the kind of interests protected by these Articles as a way of defining an endogenous notion of affirmative protection in the refugee context.[23]

1.2. Cessation of International Protection

Article 1C of the Convention envisages cessation of refugee status on the basis of both individual act of an refugee, which actually changes his/her position and as a result of a general change in circumstances in his/her country of nationality in connection with which a person became a refugee. Formally, these reasons for cessation of refugee status apply to people who have their refugee status recognised under the Convention. In practice, however, these reasons are also applied to cessation of temporary protection and in decisions to deny persons international protection.

Article 1C of the Convention relating to the Status of Refugees

This Convention shall cease to apply to any person falling under the terms of Section A if:

1. He has voluntarily re-availed himself of the protection of the country of his nationality; or
2. Having lost his nationality, he has voluntarily re-acquired it, or
3. He has acquired a new nationality, and enjoys the protection of the country of his new

[21] A joint work prepared by leading experts for refugee law, published as: James C. Hathaway, "The Michigan Guidelines on the Internal Protection Alternative", Michigan Journal of International Law 131; added as and Annex to James C. Hathaway and Michelle Foster, Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination, UNHCR, 2001.

[22] James C. Hathaway and Michelle Foster, op.cit. p. 45.

[23] Ibid.

nationality; or

4. He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
5. He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under Section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;
6. Being a person who has no nationality he is, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

UNHCR and its Executive Committee used various terms to describe the degree of change necessary to justify a declaration of general cessation, but they all suggest that such developments must be comprehensive in nature and scope.

"States must carefully assess the fundamental character of the changes in the country of nationality or origin, including the general human rights situation, as well as the particular cause of fear of persecution, in order to make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist."[24]

In UNHCR's view, cessation of refugee status must result from a fair process, which, in addition to meeting several basic requirements (a neutral decision maker, hearing in a language understandable by the refugee and in which the refugee may present reasons for continued eligibility for refugee status etc.) also includes the possibility of claiming alternative protection in order to avoid repatriation, as well as the possibility to qualify for some other legal status.[25] It is worth emphasising that cessation of refugee status does not automatically lead to repatriation. Namely, it is necessary to explore possibilities for a refugee to obtain some other status. One of the reasons is that there are refugees who can give 'compelling reasons' arising out of previous persecution to avoid cessation of refugee status or any other status that enables him/her to remain in the country. Some refugees may be protected against involuntary repatriation under human rights treaties, and States must provide them leave to remain. In addition, certain humanitarian claims may be accommodated by states of refuge, including especially vulnerable persons, persons who have developed close family ties in the state of refuge, and persons who would suffer serious economic harm if repatriated.[26]

In its Conclusion No 69, the Executive Committee proposes two groups to be exempt from

[24] Executive Committee of the High Commissioner's Programme, Conclusion No. 69 (XLIII), 1992, UN doc. A/AC.96/804.

[25] Joan Fitzpatrick and Rafael Bonoan, p. 517.

[26] Ibid. p. 518

cessation of status, namely (a) persons who have compelling reasons arising out of previous persecution for refusing to re-avail themselves of the protection of their country,[27] (b) those persons who cannot be expected to leave the country of asylum, due to their long stay in that country resulting in strong family, social and economic links.[28]

In some cases deportation of a person with strong family ties may constitute violation of international human rights provisions, such as Article 8 on the respect for private and family life of the European Human Rights Convention on. Their cases are not 'humanitarian' in nature in the sense that States have discretion to permit them to stay, or not.[29]

The process of cessation of temporary protection requires clarification. Sufficient evidence of changed circumstances must be available, and it must be determined who bears the burden of proof. In recent practice, individual states have withdrawn temporary protection at different times, creating an impression that the assessment process is not determined by objective criteria.[30] The EU has adopted a Directive that establishes a collective mechanism for introducing and terminating temporary protection.[31] The Directive envisions that information received from member States, the European Commission, UNHCR, and other relevant organisations will be considered in decisions on the introduction and ending of temporary protection measures, which will be taken by a qualified majority of the Council. A decision to withdraw temporary protection must be based on an assessment that 'the situation in the country of origin is such as to permit safe and durable return ...with due respect for human rights and fundamental freedoms and Member States' obligations regarding *non-refoulement*".[32]

2. RETURN OF KIM MINORITY MEMBERS FROM WESTERN EUROPE

Where returnees originating from Kosovo are concerned, the view of UNHCR, presented in its Guidelines released in 2009,[33] is that relocation to Kosovo would be neither a relevant nor reasonable solution in the case of members of certain minority communities from Kosovo.

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[27] In its Guidelines of 2003 UNHCR states that this group primarily includes persons severely harmed and traumatized because of previous persecution. (UNHCR, Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses), HCR/GIP/03/03 10 February 2003)

[28] Executive Committee of the High Commissioner's Programme, Conclusion No. 69 (XLIII), 1992, UN doc. A/AC.96/804.

[29] Joan Fitzpatrick and Rafael Bonoan, p. 518.

[30] Ibid, p. 522

[31] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of 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 2001 L212/12, 7 August 2001.

[32] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of 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 2001 L212/12, 7 August 2001

[33] UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Individuals from Kosovo, November 2009.

UNHCR concluded that persecution by "non-State actors", particularly relevant in the Kosovo context, may give rise to claims to refugee status under the 1951 Convention in cases where the State is unwilling or unable to provide protection. Considering the possibility of internal protection alternative within Kosovo, UNHCR concluded that Kosovo Roma may face the threat of physical violence and other human rights abuses on the basis of their race and ethnicity. UNHCR further states that Roma are subject to severe discrimination and that the risks heightened when they travel beyond their places of residence. As a result, UNHCR finds that their relocation within Kosovo would not meet the criteria of the relevance test. As living conditions are already precarious in the regions of origin, they would get even more difficult in areas outside their places of residence, so the criteria of the reasonableness test would not be satisfied either.

With respect to Serbs, UNHCR states that although they may find an area for internal relocation where they are in the majority, such relocation may not be reasonable given the prevailing security situation, the limited freedom of movement, and shortages of housing and employment.[34]

As regards the relocation to Serbia, UNHCR is of the opinion that, although physical and legal access to Serbia is possible, although the Kosovo Serbs, Roma, Ashkali and Egyptians do not normally face a risk of persecution, their relocation to Serbia may not meet the reasonableness test, in particular in the case of Roma, Ashkali and Egyptians.

Relocation to Serbia of Kosovo Serbs may meet the reasonableness test in some cases, depending on their individual circumstances. This would be the case if they are able to secure housing and officially to register their residence, if they have family members in Serbia who can assist or support them, and/or have skills and qualifications which would enable them to find employment in the labour market.

The same document points to the possibility of subsidiary protection in accordance with the Council Directive 2004/83/EC. Persons from Kosovo who fail to meet the refugee criteria under the Convention may qualify for subsidiary protection.[35] Special attention is drawn to the groups such as victims of human trafficking, victims of domestic violence, sexual minorities, persons of mixed ethnic origin or people in ethnically mixed marriages. There is a particularly serious concern that these categories of people may be subject to some forms of discrimination, social segregation, ill-treatment or that they may not be able to access legal protection mechanisms, hence their needs must be given particular consideration in assessing whether conditions are met for awarding international protection.[36]

110 individuals who declared as originating from the territory of the Autonomous Province of Kosovo were forcibly returned from Western countries through the Belgrade Airport in 2011, as reported.[37] In the period between January and November, the Readmission Office at the Belgrade "Nikola Tesla" Airport, registered 23 returnees with registered residence in Kosovo.[38] The people who decided to comply with the orders of Western countries and return "voluntarily", were given one-off assistance provided by the governments of Western countries through

[34] Ibid.

[35] Ibid.

[36] Ibid.

[37] Commissariat for Refugees of the RS, Report for the January – December 2011 period, 2012.

[38] Source: Dejan Milisavljević, advisor at the Department for Reception, Sheltering and Returnees under Readmission Agreements of the Commissariat for Refugees of the RS, by email, 27. December 2012.

IOM, and were usually registered as "assisted voluntary return". There is no consolidated information about this type of return assistance or itemized data showing how many of the beneficiaries of this kind of assistance are members of minority communities from Kosovo who were returned to Serbia. According to the Germany's Federal Office for Migrations and Refugees, only those returnees to Serbia who had claimed asylum before the EU lifted visa requirements for nationals of Serbia (19 December 2009) may receive assistance for return, which encompasses transportation costs in the amount of 250 Euros per adult person and 100 Euro per child and additional financial assistance of 400 Euro per adult person and 200 per child. 2011 saw 2,263 such "assisted voluntary" returns to Serbia under the REAG/GARP programme funded by the Federal Government of Germany and implemented by IOM.[39]

Data on returns to Kosovo

The UNHCR Statistical Overview, updated at the end of October 2012,[40] features three categories of returns from western European countries: assisted voluntary return - AVR, induced voluntary return – IVR, and forced return - FR. Statistics for the period between January 2010-October 2012 are as follows: in 2010 there were 8507 returns (AVR: 4518, IVR: 1079 and FR: 2910), in 2011 6152 returns (AVR: 2966, IVR: 751 and FR: 2435) and up to the end of October 2012 there were 4319 returns (AVR: 1927, IVR: 398, and FR: 1994). Out of a total of 7.339 forced returns in the above period 1844 were members of minority communities, namely: 970 Roma, 343 Ashkali, 166 Serbs, 133 Gorani, 110 Bosnians, 81 Albanians, 25 Turks and 16 Egyptians. Serbs, Roma, Ashkali, Egyptians and Albanians from the part of Kosovo territory where they are in minority are the ethnic groups considered by UNHCR to be at risk.

Among those who have returned directly to Kosovo, some move on to central Serbia, where they have relatives, and some are displaced within Kosovo. People originating from Kosovo and Metohija, who return to central Serbia, according to the Assistant Commissioner for Refugees Ivan Gerginov, are the most difficult categories of returnees from Western Europe. Unless someone notices that they left their place of origin after being returned, it is impossible to track their subsequent movement and their fate largely remains unknown. Five to six persons per month, mostly Roma who had been returned from Western Europe directly to Kosovo, turn to the Commissioner for Refugees in Northern Kosovo for emergency accommodation. The Commissioner secures them accommodation in some of the container settlements in Kosovo, such as Voćar, Gradište and Plandište.[41]

[39] Source: Federal Office for Migration and Refugees of Germany, by email, on 3 December 2012 (Has no data as to how many among them were persons having registered residence in Kosovo. Also, these statistics do not include the returnees who received return assistance through German federal states)

[40] UNHCR – Office of the Chief of Mission (Pristine, Kosovo), Statistical Overview, update at end October 2012.

[41] Source: Interview with Ivan Gerginov, Assistant Commissioner for Refugees of the RS, 18 June 2012.

OSCE report of 2012 reiterates serious concerns over safety of minority returns. The OSCE report[42] discusses safety risks and tensions existing between returnees and their receiving communities. Although the report is about the displaced persons belonging to minority communities, the same risks are clearly facing the deportees belonging to some of minority communities.

The Report also states the regions that are particularly difficult return areas, often for Serb returnees: Gnjilana region (village of Gornje Nerodimlje in the Uroševac municipality), Peć region (town of Đakovica in the Đakovica municipality, village of Loćane in the Dečane municipality and villages Drsnik and Grabanica in the Klina municipality), Priština region (Koljovica and the town of Priština in the Priština municipality and Slovilje in the Lipljan municipality) and Prizren region (Kijevo in the Mališevo municipality, Dvorane and Zojić in the Prizren municipality and Lješane and Mušutište in the Suva Reka municipality). The security issues faced by members of minority groups are the result of unresolved war crimes, the issue of missing persons, unsolved property issues and problematic political situation. Human Rights Watch states that the Roma, Ashkali, and Egyptians who are deported to Kosovo face numerous obstacles to their basic human rights, including lack of access to personal documents; statelessness; problems repossessing their property or obtaining housing; difficulties accessing education, health, employment and social welfare; and separation from family members. Some deportees leave behind spouses and children, especially if they are married to foreign nationals and have different nationalities to their children, which interfere with their right to family life. Many also lack identity documents, which are crucial for numerous activities including registering as a citizen and voting, and can in some cases lead to de-facto statelessness. Many child deportees are also unable to fully participate in school because they cannot speak enough Albanian or Serbian, and struggle with different curriculums and to have their foreign education certificates recognised."[43] United States Department of State, in their annual Country Reports on Human Rights Practices for Kosovo, state that the minority Serb, REA, Bosnian, etc., communities face various levels of institutional and social discrimination in the areas including employment, education, social welfare, use of language, freedom of movement, and other fundamental rights.[44] The European Community expressed a similar view, stating that in Kosovo there is a persistent problem of access to employment, education and training courses, which presents an obstacle for the sustainable reintegration of returnees, and particularly minority groups.[45]

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[42] OSCE Mission in Kosovo, An Assessment of the Voluntary Returns Process in Kosovo, October 2012.

[43] Human Rights Watch: Rights Displaced, Forced Returns of Roma Ashkali and Egyptians from Western Europe to Kosovo, October 2010. For a difficult position of minority returnees from Western Europe see also: UNICEF, Silent Harm, A report assessing the situation of repatriated children's psycho-social health, March 2012; UNICEF, No place to call home: Repatriation from Germany to Kosovo as seen and experienced by Roma, Ashkali and Egyptian children, August 2011; UNICEF, Repatriation without Responsibility: The nature and implications of Roma, Ashkali and Egyptian forced repatriation to Kosovo, October 2010. Amnesty International, Not welcome anywhere - Stop the forced return of Roma to Kosovo, September 2010; OSCE Mission in Kosovo, Assessing progress in the implementation of the policy framework for the reintegration of repatriated persons in Kosovo's municipalities, September 2011.

[44] United States Department of State (24 May 2012) Country Reports on Human Rights Practices for 2011, Kosovo

[45] Commission Staff Working Document accompanying the document Commission Communication on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo, 10 October 2012, Brussels

Where to after return to Kosovo?

The German-Swiss NGO "Society for Threatened Peoples" has been engaged in reception of mostly Roma, Ashkali and Egyptians (RAE) returned to Kosovo from Western Europe. Representatives of the Society for Threatened people visit municipalities in Kosovo attempting to find out, by interviewing Albanian neighbours of both the people who were already returned and those who are yet to be returned, whether their return is safe (whether they participated in the war, the attitude of their neighbours toward their return etc.) and whether conditions exist for their reintegration (access to employment, knowledge of languages etc.) The conclusion reached by the "Society" is that persons are being returned even in cases where conditions for their safe return have not been met and prospects for their reintegration do not exist.[46]

Through cooperation with Kosovo's Ministry of the Interior and the Department for Migrations of the German Embassy in Priština, representatives of "Society for Threatened Peoples" receive information on dates of deportation in order to be able to meet the deportees at the airport and accompany them to their destination. They estimate that 60 per cent of RAE returnees leave their return destination in Kosovo and move to central Serbia and then probably back to Western Europe again. There are reasons to assume that these people register their new residence in Serbia in order to get Serbian passport which enables them to travel to Western Europe without a visa, unlike the citizens of Kosovo.

Person who left before the visa liberalisation had to pay in order to legally enter Western Europe. "There were people who sold their homes in order to reach Western countries, which is no longer the case".[47] Even those RAE returnees who receive some sort of assistance for their reintegration, such as a paid apartment rent for one year, do not stay long among their Albanian neighbours. Some go to Roma enclaves in Kosovo, such as the one in Gračanica, or to Northern Kosovska Mitrovica where they live in local unsanitary settlements.[48]

[46] Source: Interview with Xhafer Buzolli, representative of Society for Threatened Peoples in Kosovo, held on 12 December 2012 via Skype.

[47] Ibid.

[48] Reintegration in Kosovo is regulated by the Strategy for Reintegration of Repatriated Persons, adopted by Kosovo Government in October 2007. In May 2010 a Revised Strategy for Reintegration of Repatriated Persons was adopted together with the accompanying Action Plan. An inter-ministerial body was established for monitoring return, as well as national reintegration fund. At the local level, municipal offices in charge of communities and return were established to promote and protect the rights of displaced persons and returnees. OESCE assessed the results achieved so far as very limited. See: OSCE Mission in Kosovo, Assessing progress in the implementation of the policy framework for the reintegration of repatriated persons in Kosovo's municipalities, September 2011; OSCE Mission in Kosovo, An Assessment of the Voluntary Returns Process in Kosovo, October 2012.

UNHCR representatives underline that the starting point for assessing reasonableness of internal protection alternative should be the UNHCR data for 2012, according to which Serbia currently hosts 210,146 people displaced from Kosovo and 70,561 refugees from Croatia and Bosnia and Herzegovina.[49] They live in a difficult socio-economic situation, characterised by high unemployment, limited housing possibilities (collective centres, both formal and informal,) accommodate several thousands of IDPs, Roma not being among them, as they mostly live in informal settlements), and sharply reduced international assistance.

The position of UNHCR is that application of the internal protection alternative to people displaced from Kosovo, in particular members of ethnic minorities (Roma, Ashkali and Egyptians), depending on their individual circumstances, is not an option, because of the impassable legal and/or factual obstacles faced by these people in their attempts to fully integrate in Serbian society.[50]

According to UNHCR, if an IDP registers in central Serbia as such, that can provide him/her access to some socio-economic rights. However, if a person originating from Kosovo did not register as IDP before leaving for Western Europe, he/she is not allowed to do so after returning to Serbia. On the other hand, the Commissariat for Refugees does not insist on deregistration of the displaced persons who went broad, thus these people can still enjoy the IDP status after returning to Serbia.[51]

There are also numerous obstacles in accessing rights of persons who have been recognised as returnees from the Western Europe, after they were returned to central Serbia.[52] This was the return of poor people to a poor country, further aggravating the economic and social situation in the places of return, and creating additional pressures on the labour market, already overburdened by a high unemployment rate, and the social welfare system. The most frequent problems faced by returnees include: access to personal documents, access to health care, access to education, access to labour market and adequate housing conditions. Returnees often have no personal documents, which generates their problems in many other areas. The problems that persist for years and that relate to access to personal documents include difficulties with registration of permanent residence, obtaining documents for children born outside Serbia and documents for persons who previously resided in Kosovo and Metohija and were returned to the central Serbia. The lack of personal documents influences also the possibility to access health care and some types of social welfare, and primarily cash benefits. One of the typical problems encountered by the returnees is the discontinuity in medical treatment. If a medical treatment was initiated abroad, there is a possibility that it will not be adequately continued in Serbia (due to the lack of medicines or their substitutes, the problems in the transfer of the medical documentation and other materials related to the status of the patient, change of doctors, but also due to the situation the patient is in). The fact is that a large number of

[49] Source: Interview with Ljubinka Mitrović and Davor Rako, UNHCR Office in Belgrade, 12 June 2012.

[50] Ibid.

[51] Source: Interview with Ivan Gerginov, Assistant Commissioner for Refugees of the RS, 18 June 2012.

[52] Over the last couple of years, Group 484 prepared several reports including the review of the current status and practices relating to readmission and position of returnees from Western Europe. For more details see: Challenges of Forced Migration in Serbia - Position of Refugees, Internally Displaced Persons, Returnees and Asylum Seekers (Izazovi prisilnih migracija u Srbiji - položaj izbeglica, interno raseljenih lica, povratnika i tražilaca azila), Grupa 484, Belgrade 2011; Irregular can be Regular (Iregularno može biti regularno), Belgrade 2011; Challenges of Forced Migration in Serbia: the State of Human Rights of Asylum Seekers and Returnees Based on the Readmission Agreements (Izazovi prisilnih migracija u Srbiji: stanje ljudskih prava tražilaca azila i povratnika po osnovu sporazuma o readmisiji), Belgrade, 2012.

returnees are persons without primary school qualifications and often with severely impaired health status, persons for whom it is very difficult to find any employment in the labour market. That is why the only systemic solution for them is to receive social assistance cash benefits. With respect to access to education, it is positive to see that the education authorities and schools seek to address the child returnee problems with a great deal of flexibility, and that even if case of no personal documentation, children are allowed to enrol to school conditionally. However, problems may occur also in the course of translation of documents that must be verified by court, which requires considerable financial resources and is not affordable for these socially vulnerable families. In many cases, child returnees cannot speak any or enough Serbian language. On their return to Serbia, in order to continue their education, the children from the readmission process undergo tests of their school knowledge and Serbian language. Due to their inability to speak the language, they are often sent two or three grades back, and their age differs considerably from that of the other children in the same class. Probably the greatest real obstacle to reintegration is the lack of employment opportunities in the places of return. High unemployment is one of the biggest problems in the Republic of Serbia; it is a structural problem and a result of years of unfavourable economic circumstances and trends. Considering that a large number of returnees are ethnic Roma, after they are returned to Serbia, many of them go to live with their relatives or friends in the Roma settlements. Most of these settlements are illegal and do not have developed utility infrastructure.

3. CONCLUDING REMARKS

Following the recognition of Kosovo's independence by western countries, asylum seekers minority members originating from Kosovo have found themselves in a kind of a legal limbo and a new life drama:

Western countries deny their further stay in the EU territory and their international protection. In Kosovo (as the territory of their previous residence) they have reasons to fear for their safety and have limited access to economic and social rights. In this situation, they "choose" secondary displacement, as a lesser evil, and go to central Serbia with an intention to re-migrate to the EU countries from there.

How to get out of this circle is a question for returnees, but also for all involved parties: Pristina, Belgrade and the EU

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Legal and political controversies coupled with poverty, health and psychological problems of people who have found themselves in this vicious circle make this problem extremely difficult. What we can at least do is not to allow these people to become invisible, to be forgotten, or to forget or ignore their story before it gets a slightly more acceptable form.

In this situation, we have to emphasise the importance of reports, opinions and recommendations of the relevant international and national organisations that point to the problem of security and human rights of asylum seekers, members of minority communities in Kosovo.

When it comes to the EU countries and this issue: we consider important that in deciding the termination of international protection for these people, the fact that the return to Kosovo for them is not always safe should always be reconsidered, and that they cannot always get the effective protection of their rights.

When it comes to Kosovo, we can say that after more than 13 years after the war conflict in Kosovo, it is necessary that security, access to rights, and reintegration of returnees in the places of origin of returnees are defined as a priority in the work of central and local authorities.

When it comes to Serbia, returnees from Kosovo and Metohija, as Serbian citizens, should be ensured efficient access to rights, in line with legal and strategic documents related to the improvement of the position of poor and marginalised groups. Of particular importance is for them to be recognised as a particularly vulnerable group within the returnee population.

4. ANNEXES

Returnees from Western Europe, representatives of minority communities from KiM, four cases

Annex 1: A Montenegrin family from Peć, returnees from Norway, deported to Belgrade airport in 2010

A.V. is a single mother of three school-age children: two girls aged 12 and 13 and a boy aged 10. Like all Serbs and Montenegrins, she also fled Kosovo in June 1999 and found accommodation in a so-called "unofficial" collective centre[53] in Resnik, a borough located 10 kilometres from Belgrade. This collective centre in fact consists of two old workers' living quarters. Because the official collective centres had already been occupied by the end of 1990s by refugees from Croatia and Bosnia and Herzegovina, IDPs from Kosovo who did not have a place to stay found shelter in available facilities such as workers quarters, which thus became "unofficial" collective centres. Although the centre in Resnik accommodates refugees from Croatia and Bosnia as well, the majority of its residents are IDPs from Kosovo.

A.V. and her children live in a room of 15 square metres. There is a bathroom, subsequently added to the barrack, which they share with A.V.'s sisters and their families (a large portion of CC residents share a common toilet, which is in a very poor hygiene condition). For heating they use wood, and face frequent shortages of electricity and water because of unpaid utility bills. As a result of such living conditions, A.V.'s husband got seriously ill and died in 2007, leaving her to fend for herself and their three small children. What prompted her to move to Norway was the fate of her friend from the centre who had succeeded, several years before, in getting the refugee status and permanent residence permit in that country. A.V. and the friend in question were neighbours back in Kosovo and fled together to central Serbia. The fact that her friend obtained international protection in Norway led A.V. to believe that she was also entitled to that right. At that time, people originating from Kosovo faced enormous difficulties trying to get visas to travel to the western countries, so A.V. was forced to turn to some people who helped her get a visa in exchange for a considerable sum of money, of course.

So, in January 2008, right after the death of her husband ("We didn't even give him the 40th day memorial service", as she said), A.V. and her children, holding a Schengen visa issued by Germany, arrived in Norway by bus and applied for asylum at a police station in Oslo. A.V. later found out that Norway intended to return her to Germany, because Germany, as the country that issued her visa, was considered responsible, under Dublin Regulation, for the examination of her asylum claim. Germany, however, refused to admit her, and A.V., knowing that people without identity documents cannot be returned, never handed her documents to Norwegian authorities.

A.V. and her children were then sent to a town in the north of Norway where they were housed in an apartment. She obtained work permit and her children enrolled in school. They learned

[53] Not officially recognised as collective centre

Norwegian, made friends and became fully integrated into the new environment. In March 2009, one year following the recognition of Kosovo by the Western countries, all the Serbs living in that town received decisions refusing their request for asylum, with identical explanations. Norwegian authorities stated that not being able to return them directly to Kosovo, they would return them to Serbia, where they would not be at risk of persecution.

A.V.'s lawyer appealed the decision, but the appeal was rejected in the second instance within only a month. A.V. continued living in Norway with her children, trying to avoid deportation. The Serbs in Norway lived as a close-knit community. They knew each other from various reception centres they were initially accommodated in and stayed in touch with each other even after having been dispersed across the country. As they communicated on a regular basis, news spread rapidly. "They knew about everyone who received a negative decision on asylum application, and word went around that we would all be all deported eventually – if not this time, then in a week or a month's time".

Until the end they hoped they would somehow manage to stay in Norway. The local Norwegians urged their government to find a way for the people who were integrated and led a normal life to stay in Norway and even staged a protest to prevent their deportation. Local mayor proposed that their cost of living in Serbia should be covered. But the government rejected the proposal on the grounds that it would create a precedent for future cases. Several blogs to exert pressure were launched on the internet, but to no avail.

IOM offered A.V. one-off cash assistance if she accepted to return "voluntarily", but she declined the offer knowing that a couple of thousands of Euros, without any other income, would not last long in Serbia. Finally, in 2010 police found them in their apartment and deported them to Serbia by plane. The children were crying and A.M. was hard put to explain to them why they had to leave the world that once offered them refuge only to send them away later. „Leaving Norway was more painful for us than leaving our homes in Kosovo", A.V. says. Her older daughter says that she dreams about going back to Norway and plans to do so by enrolling in a university in Norway. With this goal in mind, she studies hard, scoring straight "A"s, and does not forget Norwegian language.

Annex 2: Roma family from Gnjilane, returnees from Sweden, deported to Priština airport, went to live in Bujanovac in 2011

Eleven years ago a camp for IDPs from Kosovo was erected near Bujanovac. Ironically perhaps, it was named "Salvatore" (Saviour). More than a half of about 400 of its residents are Roma. Serbia's Commissariat for Refugees covers the daily costs of their accommodation up to 57 dinars per person, while the Serbian Red Cross provides them with food. What was intended to only serve only an interim housing for IDPs has become their only home for more than a decade now. Most of its Roma residents fled from Gnjilane and Vitina and fewer from Kosovska Kamenica and Uroševac. However, the exact number of people living in this "temporary" accommodation is not known.

This labyrinth of alleys where a visitor never knows whose yard he entered is lined with containers, tents and all sorts of makeshift structures these people call their homes. Most of them without a bathroom or beds, with dirt floors and roofs made of plastic sheets.

Some of the centre's dwellers made it to the Western Europe and some were returned from there. S.K. (27) is one of the latter. In 2006 this man and his three years younger wife set out on a journey of hope towards Sweden. During the five and a half years they spent in Sweden, their two children were born - a girl and a boy, - they split up twice, hid from the Swedish authorities, had their asylum applications refused twice (they got a "negative", as they put it)

and were eventually returned to the same place they had left behind – the "Salvatore" camp. At that time, reaching a settlement on Kosovo's status was the primary concern of Western European countries, and people whose place of residence was in Kosovo did still enjoy temporary protection. Despite the fact that the road to getting temporary protection at the time was pretty uncertain and the chances of a favourable outcome being slim, the K.s, with a strong belief that they will succeed, took off for Sweden. "There were people who got 'positives'", says S.K., sitting inside a house he now lives in with his family, father, mother and two brothers. "Some of our people from Gnjilane also got them, so we hoped to get one too".

In Sweden they were given an apartment to use. Although any Swede would consider it modest, for many people longing to stay in the countries of Western Europe, having an apartment to live in was regarded as luxury. "We had everything – a bathroom, warm water, bedrooms, even a guest room, all nicely painted", says S.'s 24-year-old wife, remembering their past life. In addition to decent accommodation, the couple had access to health care and regular welfare benefits (180 Euros per family member). They were not permitted to work pending determination of their status. While in Sweden, S.K.'s wife gave birth to their two children – a girl, in 2008, and a boy, in 2011. Unlike her fellow Roma women from the "Salvatore" camp and Roma settlement across Serbia, this young woman had Swedish doctors by her side to care for her and help her through her two pregnancies. "At no time did I feel less worthy or looked down upon or insulted by anyone while in the hospital. Swedes are quiet people, not as noisy as we are. They speak slowly and are very nice. Nurses would often give me hugs to comfort me while I was in the hospital, with my babies. I wasn't afraid of anything while I was giving birth to my children", the young mother says, recollecting her days in Sweden.

Two and a half years later and quite unexpectedly, an envelope came with a "negative". Having been convinced they would stay, no money had been put aside. In the meantime, Kosovo declared independence and nearly all EU member states recognized it as an independent state. As a result, the process of settling the issue of asylum seekers in Sweden and many other West European countries was definitely pushed forward.

The K. family, with one child at the time, were visited by a state-appointed lawyer. According to S.K., the lawyer was not interested in helping them. They attempted to explain to him that their house in Gnjilane (Kosovo) was occupied by some Albanians, and that they did not have a place to return to. Although they had a right to appeal, it was not made it clear to them. Later on they heard that the layer had, on his own, without consulting S.K., filed an appeal on their behalf, which was dismissed and followed by a new "negative" two months later. In an interview they had with court and police officers, they were ordered to return to Kosovo, without being offered the possibility to choose between Serbia and Kosovo. They insisted to be returned to Serbia, for safety reasons, and because they had nothing in Kosovo, but the Swedish authorities turned a deaf ear to their plight.

Determined to do whatever it takes to secure a good life for their children, S.K. splits from his pregnant wife and child and goes into hiding. As pregnant women were not allowed to travel, the wife and the child remained in the social housing and S.K. occasionally came to stay there secretly. "You could always find some of 'our' people, from Bosnia or Kosovo, to offer you a job, you know, under the table", adds S.K. Six months went by and their second baby was 4 months old. In the meantime, S.K again reports to the Swedish authorities, claims asylum, reunites with his family. Before his wife gave birth to their second child, the local church secured accommodation for the family. Both S.K. and his wife have nothing but praise for the religious organisation that helped her to safely give birth to their second and keep the family together. After receiving the final decision on deportation, the family was issued travel documents in Swedish, and Swedish authorities made a decision to return this already four-member family to Kosovo, despite their objections. The explanation was that "their journey has already been

arranged for and cannot be changed", says S.K., adding that he could not clearly understand what was going on. "They came all of a sudden, around 5 a.m., we were still sleepy, the children started to cry. Seven or eight policemen entered our place, there was a woman, among them, the interpreter, I guess. We were frightened and disappointed, we did not want to leave, we had no place to go to", says S.K. "They told us that our flight was leaving at noon and that we should get only the basic necessities, the rest of our stuff would be sent to us later, that we would find jobs in Kosovo. They said the war was over and peace reigned", adds S.K.'s wife with disappointment. None of this was true.

At the Priština airport they were met by S.K.'s father, and Kosovo police handed them 50 Euros to pay transportation to their home. But instead to Gnjilane, they went to Bujanovac, to the "Salvatore" camp, with lots of memories of five and a half years in Sweden.

Annex 3: Roma woman from Vučitrn, returnee from Swede, deported to Belgrade in 2011, lives in Varna near Šabac

The "Varna" refugee camp near Šabac is one of the oldest collective centres in Serbia. Several refugee families from Croatia have been living there ever since 1995. A few years ago, the centre began accommodating returnees under readmission agreements that have no other place to stay. The centre comprises 12 houses, each accommodating several persons or two families, and two common dining rooms. Since it is located in an agricultural area, people living in the centre are hired to perform seasonal works on farms. Approximately ten returnees under readmission agreements per week find temporary housing in the centre. Most of them stay there shortly – between three days and two weeks. Some stay longer, such as N.B., who has been living there for over 18 months now.

N.B, (49) was born in Vučitrn, Kosovo and Metohija. Her house, which had stood right next to army barracks, was demolished during the 1999 NATO bombing. From that moment on N.B. has been on a journey of uncertainty. She fetched a couple of things from her burned house, took a bus and fled to Raška, and then on to Belgrade. Her next stop was Podgorica, Montenegro, where she stayed about two years in a refugee camp established in the aftermath of the bombing. Left to her own devices, without a family, which dispersed across the world, without money and profession, she waited for any kind of solution to her situation. The government, however, did not seem to offer it. So, leaving the camp appeared as the only option, and Italy seemed like a way out.

Getting to Italy was neither easy nor could it be done in a legal way. Without documents and money, she had no recourse but to stowaway on a ship to Italy, hidden under a tent cover among the stacks of luggage. The Italian camp she was assigned to was no different from that in Podgorica. People who are forced to embark on such a journey do not set high expectations, and Italy was actually just a stopover. Her intended destination was Sweden, where her sister had lived for the last twenty years. With her help, N.B. arrives in Sweden and reports to the authorities as a refugee from Kosovo.

A new life began for her when she applied for asylum. At an interview with Swedish immigration authorities, she was given an opportunity to recount her tragic story, assisted by an interpreter. In addition to regular welfare benefits and health care, she was provided with an apartment to live in. With her sister by her side, who had Swedish papers and a life that is usually called "normal", N.B. begins to recover her sense of security and feeling of belonging in her family. But not before long new troubles came her way. She was diagnosed with severe kidney failure that required surgery, i.e. removal of a kidney. Even then, with such a severe diagnosis, she felt safe, because the Swedish doctors, according to her, spare no efforts to provide her with full medical care.

From her account it is obvious that Swedish doctors explained to her every single detail of the procedure she had to undergo, as well as all of its possible consequences. Although she cannot read, she knew exactly when to take her medications and that she needed to eat a special diet. She also knew that she had to save money to buy over-the-counter painkillers and basic foodstuffs at times. That is why the decision of Swedish authorities to send her back came as a surprise to her. Besides the travel document, issued by the Serbian embassy, and a written explanation by the Swedish Immigration Board, she was allowed to take with her only two bags with clothing and the necessary medications for one month. Despite having a (state-appointed) lawyer, N.B. says she did not use her right of appeal. During 2011, Sweden was returning a large number of asylum seekers from Serbia. People from Kosovo were the last to be returned. Thus the fifty-year-old N.B., without one kidney and having only a limited supply of medications, in early April 2011 found herself in Serbia.

Swedish authorities originally intended to return her directly to Kosovo, but as she kept insisting that her house in Kosovo had been burned down during the bombardment and that she had no place to go, they offered her another option: Serbia. Aware that staying in Sweden was no longer possible, N.B. resigned herself to her fate and boarded the plane to Belgrade. Despite her serious medical condition, no medical assistance was offered to her upon landing at the Belgrade Airport. Having no place to go, she spent the first night in Belgrade at Slavija Hotel and then went to the "Varna" collective centre near Šabac. She was assigned a room, serving as a kitchen, bedroom and living room. As for the furniture, she has a bed, a small table with two chairs and an old-fashioned stove. In a corner, she keeps two suitcases with clothing –souvenirs of her past "normal" life. "Although the doctors here are also nice, the Swedes have better conditions, nicer beds in their hospitals, better medical equipment. There they would scan me immediately, did all sorts of test, monitored my blood pressure, heart and lung functions all the time", says N.B. "The doctors here don't have all the equipment, they take a look at me, prescribe me a medication, an ointment, and send me home."

The health status of this fifty-year-old, looking at least ten years older, is increasingly worrisome. In our talks with representatives of the Commissariat for Refugees we have been informed that the solution for this woman is being sought. Her needs cannot be catered at the collective centre she lives in. Placing her in a gerontology centre, where she could have appropriate medical care, would be the solution. However, it requires some additional funds that are not available for the time being.

Annex 4: Roma family K, returnees from Germany, deported to Kosovo in 2008, live in Novi Sad

The K. family was returned from Germany to Kosovo in 2008. They currently live in Novi Sad. The family is made up of father, Ć.K. (51), mother, Lj.K. (45), both born in Vučitrn, Kosovo, son, F.K. (29), and four daughters - F.K. (27), Z.K. (26), E.K. (22) and Š.K. (21), all born in Rijeka, Croatia.

Lj.K and Ć.K. left Vučitrn (Kosovo) in 1983 as fiancées and moved to Rijeka (Croatia, part of the then Socialist Federative Republic of Yugoslavia), where their five children were born. The husband, Ć.K., worked for the city sanitation department.

At the onset of war in 1992, in order to avoid drafting of Ć.K., the family left Croatia for Germany, where they applied for asylum. The local centre for social work found accommodation for them. The mother and daughters received occasional financial support. The father fell ill and was confined in a psychiatric hospital for a while. The son finished a cabinet making trade school. The eldest daughter, F.K., entered in a common-law marriage and got four children out of it. The youngest daughter did not attend school, whereas the second and the third

daughters were in the eighth and ninth grade of the primary school respectively at the time of family's deportation.

After they lost the right to stay any longer in Germany, most of the K. family members (mother Lj. K., father Ć.K. and their three younger daughters - Z.K., E.K. and Š.K.) were deported in 2008 to Kosovo (through the Pristina airport). The eldest daughter F.K., is still in Germany. The son F.K. left to France to avoid being deported.

The family spent the first three months following deportation in a collective centre in Leposavić, Kosovo. The conditions in the centre were poor (they only had accommodation, without meals), so they decided to move to Novi Sad, where a cousin of theirs lived.

After moving to Novi Sad, they purchased a cheap piece of land with money they saved up, in order to build a home on it. Hardly had they started the construction work (laid the foundation wall and erected outer walls before laying a slab) when their daughter E.K. was diagnosed with breast tumour. As she did not possess personal identification documents, the parents used the rest of their savings to pay for her surgery at a private clinic.

The son who had moved to France was deported in late 2011 to Kosovo (Pristina airport). His mother spoke with him on the phone only once and, according to her information, he is in Kosovska Mitrovica, where he found accommodation and is currently in the process of obtaining personal documents.

After spending all their savings on their daughter's treatment, the family was forced to move into an unfinished house of a friend. The house is located in a Novi Sad's Adice borough, housing a large number of IDPs. The house they began to build now lies abandoned, overrun with grass and lacking building permit.

Of the unfinished house the family now live in, and whose owner currently resides in Germany, they use just one room because they cannot afford to heat more rooms in winter season. They get electricity from neighbours. Although they only use two light bulbs and a TV, they pay them 20 Euros per month because this electricity connection is illegal. The K.s live in poor material conditions with no steady income.

Recently, the house owner has started renovating it in order to sell it. This will leave the K. family homeless and they will need either a new temporary housing or financial assistance to resume construction of their own house, lay at least the first floor slab and enter the legalisation process.

In order to alleviate their situation, activists of the Ecumenical Humanitarian Organisation (EHO) put the K. family in touch with the Centre for Social Work in Novi Sad and helped them obtain a one-off financial assistance. Also, on several occasions the family received parcels with food, clothes and footwear and were given the right to use the EHO's free laundry room. In order to assist the economic empowerment of this family, EHO arranged for the daughter E.K. to attend a hairdressing training course and get hairdressing tools. Despite all these efforts to help them, the K.s' situation is still unenviable.

Lack of personal identification document is another big problem the K. family struggles with. The mother, Lj.K, does have personal documents but her id card has expired recently. EHO's legal department obtained her birth and citizenship certificates from civil registries removed from Kosovo to Serbia, but the process of issuing an id card for her has been delayed because she does not have a registered residence. The father, Ć.K., has a valid id card (however, stating Vučitrn as his place of permanent residence).

Their biggest legal problem concerns the status of their three daughters born in Croatia. EHO succeeded in obtaining birth certificates for all three of them as well as documents certifying that they are not citizens of Croatia. In cooperation with Praxis, a Belgrade-based NGO, EHO applied for their registration as Serbian citizens. Although the applications were filed in 2011, their cases are still being processed, during which time the three daughters have been left with no personal documents whatsoever.

EHO also succeeded in obtaining E.K.'s school certificate from Germany. As the girls practically spoke no Serbian upon arriving in Serbia, EHO provided a Serbian language course for them as well as a German language course to further improve their knowledge of that language.

After having her tumour surgically removed, E.K., must undergo regular follow-up checkups. As she still lacks personal documents and therefore access to public health care system, the checkups must be done at private clinics and paid for, as was the case with her surgery. This is an additional expenditure the K. family is unable to cover. So far, EHO has paid for two check-ups. Only after acquiring personal identification documents will E.K. be eligible to get a health insurance card which will enable her to get free checkups in public health facilities.


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