DRAFT LAW ON ASYLUM AND TEMPORARY PROTECTION

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GROUP 484 OBSERVATIONS

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LAW ON ASYLUM AND TEMPORARY PROTECTION*

I BASIC PROVISIONS

Subject matter of the Law

Article 1

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

Definitions of terms

Article 2

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

Asylum shall be understood to mean the right to residence and protection accorded to a foreigner who has been granted refuge or subsidiary protection provided for by this Law, on the basis of a decision by the competent authority deciding on his/her application for asylum in the Republic of Serbia.

The asylum procedure shall be understood to mean a procedure, governed by this Law, for the acquisition and cessation of the right to asylum and other rights of asylum seekers;

Article 2, paragraph 1, point 2 is amended as follows:

The asylum procedure means a procedure, governed by this Law, for granting and withdrawing the right to asylum and other rights of asylum seekers and ***persons who have been granted asylum****.*

In the part that regulates rights and obligations of persons who have been granted asylum, there are certain rights that the persons acquire ex lege, while a Decision by the Asylum Office is necessary for granting some other rights to them (family reunion, Article 71).

A foreigner shall be understood to mean any person who is not a citizen of the Republic of Serbia, irrespective of whether he/she is a foreign national or a stateless person;

An asylum seeker shall be understood to mean a foreigner (hereinafter: the Applicant) who has filed an application for asylum (hereinafter: the Application) in the territory of the Republic of Serbia, and where no final decision has yet been taken.

Article 2, paragraph 1, point 4 is amended as follows:

An asylum seeker *(hereinafter: 'applicant') is a* ***foreigner who has expressed an intention to seek asylum*** *within the territory of the Republic of Serbia and lodged an asylum application (hereinafter: 'application') in respect of which a final decision has not yet been taken.*

It is clear what goal was to be achieved by defining the asylum seeker in the manner used in this Draft. However, this definition of the term causes direct incompatibility with other provisions of the Law and a logical inconsistency of the Draft. For instance, although it is explicitly stipulated that the asylum procedure begins by lodging the application and that asylum seekers are the persons who have lodged the application, the recently introduced registration of foreigners (who have expresses an intention to seek asylum) is regulated by the Chapter IV that regulates the asylum procedure. Furthermore, from the moment of expressing the intention to seek asylum there are certain rights and obligations that are guaranteed owing to the fact that the "asylum is requested", although this Draft defines the persons who have expressed the intention to seek asylum as foreigners, with regard to their status. The contradiction and lack of logic of this solution is also visible in the manner in which the registration, which precedes the activity of lodging the application, is regulated and consequently of the provisions regulating the way records are kept, documents are issued, etc.

* Based on an unofficial English translation of the Draft Law, done by UNHCR

A subsequent asylum application (hereinafter: the Subsequent Application) shall be understood to mean an application filed after the final and unappealable decision on the substance of the previous application in accordance with Article 38, paragraph 1, points 2, 3, 4, and 5, or the decision on discontinuation of the procedure in accordance with Article 47, paragraph 2, point 1 of this Law was taken;

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

The definition of a refugee referred to in Article 2 paragraph 1 point b, is different in respect of the grounds for persecution from Article 24 (right to refuge) and Article 26 (grounds for persecution). Namely, Article 2, paragraph 1, point 6 includes the grounds of language and sex, while these grounds have been unwarrantedly omitted from the two above mentioned articles. Moreover, we would like to emphasise that Article 57, paragraph 1 of Constitution of the Republic of Serbia (right to refuge) also stipulates language and sex as the grounds.

Refuge shall be understood to mean the right to residence and protection granted to a refugee who is in the territory of the Republic of Serbia, with respect to whom the competent authority has determined that his/her fear of persecution in the country of origin or country of habitual residence is well-founded;

Subsidiary protection shall be understood to mean a form of protection granted by the Republic of Serbia to a foreigner who would be, if returned to the country of origin or habitual residence, subjected to serious harm, and who is unable or unwilling to avail himself/herself of the protection of that country.

Temporary protection shall be understood to mean a form of protection granted by the Government of the Republic of Serbia in the case of a mass influx of displaced persons who cannot be returned to their country of origin or habitual residence.

A country of origin shall be understood to mean a country whose nationality a foreigner holds or a country in which a stateless person had habitual residence. If a foreigner has multiple nationality, a country of origin shall be understood to mean any country whose national he/she is;

Habitual residence shall be understood to mean a place where a foreigner stayed under such circumstances based on which it could be concluded that his/her stay in that place or area was not only temporary;

Family members shall be understood to mean the spouses, provided that the marriage was contracted before the arrival to the Republic of Serbia, their minor children born both in or out of wedlock, minor adopted children, or minor step-children.

The status of a family member may be granted also to other persons in exceptional circumstances, particularly taking into account the fact that they had been supported by the person who has been granted asylum or subsidiary protection;

Paragraph 1, point 12 is amended as follows:

Family members are spouses who entered into marriage before arrival to the Republic of Serbia, ***an unmarried partner in accordance with the regulations of the Republic of Serbia****, their minor children, adopted minor children or minor step-children,* ***as well as parents and another adult who is able, whether by law or by the practice, to take care of the person who has been granted asylum****.*

A family member of a person who has been granted a refuge or a subsidiary protection may, exceptionally, be another person, where ***the age and material and psychological dependence of this person will particularly be taken into account, including his/her health condition, social situation, cultural background and other similar issues.***

Article 62, paragraph 5 of the Constitution of the RS guarantees, in principle, the equality between marriage and unmarried cohabitation. Although the Constitution prescribes that this constitutional guarantee should be provided in accordance with the Law (primarily the Family Law), in this case the general constitutional framework which defines limits and scope of the legislative activity in the field of human rights should be taken into account (Article 18, paragraph 2). Moreover, the Constitution (Article 17) guarantees to the foreigners in the Republic of Serbia all the rights provided for by the Constitution, with the exemption of the rights guaranteed by the Constitution and the Law only to the nationals of the Republic of Serbia: electoral right (Article 52, paragraph 1 of the Constitution) which, according to an explicit constitutional provision, may be exercised only by the citizens and the non-refoulement which refers only to the nationals and protects them against the expulsion, while the foreigners may be expelled (Article 39, paragraph 3 of the Constitution of the RS).

Article 2(j) of the Qualification Directive No. 2011/95/EU defines a family member, inter alia, as: the spouse of the beneficiary of refugee or subsidiary protection or his or her unmarried partner in a stable relationship, where the national law regulating the position of third country nationals treats unmarried couples in a way comparable to married couples;

The currently applicable regulations of the RS on foreigners do not treat unmarried couples as equivalent to married couples and for now it is still uncertain whether the expected amendments to the Law on Foreigners will regulate the issue of unmarried partners' status.

There is no unique practice in the EU Member States. Some of the countries recognise only spouses (married couples), while some others recognise permanent partnership between same-sex couples. For instance, the Slovenian Law on Foreigners of 2011 expanded the definition of a family to registered partners or cohabiting couples, regardless of their sex or sexual orientation.

Also, with regard to the cases where it should be established whether a person is a family member of a minor who has been granted asylum, more extensive criteria need be set. According to the Draft, a person may be considered a family member of such minor if he/she is his/her parent or an adoptive parent who is obliged by the law to sponsor the minor.

The European Court of Human Rights considers that the family life referred to in Article 8 of the European Convention on Human Rights (ECHR) includes married couples and their minor children, including children born out of wedlock and adopted children. The protection is also granted to unmarried cohabiting couples and to their minor children. Siblings are also subject to the protection referred to in Article 8 of the ECHR, and family relations between grandparents and grandchildren may also be recognised, and exceptionally between uncles and nephews.

Article 2(j) of the Qualification Directive No. 2011/95/EU defines who may be recognised as a family member. Indent 3 reads that a family member is: the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned.

Furthermore, the Draft provides that a family member status may, exceptionally, be recognised for other persons, where it will particularly be taken into account whether they have been dependent on the person who has been granted a refuge or a subsidiary protection. The European Council on Refugees and Exiles emphasises that due to a specific status and experience of refugees, the interpretation of the dependence should be wider, which means that it should not only refer to persons who are financially dependent, but also psychologically, socially, emotionally or medically dependent.

A minor shall be understood to mean a foreigner under 18 years of age.

An unaccompanied minor shall be understood to mean a foreigner under 18 years of age who was not accompanied by his/her parents or guardians on his/her arrival to the Republic of Serbia, or who found himself/herself without the company of his/her parents or guardians after having arrived to the Republic of Serbia.

General Comments of the Committee on the Rights of the Child, precisely, Comment No. 6 refers to the treatment of separated and unaccompanied children. Differences between these two categories have been recognised both by law and by the practice, so that the definitions of both of the categories are 'present'. The way the legislator has defined the meaning of the term 'unaccompanied minor' is more in line with the generally recognised definition of children separated from their parents or guardians: "*Children separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives"*, and it is not even fully compatible with this definition.

While unaccompanied minors (unaccompanied children) means *"children who have been separated from both parents and no person (relative) can be found who by law or custom has primary responsibility for that child"*.

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

Having in mind that the proposed amendment refers to the definition of main terms, we propose that the term 'unaccompanied minor' should be defined in such a manner as to encompass both of the above categories, or to provide for both definitions. Anyway, minors belonging to both categories must be provided with special guarantees. It is vital that the amendments to this paragraph are taken into account when laying down the principles related to the provision of special procedural and reception guarantees.

The terms used in this Law shall be gender-neutral and shall apply equally to males and females.

In our opinion, this paragraph could be subsumed under the principle of gender equality.

Application of the Law

Article 3

The provisions of this Law shall apply to the fundamental principles, conditions for the acquisition and the reasons for the cessation of the right to asylum and temporary protection, to the fundamental rights and obligations of the applicants and persons granted asylum or temporary protection, as well as to the asylum procedure.

Article 3, paragraph 1 should be deleted.

The ratio for this Article is unclear.

We propose to add the following paragraph:

Provisions of this Law shall be interpreted in accordance with the Convention and Protocol Relating to the Status of Refugees and with generally accepted rules of the international law.

The regulations governing general administrative proceedings shall apply to the issues related to the asylum procedure that are not regulated by this Law.

General remark: Having regard to the fact that the application of the newly adopted Law on General Administrative Procedure will start in June 2017, provisions of the Draft Law on Asylum relating to the procedure need to be aligned with the provisions regulating the principles of the Law on General Administrative Procedure.

The regulations governing the movement and residence of foreigners and those governing migration management shall apply to the issues relating to the scope, content, and type of the rights and obligations of the applicants and persons granted asylum or temporary protection that are not regulated by this Law.

This Law shall not apply to refugees who were granted such status under the Law on Refugees (The Official Gazette of the Republic of Serbia, Nos. 18/92, 45/2002 and 30/2010).

Right to file the application

Article 4

A foreigner who is in the territory of the Republic of Serbia shall have the right to lodge the Application in the Republic of Serbia, under the conditions specified by this Law.

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

Cooperation with United Nations High Commissioner for Refugees

Article 5

The competent authorities shall cooperate with United Nations High Commissioner for Refugees (hereinafter: UNHCR) in the performance of the activities, in conformity with its mandate.

Non-refoulement

Article 6

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

Article 6, paragraph 1, is amended as follows:

*No person shall be expelled or returned to the territory where his/her life or freedom would be threatened on the grounds of his/her race, **sex, language**, religion, nationality, particular social group membership, or political opinion.*

Having regard to the fact that the non-refoulement principle is one of the fundamental principles of the protection of refugees, the reasons need to be in accordance with the principles set in the definition of the term 'refugee'. See the statement of reasons for Article 2, paragraph 1, point 6.

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

Notwithstanding the provisions of paragraph 2 of this Article, no person shall be expelled or returned without his/her consent to a territory where there is a risk of his/her being subjected to torture, inhumane or degrading treatment, or punishment.

Principle of non-discrimination

Article 7

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

Principle of non-punishment for unlawful entry or stay

Article 8

A foreigner shall not be punished for unlawful entry or stay in the Republic of Serbia, provided that he/she expresses an intention to lodge the Application without any delay, and offers a reasonable explanation for his/her unlawful entry or stay.

See the comment on Article 2, paragraph 1, point 4.

Principle of family unity

Article 9

The competent authorities shall take all the available measures for the purpose of maintaining family unity during the procedure, as well as upon granting asylum or temporary protection.

All persons who have been granted asylum or temporary protection shall be entitled to family reunification, in accordance with the provisions of this Law.

Principle of the best interest of minors

Article 10

In the course of the implementation of the provisions of this Law, one shall comply with the principle of the best interests of the minor.

When assessing the best interests of a minor, one shall take into account the minor's well-being, social development and background; the minor's opinion, depending on his/her age and maturity; the principle of family unity and the protection and security of the minor if it is suspected that the minor is a victim of trafficking.

Article 10, paragraph 2 is amended as follows:

In assessing the best interests of a minor, one shall take due account of the minor's well-being, social development and background; the minor's opinion, depending on his/her age and maturity; the principle of family unity and the protection and safety of the minor, particularly of those suspected of being victims of trafficking.

Safety needs to be guaranteed to every child, regardless of whether he/she has been identified as a victim of trafficking or not. There is no doubt that ensuring safety for the identified victims of trafficking is one of the priorities during the procedure, but the abovementioned paragraph, as defined in the current Draft, indicates that the safety and protection need to be guaranteed only to the minors who have been identified as victims of trafficking.

Principle of free interpretation

Article 11

The Applicant who does not understand the official language of the procedure shall be provided free services for the purpose of interpretation into the language of the country of origin or a language that he/she can understand.

The obligation to provide free interpretation services referred to in paragraph 1 of this Article shall include the use of sign language and the availability of Braille materials.

Principle of free access to UNHCR

Article 12

The Applicant shall have the right to contact authorised UNHCR staff at any stage of the asylum procedure.

Principle of personal delivery

Article 13

Any written official communication in the procedure shall be delivered personally to the Applicant or to his/her legal representative or attorney. A written official communication shall be considered delivered when any of the above persons has received it.

Principle of gender equality

Article 14

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

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

Article 14 is amended as follows:

Gender equality and sensibility principle

Article 14

It shall be ensured that the Applicant may ***lodge an application and be interviewed*** *by a person of the same sex* ***and/or in the presence of a translator or an interpreter of the same sex,*** *unless when this is not possible or is associated with disproportionate difficulties for the authority conducting the asylum procedure.*

Female applicants accompanied by men shall lodge the application and give statements separately from their accompaniers.

Principle referred to in paragraph 1 of this Article shall always be applied when conducting searches, body checks and other actions in the course of the procedure that include physical contact with the applicant.

Provisions of this Law shall be interpreted in a gender-sensitive manner

The principle of 'gender sensitivity' has been included in the title of this Article because this Article, as it is currently defined, does not refer to gender equality (it does not provide for equality of rights and obligations of male and female applicants), but to a careful treatment of asylum seekers which means that an applicant will be interviewed by an official of the same sex and that they will be provided by an interpreter of the same sex, if possible. This is particularly important because the persecution may be gender - based (gender-based violence), so it may be expected that applicants will rather state the reasons for leaving their country of origin to a person of the same sex, without fear.

As regards paragraph 1, we believe that the same obligation (right) envisaged for the interview should be provided for when submitting the asylum application. Having regard to the fact that both of the abovementioned activities have almost the same 'importance' with regard to gathering facts that are pivotal for making the decision, we believe that they should be equal in respect of application of this principle.

The newly introduced paragraph 2 is aimed at applying the principle of gender sensitivity and it is provided for by the Directive 2013/32/EU, Preamble point 32 "With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender-sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender- based persecution. The complexity of gender-related claims should be properly taken into account in procedures based on the concept of safe third country, the concept of safe country of origin or the notion of subsequent applications."

Paragraph 4 is based on the Council of Europe Convention on preventing and combating violence against women and domestic violence that came into force on 1 August 2014. This Convention, in its Chapter VII relating to migration and asylum issues, lays down numerous obligations aimed at introducing gender-sensitive interpretation in the procedure of determining the refugee status, gender-sensitive reception procedures and treatment and gender-sensitive recognition of violence against migrant women and female applicants.

If the condition 'upon his/her request' is maintained, then it is necessary to add a paragraph providing for the obligation of the determining authority to inform the applicant on the possibility concerned, before the implementation of the activity. Although Article 57 provides for the right of the applicant to be informed, we believe that it is necessary to explicitly prescribe this obligation, primarily for the purpose of exercising the right to protection against gender-based persecution.

Principle of providing special procedural and reception guarantees

Article 15

In the course of the asylum procedure, care shall be taken of the specific circumstances of persons requiring special procedural and/or reception guarantees, such as minors, or persons completely or partially deprived of legal capacity, children separated from their parents or guardians, persons with disabilities, elderly persons, pregnant women, single parents with minor children, and persons who were subjected to torture, rape, or other serious forms of psychological, physical or sexual violence.

The special procedural and reception guarantees shall serve to provide the appropriate assistance to an asylum seeker who, due to his/her personal circumstances, is not able to benefit from the rights and obligations under this Law without appropriate assistance.

In Article 15, paragraph 1, one of the categories included are the children separated from parents of guardians. Considering that the Draft defines only an unaccompanied minor in the list of its main terms, and that the doctrine and international instruments clearly define the category of children separated from parents or guardians, it is necessary to align the terminology with Article 2, paragraph 1, point 13.

Although this is an Article that defines a principle, we believe that the Draft should contain more provisions that include the principle and lay down guaranteed rights and manner of exercising these rights (such as the provision guaranteeing the priority of applications lodged by unaccompanied minors, for instance). We would like to emphasise that the Directives comprising the Common European Asylum System contain many of such guarantees (Directive 2013/32/EU, Article 15 provides for the obligation of ensuring that interviews with minors are conducted in a child-appropriate manner).

Minors

Article 16

In the case of a minor, the intention shall be expressed by his/her parent or guardian.

The asylum application on account of a minor shall be filed by his/her parent or guardian.

Minors over 16 years of age who are married may participate in the asylum procedure independently.

General remark: In our opinion, the contents of Article 16 and 17 may not be characterised as provisions that need to be included in the part of the Law laying down the principles, because these articles specifically regulate certain actions/exercise of certain rights, which is definitely not the purpose of principles enshrined in legal texts. Article 6, paragraph 5 of the Unique Methodology Rules for Drafting Regulations lays down the following: ... "principles shall express main values in the field regulated by the regulation concerned".

Unaccompanied minors

Article 17

An unaccompanied minor shall have a guardian appointed by the guardianship authority before the submission of his/her asylum application in accordance with the law.

Article 17, paragraph 1 is amended to read as follows:

*An unaccompanied minor shall have a **temporary** guardian appointed by the guardianship authority before the submission of his/her asylum application, in accordance with the law.*

Having regard to the fact that appointing a guardian to a foreign unaccompanied minor is directly regulated by both the Family Law and (Draft) Asylum Law, it is necessary to establish a precise relation between these two Laws. Namely, the Family Law provides only for a temporary guardian for a foreigner as a form of special guardian protection (guardian for special cases), with an aim of providing a temporary protection to a person, and protection of rights and interests of some persons. Unlike the Family Law, the Draft provides for a guardian, and not a temporary guardian, who is appointed to a foreign unaccompanied minor. In this regard, it could be interpreted that the Draft provides for a regular and not temporary guardian protection for a foreign unaccompanied minor (permanent guardianship or full guardianship). However, the Draft lays down that the guardianship authority appoints a guardian to a foreign unaccompanied minor in accordance with the law. The expression "in accordance with the law" means reference to another law (the so called 'open reference'). This is understandable having in mind that the guardianship is a family law issue intended for the protection of some persons, determined by the law, who are provided with a legal representative, or a guardian to act as a legal representative. This is why the other law is the Family Law which, in its Part Six (articles 124-150) regulates the issue of placing a person under guardianship. One of these articles contains a provision that a temporary guardian is appointed to a foreigner, and not a permanent one (Article 132).

Furthermore, we believe that it is necessary to determine more precisely the exact moment at which the temporary guardian is to be appointed. Following the reasoning of the Draft, or the Chapter regulating this procedure, the question is whether there will be a gap in respect of the temporary guardian who will ensure the best interest of the minor from the moment he/she arrives to an asylum centre until he/she lodges the application. In the best-case scenario, there are 12 days from the registration to the arrival to a centre, but in practice so far it has frequently been even a longer period. "Before the submission of his/her asylum application" may refer to a few days or to the moment before the very submission of the application.

An unaccompanied minor shall be informed promptly about the appointment of the guardian.

Article 17, paragraph 2 is amended to read as follows:

*An unaccompanied minor shall be informed **without delay** about the appointment of the **temporary** guardian.*

In regulations of the RS, the term 'without delay' is usually used.

Notwithstanding paragraph 1 of this Article, an unaccompanied minor over 16 years of age who is married shall not have a guardian appointed.

An unaccompanied minor shall lodge the Application personally, and exclusively in the presence of his/her guardian.

Paragraph 4 is amended to read as follows:

*An unaccompanied minor shall lodge the application personally, and exclusively in the presence of his/her **temporary** guardian.*

See the statement of reasons for paragraph 1 of this Article.

The Application for an unaccompanied minor may be filed also by the guardian, when that is in the best interest of the minor.

Paragraph 5 is amended to read as follows:

A temporary *guardian may also lodge an application on behalf of an unaccompanied minor, when this is in the best interest of the minor.*

See the statement of reasons for paragraph 1 of this Article.

An unaccompanied minor shall be interviewed in the presence of his/her guardian.

The Applications by unaccompanied minors shall be processed with priority.

Article 17, paragraph 8 is amended to read as follows:

Examination of the application of an unaccompanied minor, and deciding on his/her other rights ***shall be given a priority****.*

We believe that it is unwarranted to give priority to unaccompanied minors only with regard to the submission of their applications. There are other rights that need to be granted by competent authorities, so we believe that the priority should be guaranteed in all the cases where decisions/actions related to unaccompanied minors are taken.

General remark: the manner in which an unaccompanied minor expresses his/her intention to seek asylum is not regulated, particularly whether a temporary guardian may do this on his/her behalf, if this is in the best interest of the child.

In our opinion, the provisions of this Article are extremely important, but it would be more appropriate to include them in another Chapter, which would enable a better structure of the text and the Draft would comply with the Unique Methodology Rules for Drafting Regulations.

Principle of directness

Article 18

The Applicant shall have the right to be interviewed orally and in person by an authorised officer of the organisational unit of the Ministry of the Interior in charge regarding all the facts relevant to the recognition of the right to asylum.

Article 18 is amended as follows:

Every applicant shall be entitled to present in person all the facts relevant for granting and ***withdrawing*** *the right to asylum/exercise of the right, to an authorised official of the Asylum Office of the Ministry of Interior.*

The principle of directness is based on the principle of ensuring a hearing for the parties in the administrative procedure, which implies that the party must be given an opportunity, before the decision is adopted, to make a statement regarding the facts and circumstances that are relevant for the decision. Consequently, the rationale of the provision limiting the respect of the principle to a single action - the hearing of a party (Article 26 of the Asylum Law) is unclear. In addition, this proposal would satisfy the principle of directness in the course of submission of the asylum application, orally for the record, as well as in the event of the termination of asylum byway of the annulment of the decision, by the alien contesting the circumstances in which such decision was made, which is a standard enshrined in Article 45(1)(2) of the Directive 2013/32/EU.

The newly adopted Law on Administrative Procedure introduces the principle 'The right of the party to express his/her reasons', Article 11(1). A Party must be provided with an opportunity to state the facts relevant for making decisions related to the administrative matter concerned.

Principle of confidentiality

Article 19

The information about the Applicant obtained in the course of the asylum procedure may be accessed only by the persons authorised by law.

The information referred to in paragraph 1 of this Article shall not be disclosed to the country of origin of the Applicant, unless he/she has to be forcibly returned to the country of origin upon the completion of the procedure. In that event, the following information may be disclosed:

1) identification data;
2) information about family members;
3) information about
4) fingerprints and
5) photographs.

The collection, processing and keeping of the information referred to in this Article shall be conducted in accordance with the regulations on the protection of personal information.

II COMPETENT AUTHORITIES

Ministry of the Interior

Asylum Office

Article 20

With respect to asylum applications and the cessation of the right to asylum, the procedure shall be conducted and all first-instance decisions shall be taken by the competent organisational unit of the Ministry of the Interior (hereinafter: The Asylum Office).

Article 20 is amended as follows:

The Asylum Office, as a competent organisational unit of the Ministry of Interior (hereinafter: The Asylum Office), shall take first-instance decisions on the applications, and other cases envisaged by the Law.

Asylum Commission

Article 21

The Asylum Commission shall decide in the second instance, on appeals, and shall comprise the Chairperson and eight members appointed by the Government for a four-year term.

The funding for the operations of the Asylum Commission shall be provided in the budget of the Republic of Serbia.

To be appointed Chairman or member of the Asylum Commission a person must be a citizen of the Republic of Serbia, and must have a university degree in law and minimum five years of working experience, and must be familiar with the human rights regulations.

The amount of remuneration to the Asylum Commission members for their work shall be specified in an act passed by the Government.

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

The administrative services for the Asylum Commission shall be provided by the Asylum Office within the Ministry of the Interior.

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

Having regard to the stage of the reforms being conducted in the RS, it is commendable that the Draft provides for the Asylum Commission as the competent second-instance authority. However, we believe that some changes should be made in respect of the number of the Commission members, the appointment procedure and the requirements for the appointment:

- the number of the Commission members should be 5 at most, in order to increase its efficiency, particularly taking into account the introduction of abbreviated procedures;
- in order to ensure the Commission's independence, it is useful to prescribe that 2 members must be persons elected from the rank of academia representatives and civil society organisation;
- besides the requirement that the candidate member must be familiar with the human rights regulations, a requirement of a 5-year working experience on jobs relating to the protection/exercise of human rights / protection of refugees (migrants) should be laid down;

» as regards the Chairman of the Asylum Commission, a requirement of an 8-year working experience on jobs relating to the protection/exercise of human rights / protection of refugees (migrants) should be laid down;

» furthermore, besides the funding for the operations of the Asylum Commission, we believe that appropriate material and technical conditions need to be ensured.

Administrative Court

Article 22

The Administrative Court shall decide in the second instance on administrative disputes lodged against final decisions taken by the Asylum Commission.

Commissariat for Refugees and Migration

Article 23

The Commissariat for Refugees and Migration shall provide the material conditions for the reception of asylum seekers in accordance with this Law.

The Commissariat shall provide temporary accommodation for persons who have been granted asylum in accordance with the migration management regulations.

The Commissariat for Refugees and Migration shall implement voluntary return programs and integration programs for persons who have been granted asylum in accordance with the migration management regulations.

A certain horizontal non-compliance of paragraph 3 with the provisions of the Law on Migration Management is noticeable. *Stricto senso*, the voluntary return referred to in the Draft refers only to persons who have been granted temporary protection (Article 77), while Article 10, paragraph 2 of the Law on Migration Management reads the following: ..."the Commissariat for Refugees and Migration shall propose programmes for the return of foreigners illegally staying in the Republic of Serbia", which, if considered from the aspect of the Law on Asylum, could definitely refer to the persons whose applications have been refused/protection withdrawn and alike. Moreover, the Draft extends the responsibilities of the Commissariat as compared to Article 10 of the abovementioned Law due to the fact that the Draft provides for the implementation of the programme, while the Law provides for the responsibility which involves only the activity of proposing the return programme.

III CONDITIONS FOR GRANTING ASYLUM

Right to refuge

Article 24

The right to refuge, or refugee status, shall be granted to the applicants who are outside their country of origin or habitual residence, and who have a well-founded fear of persecution on grounds of their race, religion, nationality, membership to a specific social group or political opinion, as a result of which they are unable or unwilling to avail themselves of the protection of that country.

See the comment on Article 2, paragraph 1, point 6.

Subsidiary protection

Article 25

Subsidiary protection shall be granted to the Applicant who fails to meet the conditions for granting asylum referred to in Article 21 of this Law if there are justified reasons to indicate that if he/she would be returned to his/her country of origin or habitual residence he/she would face a real risk of suffering serious harm, and who is unable, or, owing to such risk, unwilling to avail himself/herself of the protection of that country.

Serious harm shall comprise the threat of death by penalty or execution, torture, inhuman or degrading treatment or punishment, as well as a serious and individual threat to the life due to arbitrary generalised violence in situations of international or internal armed conflicts.

Grounds of persecution

Article 26

The grounds for persecution referred to in Article 24 of this Law shall be assessed by considering the content of the following terms:

1) Race, referring to skin colour, descent, and membership of a specific ethnic group.
2) Religion, referring to theistic and atheistic beliefs, participation in or abstention from formal worship in private or public, either alone or in community with others, other religious acts or expressions of faith, or forms of personal or communal conduct founded on or arising from religious beliefs.
3) Nationality, referring to membership of a group that is specific in terms of its culture, ethnic or linguistic identity, common geographical or political origins, or its relationship with the population of another state, and may also include nationality.
4) Political opinion, referring to an opinion, thought or belief about matters related to the potential actors of persecution referred to in Article 29 of this Law, and their policies or methods, irrespective of whether the Applicant acted upon that opinion, thought or belief.
5) A specific social group, referring to social groups whose members share innate characteristics or a common background that cannot be changed, or common characteristics or beliefs that are so fundamental to their identity or conscience that these persons must not be forced to renounce them, whereby that group has a distinct identity in their country of origin because it is perceived as being different from the surrounding society.

Depending on the circumstances in the country of origin, a particular social group may also mean a group that is based on the common characteristics of sexual orientation or gender identity.

See the comment on Article 2, paragraph 1, point 6.

'Sur place' principle

Article 27

A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on:

1) events that took place after the Applicant had left the country of origin or habitual residence;
2) the activities the Applicant has engaged in after he/she had left the country of origin or habitual residence, in particular where it has been established that they constitute the expression and continuation of the Applicant's beliefs and/or orientation he/she held in the country of origin or habitual residence.

If the Applicant lodges the Subsequent Application, material facts and evidence produced after the effectiveness of the decision, and relating to the assessment of the eligibility to be granted asylum, cannot be founded exclusively on the circumstances that the Applicant created by his/her personal actions aimed at meeting the conditions to be granted asylum.

Acts of persecution

Article 28

The acts regarded as persecution in accordance with Article 24 of this Law must be:

1) sufficiently serious in nature or repetition that they constitute a serious violation of fundamental human rights, in particular the non-derogable rights specified under Article 15, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, or
2) an accumulation of various measures, including violations of human rights, which are sufficiently severe as to affect an individual as referred to in point 1 above.

Article 28, paragraph 1, point 2 is amended to read as follows:

*2) a set of various measures, including violations of human rights, which are sufficiently severe as to affect an individual in a **similar** manner as referred to in point 1 of this Article.*

This provision has been taken over from the legislation of the Republic of Croatia, and this partial takeover has changed the meaning of the paragraph.

The acts of persecution referred to in paragraph 1 of this Article may, among other things, be:

1) physical or emotional violence, including sexual violence;
2) legal, administrative, police and/or judicial measures that are discriminatory;

Article 28, paragraph 2, point 2 is amended to read as follows:

*2) legal, administrative, police and/or judicial measures **that are discriminatory or implemented in a discriminatory manner.***

We believe that for the sake of legal certainty, it would be better to define this paragraph in a way that it may be clearly and unequivocally concluded that the very measures and their implementation in a discriminatory manner may be deemed as an act of persecution.

3) judicial prosecution or punishment that is disproportionate or discriminatory;
4) denial of judicial redress that leads to disproportionate or discriminatory sanctions;
5) judicial prosecution or punishment for refusal to undertake military service during conflicts, where performance of military service would include criminal offences or acts that fall within the grounds for exclusion as set out in articles 33 and 34 of this Law;
6) acts of a gender-specific or child-specific nature.

A connection must exist between the grounds of persecution and the acts of persecution and/or the absence of protection against such acts.

When assessing whether the Applicant has a well-founded fear of persecution, it shall be immaterial whether the Applicant actually possesses the racial, religious, national, social or political characteristics which are the grounds of persecution, provided that such characteristics are attributed to the Applicant by the actor of persecution.

Actors of persecution or serious harm

Article 29

The persecution referred to in Article 24 and the serious harm referred to in Article 25 of this Law may be committed by:

1) the state authorities
2) parties or organisations that control the state or a significant part of the state territory;
3) non-state bodies, if it has been shown that the state authorities or parties, or organisations that control a significant part of the state territory, including international organisations, are unable or unwilling to provide protection against persecution or serious harm.

Providers of protection in the country of origin

Article 30

Protection from persecution and serious harm in the country of origin or habitual residence, within the meaning of articles 24 and 25 of this Law, may be provided by the following, if they are able and willing:

1) the state authorities or
2) parties, state or international organisations that control the state or a significant part of the state territory.

The protection referred to in paragraph 1 of this Article must be effective and of a non-temporary nature.

The protection referred to in paragraph 1 of this Article shall imply an effective legal system in place for the detection, prosecution, and punishment of the acts constituting persecution or serious harm, as well as effective access to such protection.

Internal protection

Article 31

As part of the assessment of the Application in substance, one shall also assess the possibility for the protection of the Applicant by relocating him/her to a specific part of the country of origin or habitual residence where:

1) there are no grounds for a well-founded fear of persecution or suffering serious harm, or
2) Applicant is able to receive effective protection from persecution or from serious harm.

The internal relocation referred to in paragraph 1 of this Article shall be possible provided that the Applicant:

1) is able to travel to that part of the country safely and lawfully
2) can gain admittance to that part of the country, and
3) can be reasonably expected to settle there.

A new paragraph 2 shall be added to read as follows:

When assessing whether there are substantial grounds for well-founded fear of persecution or real threat of harm or whether the applicant has access to the protection against persecution or serious harm in any part of his/her country of origin, general circumstances known for a certain part of the country and personal circumstances of the applicant shall be taken into account.

General remark: 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, says that the concept could certainly be taken into account when deciding about a refugee status, but it may not be a ground, nor the only evidence for making a decision on asylum application. Examining the possibility of applying the IFA may be conducted only within the regular procedure, but the type of the decision that the determining authority should make remains unclear - whether a decision on refusing or on rejecting the application should be made. UNHCR emphasises that it is wrong to use the internal protection alternative analysis for rejecting the access to examining the refugee status or in a form of a 'simple reply' or 'shortcut' for avoiding the determination of the refugee status.

Assessment of facts and circumstances

Article 32

The Applicant shall cooperate with the Asylum Office, and shall deliver to the Asylum Office all available documentation, and present true and accurate information relating to his/her identity, age, nationality, family members, country and address of previous residence, previous applications, his/her travel routes after leaving the country of origin, identification and travel documents, and the grounds for the application.

When examining the substance of the application, the Asylum Office shall collect and consider all the relevant facts and circumstances, particularly taking into consideration:

1) the relevant facts and evidence presented by the Applicant, in accordance with paragraph 1 of this Article, including the information about whether he/she has been or could be exposed to persecution or the risk of suffering serious harm;
2) current reports about the situation in the country of origin or habitual residence, and, if necessary, the country through which he/she travelled, including the laws and regulations of that country, and the manner in which they are applied, as contained in various sources provided by international organisations including UNHCR and the European Asylum Support Office (hereinafter: EASO), and other human rights organisations;
3) the position and personal circumstances of the Applicant, including gender and age, in order to assess on those bases whether the procedures and acts to which he/she has been or could be exposed would amount to persecution or serious harm;
4) whether the Applicant's activities, since leaving the country of origin, were aimed at creating the essential conditions to be granted asylum, in order to assess whether those activities would expose the applicant to persecution or a risk of serious harm if returned to that country;
5) whether the applicant could benefit from the protection of a country whose nationality he/she can prove.

Article 32, paragraph 2, point 5 is amended to read as follows:

whether the applicant could benefit from the protection of a country whose nationality could be proved.

We believe that the burden of proof referred to in this point is unfairly put on the applicant, unlike in other points that unequivocally prescribe that the Asylum Office should be the one that collects and considers.

The fact that the Applicant has already been exposed to persecution or serious harm, or the threat of such persecution or harm, is an indication of the Applicant's well-founded fear of persecution or risk of suffering serious harm, unless good reasons exist to consider that such persecution or serious harm will not be repeated.

The Applicant's claims shall be considered credible in the part where a certain fact or circumstance is not substantiated with evidence if:

1) it has been established that the Applicant's claims are generally credible;
2) the Applicant has made a sincere effort to substantiate his/her claims with evidence;
3) all the relevant elements at his/her disposal have been presented, with a satisfactory explanation of the shortcomings of other relevant facts;
4) it has been established that the Applicant's claims are consistent and acceptable, and that they are not in contradiction with the specific and general information relevant to the decision on the Application, and
5) the Applicant has sought asylum as soon as possible or has justified his/her failing to do so.

The Draft recognises both the expression of an intention and the submission of an application, and therefore it is necessary to precisely define Article 32, paragraph 4, point 5 because it is not clear how to interpret the formulation "seek asylum" - whether the applicant has met the requirement by expressing the intention or by lodging an application. We would like to emphasise that if the intention was to say that the requirement is fulfilled by lodging an asylum application, then the ratio of this requirement is not clear. Having regard to the practice implemented so far and the fact that the manner of lodging an application is prescribed almost identically and that the applicant may not lodge an application without the presence of the Asylum Office representatives, the question is whether there is a possibility of applying this requirement, particularly with regard to the time limit 'as soon as possible', in view of the fact that the applicant may not lodge an application without the presence of the Asylum Office representatives.

Grounds for denying the right to refuge

Article 33

The right to refuge shall not be granted to the Applicant if there are serious reasons for considering that he/she has committed, incited or in some other way participated in committing:

1) a crime against peace, a war crime or a crime against humanity as defined by the provisions of international conventions adopted to prevent such crimes;
2) a serious non-political crime outside the Republic of Serbia, before his/her arrival to its territory, including particularly cruel acts, even if committed with an allegedly political objective;
3) acts contrary to the purposes and principles of the United Nations as set out in the Preamble, and in articles 1 and 2 of the Charter of the United Nations.

The Applicant who already has a residence permit approved in a country that recognises him/her based on the right to residence equal rights and obligations to those of its nationals shall not be granted refuge.

Article 33 has been completely taken over from the Article 12 of the Directive 2011/95/EU, but we believe that it is necessary to include precise definitions with respect to paragraph 1, point 2.

Although the next Article defines a serious crime, it is necessary to include such an explicit definition in this Article as well or to provide for reference to its application even in Article 34. Moreover, the formulation of a serious crime which is not of a political character may leave some room for different interpretations with regard to the country whose legislation should be taken into account when assessing whether a serious crime is at issue.

Grounds for denying subsidiary protection

Article 34

Subsidiary protection shall not be granted to the Applicant if there are serious reasons for considering that he/she has committed, incited or in some other way participated in committing:

1) a crime against peace, a war crime or a crime against humanity as defined by the provisions of international conventions adopted to prevent such crimes;
2) a serious crime;
3) acts contrary to the purposes and principles of the United Nations as set out in the Preamble, and in articles 1 and 2 of the Charter of the United Nations.

Subsidiary protection shall not be granted to the Applicant who constitutes a danger to the national security or public order of the Republic of Serbia.

A serious crime referred to in paragraph 1, point 2 of this Article shall be understood to mean a crime which, in accordance with the legislation of the Republic of Serbia, is punishable by a term of imprisonment of five years or more.

IV ASYLUM PROCEDURE

General remark: *Stricto iure* registration is not considered to be a part of the asylum procedure because Article 36 and the rationale of the Law prescribe that the asylum procedure starts with the submission of an asylum application.

Registration

Article 35

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

In exceptional circumstances, a foreigner may express his/her intention to seek asylum also at the Asylum Centre or in other facilities specified for the accommodation of asylum seekers under Article 52 of this Law.

Taking into account the provisions of Article 52, particularly paragraph 4, points 2 and 3, and Article 23, the conclusion that imposes itself is that it is not possible to express intention in a centre for the accommodation of foreigners.

A foreigner who has expressed the intention to seek asylum in accordance with paragraph 1 of this Article shall be registered and referred to the Asylum Centre or other facilities specified for the accommodation of asylum seekers under Article 52 of this Law, and shall be obligated to report there within 72 hours from the issuance of the registration certificate.

The Draft does not envisage the situations in which a person needs to be transported to asylum centres. There is a legal gap relating to the actions taken by the police officers to whom a person expresses his/her intention, if there are some of the reasons for which the freedom of movement may be restricted to the person concerned or if the person should be detained. The term 'referred to' the Asylum Centre and the legal consequence that is prescribed, imply that the persons concerned are obliged to reach, on their own, the Asylum Centre and other facilities intended for the accommodation. In such situations, it is clear that their actions will be based on the provisions of the Law on the Police, but we believe that due to the specific position and vulnerability of the 'foreigners who have expressed their intention', it would be better to prescribe explicit provisions. Furthermore, with regard to unaccompanied minors, the question is whether they are referred to or transported to asylum centres, particularly where the guardianship authority has been appointed as a temporary guardian.

As part of the registration of the foreigner, an authorised police officer shall:

1) take his/her photograph;
2) take his/her fingerprints.

It would be advantageous to provide for one more paragraph that would regulate the procedure of taking fingerprints of minors in such a manner that the minors under 14 years of age will not be subject to the obligation of providing the fingerprints. It is true that the Draft does not envisage the introduction of the procedure for establishing the age of a person, as it is the case with many European legislative systems, but an additional guarantee that would decrease the possibility of malpractice could be to prescribe such an exception for the cases when it could be reliably and irrefutably be established that a person is under 14. We hereby emphasise that the EU legislation also recognises this limitation.

An authorised police officer shall have the right to search a foreigner and his/her personal belongings for the purpose of finding identification papers and documents required for establishing the identity, and the right of temporary seizure of all identification papers and documents that may be relevant to the asylum procedure, whereby the foreigner shall be issued a certificate thereof.

A foreigner who possesses a passport, an identity card or some other identification document, a residence permit, a visa, a birth certificate, a travel ticket, or another document or an official communication of relevance to the asylum procedure, shall be obliged to submit them during the registration.

A foreigner who deliberately obstructs, avoids, or fails to consent to the registration referred to in paragraph 4 of this Article shall not be allowed to lodge the Application.

A foreigner who has expressed the intention to seek asylum in accordance with paragraph 1 of this Article shall be registered and referred to the Asylum Centre or other facilities specified for the accommodation of asylum seekers under Article 52 of this Law, and shall be obligated to report there within 72 hours from the issuance of the registration certificate.

This paragraph needs to be deleted. It is identical to paragraph 3.

An authorised police officer of the Ministry of the Interior shall issue a certificate of the registration of a foreigner in the Ministry's records.

If we take into account the rationale of this Article which reads that the "Foreigners who have expressed an intention to lodge an asylum application in the Republic of Serbia, will be photographed and their fingerprints taken for the purpose of registration, **by virtue of this Law and not the Law on Police**, as it is the case now, so it will not be necessary to repeat these actions when receiving the application, but only to check the registration through the existing electronic databases. Upon the registration, the **registration certificate** will be issued to the persons concerned (and **not a certificate of the intention to apply for asylum**) with which they are referred to one of the asylum centres", and the provisions of Article 1 of this Law which clearly indicates the subject matter of this Law, the question is whether the envisaged solution is an appropriate one having in mind the interpretation of terminology according to which the foreigners are registered, and not the persons who have expressed their intention to apply for asylum. We believe that the solution provided by the Draft, to 'link' the registration activity with the expression of the intention, is a positive one, but we also believe that, taking into account the subject matter of the Draft, using the term 'registration of foreigners', without closer defining it by adding 'who have expressed an intention to seek asylum', could not be an appropriate one.

Furthermore, upon a targeted interpretation, such procedures of registration, issuing certificates and record keeping directly affect the definition of an applicant and consequently lead to non-compliance between some provisions and to an inconsistency of the Draft.

Therefore, we suggest an alignment of the text by ensuring that this Article regulates the registration of foreigners who have expressed their intention to apply for asylum and issuing of the registration certificates for them.

Moreover, we would like to emphasise that the regulations from the Republic of Croatia, which this Draft mostly relies on, provide for an identical solution.

The registration procedures and the obligations and the rights of persons registered as specified in paragraph 4 of this Article shall be prescribed by the Minister of the Interior (hereinafter: the Minister).

If a foreigner fails to report to the Asylum Centre or other facilities specified for the accommodation of asylum seekers under Article 52 of this Law within 72 hours without a justified reason, the regulations on the legal status of foreigners shall apply.

General remark: In our opinion, it would be advantageous to introduce a provision regulating the treatment of foreigners who have expressed their intention to seek asylum and who have arbitrarily left the asylum centre before lodging the application, without approval and duly justified reasons. Even in such cases, the Law on Foreigners needs to be accordingly applied. Otherwise, there is a legal gap of 12 days provided that all the time-limits have been met.

Initiating asylum procedure

Article 36

The asylum procedure shall be initiated by lodging the Application to an authorised officer of the Asylum Office on the prescribed form, at the latest within 15 days of the date of registration.

Article 36, paragraph 1 is amended to read as follows:

The asylum procedure shall be initiated by lodging the application, orally for the record, in the presence of an authorised officer of the Asylum Office on the prescribed form, within 15 days of the date of registration, at the latest.

Although the rationale of the Draft specifies this more precisely, the provision from paragraph 1 leaves some room for different interpretations. "It is lodged to an authorised official" may be interpreted as a possibility to address the submission, i.e. the application in writing, to an authorised official of the Asylum Office.

paragraph 2 is added to read as follows:

If the authorised official of the Asylum Office does not enable the submission of the application within the time-limits referred to in paragraph 1 of this Article, the asylum seeker may do so by filling in the application form, within 8 days of the day of expiry of the time-limit referred to in paragraph 1 of this Article.

The Procedure shall be deemed initiated upon the receipt of the application form by the Asylum Office.

Paragraph 2 is introduced in order to provide additional guarantees ensuring access to the asylum procedure and establishment of a fair and efficient asylum procedure in Serbia. Namely, in practice it has happened so far that even several months pass from the moment a person arrives to an asylum centre to the moment he/she lodges the asylum application.

The asylum application shall be submitted personally.

Before the submission of an asylum application, the Applicant shall be informed about his/her rights and obligations, in particularly the rights to residence, a free interpreter during the procedure, legal aid, and the right of access to UNHCR.

The contents and the form of the application form shall be prescribed by the Minister.

Interview

Article 37

An authorised officer of the Asylum Office shall interview the Applicant as soon as possible to establish all the facts and circumstances of relevance to making a decision on the Application lodged, and particularly to establishing:

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

An authorised officer of the Asylum Office may interview the Applicant more than once in order to establish the factual situation.

During the interview, the Applicant shall fully cooperate with the authorised officer of the Asylum Office and give credible and persuasive explanations of the grounds on which his/her Application is based, present all the available evidence to support his/her Application, and reply truthfully to all questions asked.

The Applicant shall attend the interview personally, and shall participate in the interview, irrespective of whether he/she has a legal representative or attorney.

The interview with the Applicant shall be conducted even in the absence of his/her duly summoned attorney if the attorney has failed to justify his/her absence.

Family members of different sex shall be interviewed separately, unless when that is not possible, or is associated with disproportionate difficulties for the authority conducting the procedure for the Application lodged.

We believe that this paragraph needs to ensure a higher level of guarantee in order to be harmonised with the provisions of Article 15 (Requirements for a personal interview) of the Directive 2013/32/EU. Paragraph 1 of the Article concerned lays down that a personal interview normally takes place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present.

Moreover, we believe that the obligation of conducting personal interviews without the presence of family members should not be conditioned by the different sex issue, since it is frequently the case that some relevant facts that might ensure exercise of the right to asylum will not be provided to family members who are of the same sex, in the presence of family members, for certain reasons, mostly due to some social and customary norms.

The interview shall be closed to public.

Notwithstanding paragraph 7 of this Article, a UNHCR representative may be present during the interview, provided that the Applicant does not object to that.

An audio or audio-video recording of the interview may be made, provided that the Applicant has been informed about it.

The interview may be omitted if:

1) on the basis of the available evidence, a decision may be adopted upholding the application and granting the right to refuge or subsidiary protection;
2) the Applicant is unable to give a statement due to permanent circumstances that are outside of his/her influence;
3) the admissibility of the Subsequent Application is being assessed in accordance with Article 46, paragraphs 2 and 3 of this Law.

If the interview has been omitted in accordance with paragraph 10, point 2, it shall be made possible to the Applicant or a member of his/her family to present evidence and/or give statements relevant to the decision on the Application.

Where there is such a large number of submitted asylum applications that the competent authority is unable to interview every applicant in good time, the Government of the Republic of Serbia may, upon the request of the competent authority, issue a decision providing for a temporary engagement of another state authority officials for conducting the interviews.

In such a case, upon issuing the decision referred to in the previous paragraph, the officials of another state authority shall have the necessary training before being included in the interviewing procedure.

Paragraph 11 is amended as follows:

Where there is such a large number of submitted asylum applications that the competent authority is unable to interview every applicant in good time, the Government of the Republic of Serbia may, upon the request of the competent authority, issue a decision providing for a ***temporary engagement of officials from other competent authority's organisational units, and/or engagement of other authorities' officials.***

Paragraph 12 is amended as follows:

In such a case, upon issuing the decision referred to in the previous paragraph, ***the officials of other competent authority's organisational units, and/or other authorities' officials shall have the necessary training before being included in the interviewing procedure.***

We think that it would be more rational to compensate for the lack of capacities for conducting interviews by engaging the representatives of the Ministry of Interior of the RS, and then of other pubic authorities.

Furthermore, we believe it necessary to introduce a paragraph that would closely specify what is considered to be 'a too large number of submitted asylum applications'. Although the solution referred to in paragraph 10 is literally taken from the Directive 2013/32/EU, let us remind you that EU Directives prescribe only the goal that needs to be achieved, and it is up to the Member States to closely specify the manner/requirements for achieving such a goal.

Examination of the Application in substance

Article 38

The Asylum Office shall render a decision on the substance of the Application:

1) upholding the Application and recognising the right to refuge if the applicant meets the conditions under Article 24 of this Law,
2) upholding the Application and granting subsidiary protection, if the applicant meets the conditions under Article 25 of this Law;
3) refusing the Application as unfounded if the Applicant fails to meets the conditions under articles 24 and 25 of this Law;
4) refusing the Application if the conditions for exclusion in accordance with articles 33 and 34 of this Law exist;
5) refusing the Application as unfounded if the Applicant fails to meets the conditions under articles 24 and 25 of this Law, and if the circumstances under Article 40 of this Law exist.

In a decision referred to in paragraph 1, points 3), 4) and 5), the Asylum Office shall specify the time limit for the foreigner who does not have any other grounds of residence in the Republic of Serbia to leave the country.

Time limits

Article 39

The decision on the Application under regular procedure shall be rendered not later than six months from the date of the Application or admissible Subsequent Application.

The time limit may be extended for a further nine months if:

1) the Application includes complex factual and/or legal issues;
2) a large number of foreigners have lodged their Applications at the same time;

Notwithstanding paragraph 2 of this Article, the time limit may be extended for a further three months if it is necessary to ensure a proper and complete assessment of the Application.

If a decision cannot be rendered within the time limit referred to in paragraph 1 of this Article, the Applicant shall be informed about it and about the time needed before he/she may expect a decision.

If it can be justifiably expected that no decision will be rendered on the Application within the time limits referred to in paragraphs 1 through 3 of this Article on account of the temporary unsafe situation in the country of origin, the authorised officers of the Asylum Office shall:

1) verify the situation in the country of origin every six months, and
2) inform the Applicant in reasonable time bout the reasons for the postponement of a decision.

In the case referred to in paragraph 5 of this Article, the decision shall be made not later than 21 months from the date of the Application.

Although the time-limits have been literally taken from Directive 2013/32/EU, we consider them inappropriately long having in mind the circumstances in which the asylum system in Serbia functions. Notably, we are referring to the available financial resources for the functioning of the asylum system. Please note that the abovementioned EU Directive, in its Article 3 provides for the possibility of introducing or retaining more favourable standards on procedures for granting and withdrawing international protection, insofar as those standards are compatible with this Directive. Moreover, point (18) of its Preamble says that: "It is in the interests of both Member States and applicants for international protection that a decision is made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out."

General remark: If the envisaged time-limits remain, the issue of (in)compatibility of this Article with the Article laying down the measures aimed at limiting movement referred to in paragraphs 3 and 4, may be raised.

Accelerated procedure

Article 40

Under accelerated procedure, the decision shall be rendered not later than two months from the date of the Application or admissible Subsequent Application, with the entire asylum procedure conducted, if it has been established that:

1) the Applicant has presented only the facts that are irrelevant for the assessment of the Application;
2) the Applicant has consciously misled the Asylum Office by presenting false information or forged documents, or by not providing relevant information or by concealing documents that could have had a negative effect on the decision;
3) the Applicant has probably destroyed or hidden documents that establish identity and/or nationality in bad faith so as to provide false information about his/her identity and/or nationality;
4) the Applicant has presented manifestly inconsistent, contradictory, inaccurate, or unconvincing statements contrary to the verified information on the country of origin, rendering his/her Application non-credible;
5) the Applicant has lodged the Subsequent Application that is admissible in accordance to Article 46, paragraphs 2 and 3 of this Law;
6) the Applicant has lodged the Application for the clear purpose of postponing or preventing the enforcement of a decision that would result in his/her removal from the Republic of Serbia;
7) the Applicant presents a risk for the national security or public order;

Point 7 is amended as follows:
*the applicant presents a **serious danger** to the national security or public order;*
Article 31 of the Directive provides for the serious danger standard.

8) it is possible to apply the safe country of origin concept, in accordance with Article 44 of this Law;

The Applicant shall be informed that a decision is to be rendered on his/her Application in accelerated procedure.

An appeal against the decision of the Asylum Office rendered in accelerated procedure can be brought before the Asylum Commission within 8 days from the date the decision is served.

Procedures at border crossings or in transit zones

Article 41

As part of deciding on the Application or Subsequent Application at a border crossing or in the transit zone of an airport or a port or inland water port, the entire procedure shall be conducted at the border crossing or in the transit zone, or in a special accommodation facility inside the territory of the Republic of Serbia designated for that purpose if the person who has expressed the intention to file for asylum cannot be provided adequate accommodation at the border crossing or in the transit zone itself, whereby respecting the fundamental principles specified under this Law.

Directive 2013/32/EU lays down that procedures at the border or in transit zones, aimed at deciding on the admissibility of the application (another Member State has granted international protection; a country which is not a Member State is considered as a first country of asylum for the applicant; a country which is not a Member State is considered as a safe third country for the applicant; etc) and the substance of the application, may be conducted under the conditions and on the grounds envisaged for the accelerated procedure. Therefore, procedures at the border or in transit zones are subject to certain limitations, and let us remind you that the Directive provides only for the possibility of introducing more favourable provisions for the applicants.

The representatives of the organisations providing legal aid to asylum seekers and persons who have been granted asylum shall have effective access to border crossings, or transit zones in airports or inland water ports, or the special accommodation facility inside the territory of the Republic of Serbia designated for that purpose, in accordance with the regulations on the protection of national borders.

An attorney or a representative of an organisation providing legal aid to asylum seekers and persons who have been granted asylum, apart from UNHCR, may have access to the Applicant temporarily restricted, when that is necessary for the protection of the national security or public order of the Republic of Serbia.

The Asylum Office shall render a decision on the Application referred to in paragraph 1 not later than 28 days from the date the Application is lodged.

An appeal against the decision referred to in paragraph 4 of this Article can be brought before the Asylum Commission within 5 days from the date the decision is served.

General remarks: In our opinion, it is positive that the Draft also provides for the possibility of conducting procedures at the border or in transit zones, however, we believe that the procedures are not completely regulated and that there are some legal gaps and uncertainties.

1. What is the ratio of the envisaged possibility of accommodation within the territory of the Republic of Serbia if it is not possible to provide a person who has expressed an intention to apply for asylum with an adequate accommodation at the very border-crossing or in the transit zone, particularly bearing in mind that the grounds for conducting such a procedure are not specified?
2. Where will such person be staying during the appeal procedure?
3. What is this procedure specific for, except for a short time limit for making a decision and limited freedom of movement?
4. What happens if the Asylum Office does not decide on the application within the envisaged time limits?

Dismissal of applications or subsequent applications

Article 42

A decision on dismissal the Application shall be rendered if:

1) it is possible to apply the first country of asylum concept in accordance with Article 43 of this Law;
2) it is possible to apply the safe third country concept in accordance with Article 45;

The Asylum Office shall render a decision dismissing the Subsequent Application if it assesses that it is inadmissible in accordance with Article 46, paragraphs 2 and 3 of this Law.

An appeal against the decision on the dismissal of the Application or the Subsequent Application can be brought before the Asylum Commission within 8 days from the date the decision is served.

The question is whether such a short time-limit for the appeal is justifiable, particularly taking into account the fact that the decision on rejecting the application is made within the regular procedures. This solution would make sense if the possibility of rejecting the application would be examined when examining the admissibility of the application, as provided for by Directive 2013/32/EU.

First country of asylum concept

Article 43

A country shall be considered to be a first country of asylum for the Applicant:

1) if he/she has been recognised refugee status in that country, and if he/she is still able to avail himself/herself of that protection; or
2) if he/she otherwise enjoys sufficient protection in that country, including the guarantees arising from the non-refoulement principle;

The provisions under paragraph 1 of this Article shall apply provided that the Applicant will be readmitted to that first country of asylum.

The title of the Article is amended as follows:

First country of Asylum

Paragraph 1, point 2, is amended to read as follows:

2) if he/she otherwise enjoys an effective protection in that country, including the guarantees arising from the non-refoulement principle;

Moreover, we believe that these two requirements should be linked with an 'and' in order to explicitly prescribe that the requirements are interpreted cumulatively during the assessment.

Paragraph 2 is amended to read as follows:

The provisions under paragraph 1 of this Article shall apply provided that the applicant will be readmitted to that first country of asylum.

Paragraph 3 is added to read as follows:

The applicant shall be allowed to challenge the application of the first country of asylum concept to his or her particular circumstances.

Safe country of origin concept

Article 44

Title of Article 44 is amended as follows:

Safe country of origin

A country shall be considered as a safe country of origin where, on the basis of the legal situation, the application of the law, and the general political circumstances, it is clear that there are no acts of persecution referred to in Article 24 of this Law or risk of suffering serious harm within the meaning of Article 25, paragraph 2 of this Law, which shall be established on the basis of information on:

1) the relevant laws and regulations of the country, and the manner in which they are applied;
2) observance of the rights and freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, particularly Article 15, paragraph 2 of the European Convention, the International Covenant for Civil and Political Rights, and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
3) respect for the non-refoulement principle;
4) application of effective legal remedies.

The information referred to in paragraph 1 of this Article shall be collected from various relevant sources, particularly from EASO, UNHCR, the Council of Europe, and other relevant international organisations.

The Government shall determine a list of safe countries of origin, and shall revise it, as needed, taking into account the provisions of paragraph 1 of this Article, at the proposal of the Minister of Foreign Affairs.

Paragraph 4 is added to read as follows:

The Ministry of Foreign Affairs shall draft the proposal taking into account the opinions of competent authorities in accordance with this Law.

In our opinion, it is necessary to explicitly stipulate obligatory consultations, notably taking into account the provision of paragraph 1 that lays down the requirements which a country needs to meet in order to be deemed a safe country. Evaluation of certain requirements requires specific knowledge in the field of human rights/refugee law, so we believe that it is unwarranted to expect the Ministry of Foreign Affairs to have the high level of knowledge/understanding in the subject matter which is necessary for evaluating the cited requirements.

The eligibility for the application of the safe country of origin concept shall be established individually for each Application that is lodged. A country included in the list of safe countries of origin may be considered a safe country of origin in a specific case only if the Applicant:

1) holds the nationality of that country, or had his/her habitual residence in that country if he/she is a stateless person; and
2) has not explained in a credible manner why that country of origin cannot be considered to be a safe country of origin in his/her case.

Paragraph 6 is added to read as follows:

The applicant shall be informed in good time of the application of the safe third country of origin concept, so that he/she is able to challenge this in relation to paragraphs 5 of this Article, in the light of his/her personal circumstances.

This kind of guarantee is enshrined in Article 45 which regulates the application of safe third country concept, so we believe that such a positive solution should also be provided in the article regulating the application of the safe third country of origin concept.

Safe third country concept

Article 45

Title of Article 45 is amended as follows:
Safe third country

A safe third country shall be a country where the Applicant is safe from persecution, as referred to in Article 24 of this Law, or the risk of suffering serious harm as referred to in Article 25, paragraph 2 of this Law, where he/she enjoys the benefits prescribed by the non-refoulement principle, and where he/she has access to an effective procedure for granting protection in accordance with the 1951 Convention on the Status of Refugees (hereinafter: the 1951 Convention).

Paragraph 1 is amended to read as follows:

A safe third country shall be a country where the applicant is safe from persecution referred to in Article 24 of this Law, or the risk of suffering serious harm as referred to in Article 25, paragraph 2 of this Law, where he/she enjoys the benefits prescribed by the non-refoulement principle, and where he/she has a possibility to access an efficient procedure for granting ***and enjoying*** *protection in accordance with the 1951 Convention on the Status of Refugees (hereinafter: the 1951 Convention.)*

In our opinion, the manner of regulating the safe third country concept has been significantly improved, but we believe that it is also crucial to provide for the guarantee of an efficient enjoyment of the protection. An efficient procedure is the first, very important step, but in order to evaluate whether a country fully complies with the Geneva Convention, it is necessary that the country offers the possibility of de facto enjoyment of the protection. We would like to emphasise that the Draft itself lays down the criteria of enjoyment of the protection (for instance, the first country of asylum).

The eligibility for the application of the safe third country concept shall be established for each application individually, examining whether a country meets the conditions specified in paragraph 1 of this Article, and whether there exists a connection between that country and the Applicant on the basis of which it could be reasonably expected that he/she could seek asylum in that country.

The Applicant shall be informed in good time of the application of the safe third country concept, so that he/she is able to challenge this in relation to paragraphs 1 and 2 of this Article, in view of his/her personal circumstances.

The Asylum Office shall issue the Applicant whose Application has been dismissed in accordance with Article 42, paragraph 1, point 2 of this Law, a document in the language of the safe third country, informing the competent state authorities of that country that his/her Application has not been examined in substance in the Republic of Serbia.

If the safe third country refuses to accept the foreigner, a decision shall be rendered on the substance of the Application in accordance with the provisions of this Law.

Subsequent application

Article 46

A foreigner may lodge the Subsequent Application if he/she provides evidence that the circumstances relevant to recognising the right to asylum have substantially changed in the meantime, within 30 days after the effectiveness of the decision whereby:

1) the Application was dismissed in accordance with Article 38 of this Law;
2) the procedure was discontinued in accordance with Article 47, paragraph 2, point 1 of this Law.

The Subsequent Application shall be comprehensible and shall contain the relevant facts and evidence that arose after the effectiveness of the decision, or which the Applicant for justified reasons did not present during the previous procedure for establishing the eligibility for asylum.

We believe that paragraph 1 and paragraph 3 are not in compliance with each other because in paragraph 1 the possibility of submitting a subsequent application depends on whether the decision is final or not, whereas in paragraph 2 it depends on its effectiveness. Additionally, we should also mention Article 2, paragraph 1, point 5 which defines the subsequent application for asylum as an..."application filed upon taking a final decision..."

The admissibility of the Subsequent Application shall be assessed on the basis of new facts and evidence, and in connection with the facts and evidence already presented in the previous procedure.

If it has been established that the Subsequent Application is admissible, a decision shall be rendered once again on the substance of the Application, and the previous decision shall be revoked.

The Subsequent Application shall be dismissed if it has been established that it is inadmissible in accordance with paragraphs 2 and 3 of this Article.

The Ministry shall decide about the Subsequent Application not later than 15 days from the date it is lodged.

Paragraph 6 should provide that the decision on the subsequent application is taken by the Asylum Office, and not the Ministry.

The solution referred to in this Article has been taken from Croatian regulations which provide that the competent authority is the Ministry, while the Draft designates the Asylum office as a competent authority for making a first-instance decision.

Suspension of the procedure and *restitutio in integrum*

Article 47

The procedure for deciding on the Application shall be discontinued if the Applicant withdraws the Application.

It shall be considered that the Applicant has withdrawn his/her application if:

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

The decision to discontinue the procedure shall indicate a time limit for a foreigner who has no other grounds for residing in the Republic of Serbia to leave the country, and if he/she fails to do so, he/she shall be forcibly removed, in accordance with the law governing the legal status of foreigners.

The Applicant may, within three days from the date the reasons for his/her failure to respond to the summons for the interview or to report a change of address in a timely manner ceased to apply, submit a proposal for the re-establishment of rights (*restitutio in integrum*).

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

We believe that the paragraphs referring to the restitutio in integrum should be harmonised with the Law on General Administrative Procedure (LGAP), particularly with regard to the time limits - Article 83, paragraph 1 of the LGAP stipulates that the Proposal for the restitutio in integrum should be submitted within 8 days of the day when the reason for failing stopped to exist, and if the party found out about the failure at a later stage, then within 8 days since he/she found out about the failure. Paragraph 2 also envisages a reasonable time limit of 3 months.

Timeline for appeals

Article 48

An appeal against the first instance decision rendered in the asylum procedure shall be lodged within 15 days from the receipt of the first instance decision, unless this Law provides otherwise.

Court protection

Article 49

The decisions of the Asylum Office in the asylum procedure may be contested by initiating administrative proceedings.

The administrative proceedings shall be initiated within 30 days from the date the decision is served.

The claim shall suspend the enforcement of the decision.

V APPLICANTS' RIGHTS AND OBLIGATIONS

General remark: It is positive that the Draft introduces a new arrangement of articles/chapters in the part regulating the available rights.

However, certain provisions of this Chapter regulating the rights and obligations of applicants are directly non-compliant with Article 2, paragraph 1, point 5 of the Draft which defines the term 'applicant', and with the provisions regulating the asylum procedure.

In view of the fact that the definition of terms and asylum procedure are aimed at making strict distinction between the status of persons who have expressed an intention to seek asylum and persons who have lodged an application for asylum, this distinction needs to be applied with regard to these provisions as well.

Applicants' rights

Article 50

The Applicant shall have the right to:

1) residence and freedom of movement in the Republic of Serbia
2) material reception conditions
3) social assistance
4) health care
5) primary and secondary education
6) information and legal aid
7) freedom of religion
8) labour market access
9) personal documents in accordance with Article 60 of this Law

Residence and freedom of movement in the Republic of Serbia

Article 51

After he/she is admitted to the Asylum Centre or other facilities specified for the accommodation of asylum seekers under Article 52 of this Law, the Applicant shall have the right to reside in the Republic of Serbia, and during that time, he/she is allowed move freely throughout the country, unless there exist special reasons for the restriction of movement specified under Article 79 of this Law.

There is a non-compliance between Article 51 and Article 2, paragraph 1, point 5 that prescribes that a person will be deemed an applicant upon lodging an asylum application, and not upon his/her reception to an asylum centre, and accordingly, the question is which person, with regard to his/her status, acquires the right to residence - the applicant or a "foreigner who has been registered"?

Material reception conditions

Article 52

The material reception conditions shall include: housing accommodation, food, and clothing.

When deciding on the accommodation for a person, due attention shall be given in particular to his/her gender, age, location of persons who require special procedural and/or reception guarantees, as well as the family unit.

Material conditions of admission, under certain conditions, may be reduced or ceased, a decision made by the Commissariat for Refugees and Migration.

If an asylum seeker possesses his/her own financial assets, he/she may reside outside the capacities of the Commissariat for Refugees and Migration at own cost, and exclusively with a prior consent of the Asylum Office. Such consent shall be given at the request of the person after he/she has lodged the Application, and in exceptional circumstances it may be given even before, if that is required for security reasons.

Paragraph 4 is amended to read as follows:

If an applicant possesses his/her own financial assets, he/she may reside outside the accommodation capacities of the Commissariat for Refugees and Migration at his/her own cost, and exclusively with a prior permission granted by the Asylum Office. Such permission shall be granted at the request of the person after he/she has lodged the application, and exceptionally, it may be granted even earlier, ***if particular circumstances of the person require so****.*

Besides the doubt related to the status of a person before lodging an asylum application, and accordingly, to the competences of the Asylum Office to take decisions before a formal initiation of the first-instance procedure, we believe it is necessary to set out a wider basis for approving a stay at a private accommodation place. Along with the security issue, which is extremely important, there are some other circumstances which might provide a fully justified reason for which a person does not want to use the possibility to use the accommodation capacities of the Commissariat. Moreover, we would like to emphasise that the formulations used above do not leave an impression that the residence in the accommodation capacities of the Commissariat is an imperative, but rather a possibility, particularly having in mind the formulation that..." he/she may reside in a private accommodation place with a permission granted by the Ministry of Interior". If the intention was to limit the possibility of residence outside the accommodation centres and other facilities intended for accommodation, it would be useful to lay down that this possibility may be used only in exceptional circumstances and provided that certain requirements are met, including the possession of financial assets.

The regulations on conditions that ensure material conditions accepted, the manner of their realisation, conditions and procedures for their reduction or termination and other issues related to the material conditions of reception and regulations on the house rules at the Asylum Centre and other facilities intended for the accommodation of asylum, shall be adopted by the state official in charge of the Commissariat for Refugees and Migration.

» The material reception conditions can be provided in:
» the Asylum Centre;
» facilities (hotels, resorts, other suitable facilities) designated for such purposes, and accommodation facilities at the border or in the transit zones or in special accommodation facilities inside the territory of the Republic of Serbia designated for that purpose.

Asylum Centre and other facilities for accommodation of asylum seekers

Article 53

Pending the adoption of the final decision on their asylum application, the applicants shall be provided the material reception conditions at the Asylum Centre or other facilities specified for the accommodation of asylum seekers under Article 52 of this Law, which is part of the Commissariat for Refugees and Migration as a separate organisation, in accordance with the Law on State Administration and the Law on Civil Servants.

Article 53, paragraph 1 is amended to read as follows:

Pending the adoption of the final decision on their asylum application, the applicants shall be provided with the material reception conditions at the Asylum Centre or other facilities intended for accommodation of applicants referred to in Article 52 of this Law, which is a part of the Commissariat for Refugees and Migration as a separate organisation, within the meaning of the Law on State Administration and the Law on Civil Servants.

Article 49, paragraph 3 of the Draft lays down that a claim suspends the enforcement of the decision. Accordingly, it is necessary to harmonise the provisions of this Article with the procedural guarantees.

The Government shall pass an act establishing one or more asylum centres.

The operation of the Asylum Centre shall be managed by the state official in charge of the Commissariat for Refugees and Migration, who shall pass an act regulating the internal organisation and job classification at the Asylum Centre.

The Government shall adopt an act designating one or more facilities for the accommodation of applicants.

This needs to be deleted since this paragraph is identical to paragraph 2.

Funds necessary for operation of asylum centres and other facilities intended for accommodation of applicants shall be allocated from the Budget of the Republic of Serbia.

The material conditions for the reception of unaccompanied minors pending the final decision on their Application shall be provided at the Asylum Centre.

Exceptionally, an unaccompanied minor who has lodged an asylum application, pending the final decision on the Application, may be placed in a social protection institution or in foster care, if the necessary conditions for his/her accommodation cannot be provided at the Asylum Centre or other facilities specified for the accommodation of asylum seekers under Article 52 of this Law, at the proposal of the competent guardianship authority.

The decision on placing an unaccompanied minor who has applied for asylum into a social protection institution or in foster care shall be rendered by the Commissariat for Refugees and Migration - Asylum Centre, subject to the prior findings and expert opinion of the guardianship authority, which appointed a guardian for the minor.

We believe that such a decision should be taken by an authority responsible for the social protection system, with a previously provided opinion by the guardianship authority. Another option, in line with the granting of the permission for residing at a private accommodation place, is an Asylum Office with a previously provided opinion by the authority responsible for the social protection system/guardianship authority.

Exceptionally, persons with a particular psychological or physical condition (old age, disability and alike) and who may not be provided with the necessary conditions for their accommodation in the asylum centre or other facilities intended for accommodation of applicants under Article 52 of this Law, shall be provided with an accommodation in a social protection institution.

The decision on accommodation of persons referred to in paragraph 9 of this Article in a social protection institution shall be taken by the Commissariat for Refugees and Migration, based on an Act of the social welfare centre.

See the comment on paragraph 8.

The funds for the accommodation of an unaccompanied minor in a social protection institution or in a foster family and the funds for the accommodation of persons referred to in paragraph 9 of this Article in social protection institutions shall be allocated from the Budget of the Republic of Serbia, from the line allocated for providing accommodation for asylum applicants.

We believe that the provisions of paragraphs 6-10 should be grouped in a separate article that would regulate the accommodation of unaccompanied minors and/or other persons in 'particular situations'.

Social assistance

Article 54

Unless he/she is accommodated in the capacities of the Commissariat, the Applicant shall have the right to social assistance in accordance with a separate regulation adopted by the minister in charge of the social policy.

Article 54 is amended as follows:

*Unless he/she is accommodated in the accommodation capacities of the Commissariat **and social protection institutions**, the applicant shall have the right to social assistance in accordance with a separate regulation adopted by the Minister in charge of the social policy.*

Having in mind that both are institutions funded from the Budget of the Republic of Serbia and that both meet the material reception conditions, the question is why should the persons accommodated in the facilities of the Commissariat be excluded.

Health care

Article 55

Upon the admission to the Asylum Centre or other facilities specified for accommodation, all applicants shall undergo a medical examination, as specified by the regulation adopted by the minister in charge of health.

The Applicant in the Republic of Serbia shall have the right to health care, in accordance with the regulations governing health care for foreigners.

In exercising the right to health care by applicants, health care shall be provided as a priority to victims of torture, rape or other serious forms of psychological, physical or sexual violence, and the applicants with mental disabilities.

Education

Article 56

The Applicant shall have the right to free primary and secondary education, in accordance with a separate regulation.

Information and legal aid

Article 57

The Applicant shall have the right to be informed about his/her rights and obligations in the course of the entire asylum procedure.

The Applicant may use free legal aid and representation before competent authorities by organisations whose objectives and activities are aimed at providing legal aid to the applicants and persons who have been granted asylum, and free legal aid provided by UNHCR.

Labour market access for applicants

Article 58

The Applicant shall have the right to labour market access nine months after he/she lodged the Application, if the decision on his/her Application has not been rendered outside of his/her fault.

The conditions for enjoying the right referred to in paragraph 1 of this Article are stipulated more specifically under the law governing the employment of foreigners.

We believe that the time limits referred to in paragraph 1 should be harmonised with the time limits set out for the adoption of the first-instance decision on the asylum application. Considering that the Law on the Employment of Foreigners lays down an identical time limit of 9 months after the submission of the application and that a question of potential "contradiction" might be raised in principle, theoretically this could be solved by applying a law principle laying down that the latest law derogates the previous one (*lex posterior derogat legi priori*), so a shorter time limit may be set out accordingly. Also, this Law is considered to be a separate law with regard to general regulations on the status of foreigners.

Special applicants' obligations

Article 59

The Applicant is obligated to:

1) to comply with the measures for restriction of movement referred to in Article 79 of this Law, if imposed;
2) to inform the Asylum Office in writing of any change of address within three days of such change of address;
3) to abide by the House Rules, if he/she is accommodated at the Asylum Centre;
4) to respond to summons and cooperate with the Asylum Office and other competent authorities at all the stages of the asylum procedure;
5) to hand over to an authorised officer his/her identification papers, travel document, and other documents that may be of relevance for his/her identification;
6) to cooperate with the authorised staff during the registration;
7) to cooperate with the authorised staff during the medical examination;
8) to stay in the territory of the Republic of Serbia pending the completion of the asylum procedure.
9) to leave the Asylum Centre or other facilities specified for accommodation upon the effectiveness of the decision on his/her Application.

In the case of non-compliance with the obligations referred to in paragraph 1, points 3, 7, and 9 of this Article, the authorised officer of the Asylum Centre or other facilities specified for accommodation shall inform the Asylum Office, which shall in turn adopt a decision denying or restricting the material reception conditions on the basis of an individual assessment, in proportion to the desired effect that is to be achieved, taking into account the specific circumstances of the person referred to in Article 15 of this Law.

VI RIGHTS AND OBLIGATIONS OF PERSONS GRANTED ASYLUM

Rights and obligations of persons granted asylum

Article 60

A person who has been granted asylum shall have the right to:

1) residence
2) accommodation
3) freedom of movement
4) health care
5) education
6) labour market access
7) legal aid
8) social assistance
9) ownership
10) freedom of religion
11) family reunification
12) personal documents in accordance with articles 91 and 92 of this Law
13) integration assistance.

A person who has been granted asylum shall respect the Constitution and other regulations of the Republic of Serbia.

The Asylum Office shall inform a person who has been granted asylum as soon as possible about the rights and obligations that arise from that status, in a language he/she can understand.

Right to residence

Article 61

The right to residence in the Republic of Serbia shall be approved under a decision on granting refuge, or granting subsidiary protection, and shall be proved by an identity card for persons who have been granted asylum.

Under the conditions referred to in paragraph 1 of this Article, the right to residence shall be enjoyed by the family members of a person who has been granted asylum, in accordance with the provisions of this Law.

In our opinion, for the purpose of legal certainty and avoiding various interpretations, it would be useful to lay down a period of validity of the right to residence, at least to name a period from - to.

Moreover, we would like to emphasise that the Draft does not contain a single provision on the rights and obligations of family members of the person enjoying asylum.

Right to accommodation

Article 62

A person who has been granted asylum shall have provided accommodation commensurately with the capacities of the Republic of Serbia, and not longer than for one year from the final decision on status recognition, if he/she does not hold funds in accordance with special regulations governing the accommodation of persons who have been granted asylum.

For the purposes of paragraph 1 of this Article, accommodation shall mean the provision of a habitable space for temporary use, or the provision of financial assistance necessary for temporary housing.

Article 62, paragraph 1 is amended to read as follows:

A person who has been granted asylum shall be provided with an accommodation commensurately with the capacities of the Republic of Serbia, and not longer than within one year from the adoption of the final decision on the recognition of his/her status, provided that he/she does not have any financial assets in compliance with a special provision regulating the accommodation of persons granted asylum.

There is a clear intention to enable the person to exercise his/her right to accommodation as soon as possible. However, based on practical experience, we believe that for the purpose of avoiding legal uncertainty, the moment when the person becomes eligible to exercise his/her right should be the moment when the decision becomes final. Namely, so far we have had cases where legal remedies were submitted even in situations when the first-instance authority made positive decisions. Some of the decisions were annulled and returned for reconsideration.

Freedom of movement

Article 63

A person who has been granted asylum shall have the right of move freely throughout the territory of the Republic of Serbia, and outside the territory of the Republic of Serbia, in accordance with the provisions of this Law.

Right to health care

Article 64

A person who has been granted asylum in the Republic of Serbia shall have the right to health care in accordance with the regulations governing health care for foreigners.

The cost of health care for the person referred to in paragraph 1 of this Article shall be financed from the budget of the Republic of Serbia.

Right to education

Article 65

A person who has been granted asylum in the Republic of Serbia shall have the right to primary, secondary, and higher education under equal conditions as the nationals of the Republic of Serbia, in accordance with separate regulations.

General remark: It is necessary to provide for an Article that would regulate the issue of recognition of qualifications of a person who has been granted asylum.

Right to labour market access

Article 66

A person who has been granted asylum shall have the right to labour market access.

The conditions for enjoying the right referred to in paragraph 1 of this Article are stipulated more specifically under the law governing the employment of foreigners.

Right to legal aid

Article 67

A person who has been granted asylum in the Republic of Serbia shall have equal rights to those of the nationals of the Republic of Serbia in terms of free access to courts, legal aid, exemptions from payment of legal fees and other costs payable to the state authorities.

Right to social assistance

Article 68

A person who has been granted asylum shall have the right to social assistance in accordance with a separate regulation adopted by the minister in charge of the social policy.

Right of ownership

Article 69

A person who has been granted asylum shall have the right to own movable and immovable property under equal conditions as permanently residing foreigners in the Republic of Serbia, as well as the right to the protection of intellectual property rights as the nationals of the Republic of Serbia.

Freedom of religion

Article 70

A person who has been granted asylum shall be guaranteed the right to life and upbringing of children in accordance with his/her religious beliefs.

Right to family reunification

Article 71

A person who has been granted asylum shall have the right to reunification with his/her family members.

A minor child of a person who has been granted asylum, who has not founded his/her own family, shall have the same legal status as his/her parent who has been granted asylum, as decided by the Asylum Office.

We believe that paragraph 2 should be aligned with Article 2, paragraph 1, point 12 which recognises, besides the minor children born in and out the wedlock, the adopted minor children and minor step-children.

The family members of a person who has been granted asylum who are not referred to in paragraph 2 of this Article shall regulate their residence in accordance with the regulations governing the legal status of foreigners.

A family member for whom there exist grounds to be excluded from the right to refuge shall not have the right to family reunification.

Integration assistance

Article 72

The Republic of Serbia shall, commensurately with its capacities, ensure the conditions for the inclusion of refugees in its social, cultural, and economic life, and enable the naturalisation of refugees.

Conditions, method, procedure and other issues of importance for the inclusion of persons granted asylum in the social, cultural and economic life in the Republic of Serbia, as well as their naturalisation shall be prescribed by the Government, at the proposal of the Commissariat.

Exemption from reciprocity

Article 73

After residing in the Republic of Serbia for five years from the date of the recognition of the right to refuge, a person shall be exempt from any possible reciprocity measures in respect of the rights that are due to him/her according to the law.

Article 7 (2) of Geneva Convention lays down a 3-year time limit.

Special rights of unaccompanied minors

Article 74

An unaccompanied minor who has been granted asylum shall have a guardian appointed as soon as possible by the guardianship authority, or a legal representative.

The person referred to in paragraph 1 of this Article shall be accommodated primarily together with his/her adult relatives or with persons with whom he/she has particularly close bonds.

An unaccompanied minor who has been granted asylum may be placed in a foster family or a social protection institution under the conditions and in the procedure specified under Article 53 of this Law.

Reference to Article 53 is questionable with regard to the responsibility for taking the decision - we believe that such a decision may be taken either by an authority responsible for the guardianship issues and accommodation in social protection institutions and foster families, or alternatively, by the Asylum Office on the proposal of the guardianship authority.

When deciding on the accommodation for an unaccompanied minor, whenever it is possible, brothers and sisters shall be accommodated together, in accordance with their best interest, taking into account their age and maturity.

Whenever it is necessary, the competent authorities shall initiate the search for the family members of an unaccompanied minor, protecting the best interests of the minor. In the cases where the life or integrity of the minor or his close relatives may be threatened, particularly if they remained in the country of origin, it shall be ensured that the collection, processing, and exchange of information is in accordance with the principle of confidentiality.

Paragraph 5 is amended to read as follows:

The competent authorities shall start tracing unaccompanied minor's family members as soon as possible after the granting of asylum, whilst protecting the minor's best interests. In the cases where the life or integrity of the minor or his close relatives may be jeopardised, particularly if they remained in the country of origin, it shall be ensured that the collection, processing, and exchange of information is in accordance with the principle of confidentiality.

We think that paragraph 5 needs to contain qualitatively stronger guarantees with regard to tracing family members. Directive 2011/95/EU makes references to the adoption of such solutions, as its Article 31(5) reads, inter alia, the following: ..."If an unaccompanied minor is granted international protection and the tracing of his or her family members has not already started, Member States shall start tracing them as soon as possible after the granting of international protection, whilst protecting the minor's best interests"...

VII TEMPORARY PROTECTION

Temporary protection

Article 75

Temporary protection shall mean a form of protection that is provided in the extraordinary procedure, in the case of a mass influx of persons that cannot be returned to the country of origin or habitual residence, particularly if there is a risk that, due to the mass influx, is will not be possible to carry out effectively individual asylum procedures, in order to protect the interests of displaced persons and other persons seeking protection. A decision on the provision of temporary protection shall be taken by the Government the Republic of Serbia.

The displaced persons referred to in paragraph 1 of this Article shall be understood to mean foreigners who were forced to leave the area or country of their origin or habitual residence, or who were evacuated, and who are unable to return to durable and safe living conditions due to the situation that is prevalent in that country, in particular:

1) persons who have left the area of armed conflict or localised violence;
2) persons who face a serious threat of mass violations of human rights or who have been victims of such violations.

Temporary protection may be granted also to persons who were residing lawfully in the Republic of Serbia at the time of the adoption of the decision referred to in paragraph 1 of this Article, whose right of residence had expired before the decision on temporary protection was revoked.

In accordance with the decision referred to in paragraph 1 of this Article, persons who have been granted temporary protection shall be registered in accordance with this law, and a decision granting temporary protection shall be rendered for each person individually.

Duration and cessation of temporary protection

Article 76

Temporary protection may be granted for a period of maximum one year.

If the grounds for providing temporary protection continue to apply, temporary protection may be extended for a further six month, and for a maximum of one year.

Temporary protection shall cease upon the expiry of the period for which it was granted, or when the grounds based on which it was granted have ceased to exist, as decided by the Government.

Notwithstanding paragraph 2 of this Article, temporary protection may cease to apply to a foreigner on the basis of a decision taken by the Asylum Office, if it has been established that in his/her case there are grounds for denying the right to refugee status.

Voluntary return

Article 77

At the request of a person who has been granted temporary protection or a person whose temporary protection has ceased, the Commissariat for Refugees and Migration shall provide the conditions for voluntary return to the country of origin, with due regard to human dignity.

In the case referred to in paragraph 1 of this Article, the Commissariat shall consider the relevant reports on the situation in the country of origin, inform the person accordingly, and enable him/her to make a decision to return with full knowledge of the facts.

A person referred to in paragraph 1 of this Article shall retain the rights guaranteed by this Law until the date of his/her return to the country of origin.

The Government shall adopt a voluntary return support programme, at the proposal of the Commissariat for Refugees and Migration.

Rights and obligations of persons granted temporary protection

Article 78

A person who has been granted temporary protection shall have the right to:

1) residence during the period of the validity of temporary protection;
2) a personal document confirming his/her status and residence right;
3) health care, in accordance with the regulations governing health care for foreigners;
4) labour market access for the period of the validity of temporary protection, in accordance the regulations governing the employment of foreigners;
5) free primary and secondary education in public schools, in accordance with a separate regulation;
6) legal aid, under the conditions prescribed for the applicants;
7) freedom of religion, under equal conditions that apply to the nationals of the Republic of Serbia;
8) accommodation,
9) appropriate accommodation for persons with disabilities, in accordance with Article 15 of this Law.

Paragraph 1, point 9, is amended to read as follows:

Adequate accommodation for the persons who need special reception guarantees, in accordance with Article 15 of this Law

We believe that the adequate accommodation should be ensured for some other categories recognised in Article 15.

A person who has been granted temporary protection shall be guaranteed the right to lodge an asylum application.

The competent authority may, in justified cases, approve family reunification and grant temporary protection to the family members of a person enjoying temporary protection in the Republic of Serbia.

Persons who have been granted temporary protection shall be equal in terms of their obligations as persons who have been granted asylum.

The criteria for setting priorities for the accommodation of persons who have been granted temporary protection and the conditions for using space for temporary accommodation are prescribed by the Government, at the proposal of the Commissariat for Refugees and Migration

VIII RESTRICTION OF MOVEMENT

Grounds for restriction of movement

Article 79

Applicants may have their movement restricted by a decision of the Asylum Office, when that is necessary in order to:

1) establish identity or nationality,
2) implement the procedure at the border or in the transit zone or in the special accommodation facility inside the territory of the Republic of Serbia designated for that purpose;
3) establish material facts and circumstances underlying the asylum application, which cannot be established without the restriction of movement, particularly if there is a risk of absconding;
4) ensure the presence of the foreigner in the course of the asylum procedure, if there are reasonable grounds to believe that the asylum application was lodged with a view to avoiding deportation;
5) protect national security and public order in accordance with the law.

The risk of absconding shall be assessed on the basis of all the facts and circumstances in a particular case, particularly taking into account all previous arbitrary attempts of leaving the Republic of Serbia, failures to consent to the identity checks or identity establishment procedures, concealing information or providing false information about one's identity and/or nationality, and all violations of the provisions of the House Rules.

Measures for restriction of movement

Article 80

Restriction of movement shall be implemented by:

1) imposing a ban on leaving the Asylum Centre, a particular address and/or a designated area;
2) regular reporting at specified times to the regional police department, or police station, by place of residence;
3) ordering accommodation at the Reception Centre for Foreigners under intensified police supervision;
4) ordering accommodation in a social protection institution for minors under intensified supervision;
5) temporary confiscation of a travel document.

The measure of residence in the transit zone or in border facilities is lacking.

The measure referred to in paragraph 1, point 3 of this Article may be imposed if it has been established based on an individual assessment that other measures could not achieve the effect of the restriction of movement.

General remark: The manner in which this Article is set out leaves some room for various interpretations of the measures that may be applied to minors/unaccompanied minors - can only the measure provided for in point 4 be applied to them or there is a possibility to apply some other measures to them as well? This is an essential issue both with regard to the treatment of unaccompanied minors, and also, even more importantly, to the children accompanied by parents or a guardian. Moreover, in line with the provisions of Directive 2013/33/EU, it is necessary to make clear provision for the guaranties for detained applicants, general detention conditions and in particular with regard to the detention of vulnerable persons (persons with special needs).

The restriction of movement shall last for as long as the grounds referred to in Article 79 of this Law apply, and maximum for three months.

Exceptionally, when the restriction of movement has been imposed on the grounds referred to in Article 79, points 3, 4, and 5 of this Law, the restriction of movement may be extended for a further three months.

An appeal against a decision imposing or extending the measure referred to in paragraph 1, point 3 of this Article shall be decided by the competent higher court.

In the procedure for deciding on the appeal referred to in paragraph 5 of this Article, the provision of Article 53 of the Law on Police ("Official Gazette of the Republic of Serbia", No. 101/05, 63/2009 – Constitutional Court judgement, 92/2011 and 64/2015) shall apply accordingly.

Paragraph 6 is amended to read as follows:

The provisions of the Law on Police (The Official Gazette of the Republic of Serbia no. 6/2016) shall accordingly apply to the procedure of passing decisions on appeals referred to in paragraph 5 of this Article.

General remark: Article 9 of the Directive 2013/33/EU lays down in detail the guarantees for detained applicants, and inter alia, it provides that 'The detention order shall state the reasons in fact and in law on which it is based.' Furthermore, 'Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted ex officio and/or at the request of the applicant. When conducted ex officio, such review shall be decided on as speedily as possible from the beginning of detention. When conducted at the request of the applicant, it shall be decided on as speedily as possible after the launch of the relevant proceedings. To this end, Member States shall specify in national law the period within which the judicial review ex officio and/or the judicial review at the request of the applicant shall be conducted.'

Therefore, we believe that it is necessary to introduce a provision that will explicitly lay down an obligation of providing reasons for the decision on the restriction of movements, and time limits which would meet the goal set out by the Directive - speedy judicial review of the lawfulness.

An appeal against a decision on the restriction of movement shall not have suspensive effect.

Non-compliance with restriction of movement

Article 81

An applicant may be ordered to stay at the Reception Centre for Foreigners if he/she has violated the ban referred to in Article 80, paragraph 1, points 1 and 2 of this Law.

Restriction of movement of persons requiring special procedural and reception guarantees

Article 82

A person referred to in Article 15 of this Law may be ordered to stay at the Reception Centre for Foreigners only if it has been established, based on an individual assessment, that such accommodation is appropriate, taking into account his/her personal circumstances and needs, and particularly health condition.

An unaccompanied minor may be ordered to stay in a social protection institution for minors with intensified supervision.

Paragraph 2 is amended to read as follows:

Measures referred to in Article 80, paragraph 1, point 4 shall be applied to unaccompanied minors only in exceptional cases if other less coercive alternative measures cannot be applied effectively.

IX CESSATION OF ASYLUM AND REMOVAL OF FOREIGNERS

Cessation of the right to refuge

Article 83

The right to refuge shall cease on the following grounds:

1) if a person has voluntarily re-availed him/herself of the protection of his/her country of origin;
2) if a person has re-acquired the nationality that he/she had previously lost;
3) if a person has acquired a new nationality, and thus enjoys the protection of the country of his/her new nationality;
4) if a person voluntarily returned to the country he/she had left or outside which he/she had remained owing to the fear of persecution or ill-treatment;
5) if a person can no longer continue to refuse to avail him/herself of the protection of his/her country of origin, as the circumstances that had led to his/her being granted protection have ceased to exist; or
6) if a stateless person can be returned to the country of his/her habitual residence, as the circumstances that had led to his/her being granted protection have ceased to exist.

When considering the grounds referred to in paragraph 1, points 5 and 6 of this Article, it shall be taken into account whether the change of circumstances is substantial and durable so that the fear of persecution can no longer be considered well-founded.

The cessation of protection in accordance with the provisions of paragraph 1, points 5 and 6 of this Article shall not apply to a person who refuses to avail himself/herself of the protection of his/her country of origin, or the country in which he/she had habitual residence, if he/she can invoke compelling reasons relating to possible persecution or harassment.

Paragraph 4 is added to read as follows:

Before taking a decision on the withdrawal of the right to refuge, the Asylum Office shall inform the person on the reasons for the withdrawal and provide him/her with a possibility state the facts relevant for the withdrawal of the protection.

In compliance with Directive 2013/32/EU, with respect to the withdrawal of refugee or subsidiary protection status, Member States should ensure that persons benefiting from international protection are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a reasoned decision to withdraw their status.

Article 45 of the abovementioned Directive contains a series of procedural guarantees and a review of cases in which the withdrawal of the right could be provided for by law.

Article 45

Procedural rules

1. Member States shall ensure that, where the competent authority is considering withdrawing international protection from a third-country national or stateless person in accordance with Article 14 or 19 of Directive 2011/95/EU, the person concerned enjoys the following guarantees:

   (a) to be informed in writing that the competent authority is reconsidering his or her qualification as a beneficiary of international protection and the reasons for such a reconsideration; and

   (b) to be given the opportunity to submit, in a personal interview in accordance with Article 12(1)(b) and articles 14 to 17 or in a written statement, reasons as to why his or her international protection should not be withdrawn.

2. In addition, Member States shall ensure that within the framework of the procedure set out in paragraph 1:

(a) the competent authority is able to obtain precise and up-to- date information from various sources, such as, where appropriate, from EASO and UNHCR, as to the general situation prevailing in the countries of origin of the persons concerned; and

(b) where information on an individual case is collected for the purposes of reconsidering international protection, it is not obtained from the actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a beneficiary of international protection whose status is under reconsideration, or jeopardise the physical integrity of the person or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.

3. Member States shall ensure that the decision of the competent authority to withdraw international protection is given in writing. The reasons in fact and in law shall be stated in the decision and information on how to challenge the decision shall be given in writing.

4. Once the competent authority has taken the decision to withdraw international protection, Article 20, Article 22, Article 23(1) and Article 29 are equally applicable.

5. By way of derogation from paragraphs 1 to 4 of this Article, Member States may decide that international protection shall lapse by law where the beneficiary of international protection has unequivocally renounced his or her recognition as such. A Member State may also provide that international protection shall lapse by law where the beneficiary of international protection has become a national of that Member State.

Cessation of subsidiary protection

Article 84

Subsidiary protection shall cease when the circumstances which led to the granting of subsidiary protection have ceased to exist or have changed to such a degree that the protection is no longer required, or the person no longer faces a risk of serious harm.

The cessation of subsidiary protection in accordance with paragraph 1 shall not apply to a person who refuses to avail himself/herself of the protection of his/her country of origin, or the country of former habitual residence if he/she is a stateless person, as he/she can invoke compelling reasons arising out of previous serious harm.

See suggestion and statement of the reasons relating to Article 83.

Revocation of decisions on upholding the application

Article 85

The Asylum Office shall ex officio revoke a decision upholding the Application if it has been established that the grounds referred to in articles 83 and 84 of this Law apply.

Cessation of asylum by cancelling decision on upholding the application

Article 86

The Asylum Office shall ex officio cancel a decision upholding the Application if it has been subsequently established:

1) that the decision upholding the Application was rendered on the basis of falsely presented facts or concealment of facts by the Applicant and that, due to the above, at the time of the submission of the Application, he/she was not eligible to be granted of asylum, and

2) that there exist grounds that, had they been known at the time of the submission of the Application, would have excluded him/her, in accordance with the law, from the right to refuge, or subsidiary protection.

ee the statement of the reasons for Article 80.

Removal of foreigners

Article 87

A foreigner whose Application has been refused or dismissed under a decision of the competent authority, or whose procedure has been discontinued, and who does not have any other grounds for residing in the country, shall leave the Republic of Serbia within the time limit specified in that decision.

A foreigner who has been issued the decision referred to in Article 76 paragraphs 3 and 4, and articles 85 and 86 of this Law, and who has no other grounds for residence, shall leave the Republic of Serbia within the time limit specified in that decision.

The time limit for the foreigner to leave the Republic of Serbia shall not exceed 15 days from the date of effectiveness of the decision referred to in paragraphs 1 and 2 of this Article.

Paragraph 3 needs to be aligned with the Law on General Administrative Procedure. In compliance with Article 17, an administrative act becomes effective from the moment the party concerned has been informed on it, provided that it does not provide for the postponement of the legal effects.

If the foreigner fails to leave the Republic of Serbia voluntarily within the specified time limit, he/she shall be forcibly removed in accordance with the provisions of the law governing the legal status of foreigners.

X PERSONAL DOCUMENTS

Types of personal documents

Article 88

The Ministry of Interior shall issue to a person who has been registered in the records of the Ministry, a person who has lodged an application, and a person who has been granted asylum the following personal documents:

1) a registration certificate

See the statement of the reasons relating to Chapter IV, Article 2, paragraph 1, point 4

2) an identity card for asylum seekers;
3) an identity card for persons granted refuge;
4) an identity card for persons granted subsidiary protection;
5) a travel document for refugees.

A person who has been issued a personal document referred to in paragraph 1 of this Article shall be obliged to carry it with him/her at all times and to produce it at the request of an authorised public officer.

The contents and the form of the templates for the personal documents referred to in paragraph 1 of this Article shall be specified by the Minister.

Registration certificate

Article 89

The registration certificate shall be issued in a prescribed form that cannot serve as an identification document.

See the statement of the reasons relating to Chapter IV, Article 2, paragraph 1, point 4.

Article 89 is not in compliance with Article 35, paragraph 10 which is about the certificate of the registration of foreigners.

It is pivotal to determine and stipulate which persons this refers to, with regard to their status, what the registration refers to, particularly having in mind that the Ministry of Interior of RS is the authority responsible for keeping many records and issuing various registration certificates (vehicle registration, weapon registration, etc.). We would like to emphasise that Article 35, paragraph 10 is about the registration certificate for foreigners.

Identity card for asylum seekers

Article 90

Within three days from the date of his/her Application, the Asylum Office shall issue to the Applicant an identity card in a prescribed form, which shall serve also as an identification document and a permit of residence in the Republic of Serbia, pending the completion of the asylum procedure.

The identity card referred to in paragraph 1 of this Article shall also be issued to a family member accompanying the Applicant, who has also lodged his/her Application.

The identity card referred to in paragraph 1 of this Article shall be issued to a person over 16 years of age, and at the request of his/her parent, or the guardian, to a person over 10 years of age.

Identity card for persons granted asylum

Article 91

A person who has been granted asylum in the Republic of Serbia shall be issued by the Asylum Office an identity card in a prescribed form.

A request for issuance of the identity card referred to in paragraph 1 shall be submitted by a person over 16 years of age, and for persons under 16 years of age, the request shall be submitted by his/her parent, or the guardian.

A person who has been granted refuge shall be issued an identity card for a period of 5 years, a person who has been granted subsidiary protection shall be issued an identity card for a period of 1 year, and a person who has been granted temporary protection shall be issued an identity card for the validity of temporary protection that has been granted.

Travel document for refugees

Article 92

At the request of a person who has been granted refuge in the Republic of Serbia, the Asylum Office shall issue a travel document in a prescribed form, valid for a period of 5 years.

For a person under 16 years of age, the request shall be submitted by his/her parent, or the guardian.

In the exceptional cases of a humanitarian nature, the travel document referred to in paragraph 1 of this Article shall also be issued to persons who have been granted subsidiary protection, and who do not possess a national travel document, for a validity period of maximum 1 year.

Restitution of personal documents

Article 93

The personal documents referred to in Article 88, paragraph 1, points 2, 3, 4 and 5 shall be restituted to the Asylum Office, upon the completion of the procedure, revocation of status, or in the case of replacement due to their worn-out or damaged condition.

XI RECORD KEEPING

Article 94

The Ministry of the Interior shall keep records on:

1) Registered persons

See the statement of the reasons relating to Chapter IV, Article 2, paragraph 1, point 4.

It is pivotal to determine and stipulate which persons this refers to, with regard to their status, what the registration refers to, particularly having in mind that the Ministry of Interior of RS is the authority responsible for keeping many records and issuing various registration certificates.

2) Applicants;
3) Applicants who have been approved residence at a private address;
4) Applicants who have been granted refuge or subsidiary protection;
5) Persons who have been granted temporary protection;
6) Applicants who have been imposed the restriction of movement in accordance with articles 79 and 80 of this Law;
7) Temporarily seized foreign identification papers, and
8) Identification papers issued in accordance with this Law.

The Commissariat for Refugees and Migration shall keep records on the persons accommodated at the Asylum Centre and in other facilities specified for the accommodation of asylum seekers under Article 52 of this Law.

The record keeping procedure and the contents of the records referred to in paragraph 1 of this Article shall be prescribed by the Minister, and the record keeping procedure and the contents of the records referred to in paragraph 2 of this Article shall be prescribed by the state official in charge of the Commissariat for Refugees and Migration.

The data from the records referred to in paragraph 1 of this Article shall be entered into the central data base maintained by the Ministry of the Interior.

The data on the persons referred to in paragraphs 1 and 2 of this Article shall be collected, used, and kept in accordance with the regulations governing the protection of personal information.

XII TRANSITIONAL AND FINAL PROVISIONS

Article 95

Within 60 days of the coming into effect of this Law, the Government shall appoint the Chairman and members of the Asylum Commission referred to in Article 20 of this Law.

Within 60 days of the coming into effect of this Law, the Government shall establish the list of safe countries referred to in Article 2 of this Law.

Article 96

Within 60 days of the coming into effect of this Law:

1) the minister in charge of the interior shall issue regulations on the procedure for the **registration of the persons who have expressed the intention** referred to in Article 35, the contents and format of the asylum application and personal documents referred to in Article 88 of this Law, and the record keeping procedure and contents of the records referred to in Article 94 this Law;

Paragraph 1, point 1 is not in compliance with Article 35, paragraphs 9 and 10

2) the state official in charge of the Commissariat for Refugees and Migration shall issue an act on the internal organisation and job classification at the Asylum Centre, as well as regulations governing the material reception conditions, the House Rules, and keeping records of persons accommodated at the Asylum Centre;
3) the minister in charge of social policy shall issue regulations on social assistance for the applicants, or persons who have been granted asylum;
4) the minister in charge of health shall issue a regulation on medical examinations referred to in Article 55 of this Law, performed upon admission to the Asylum Centre.

Article 97

On the date of the commencement of the implementation of this Law, the provisions of the Law on Asylum ("Official Gazette of the Republic of Serbia," No, 109/07) shall cease to have effect.

Article 98

All asylum procedures initiated before the commencement of the implementation of this Law shall be completed in accordance with provisions of this Law.

Article 99

This Law shall come into force on the eighth day following the date of its publication in the "Official Gazette of the Republic of Serbia".