

Detention of Migrants under Migration Regulations - A review of legislation and practice in the Republic of Serbia

-Policy Brief-

Jelena Unijat



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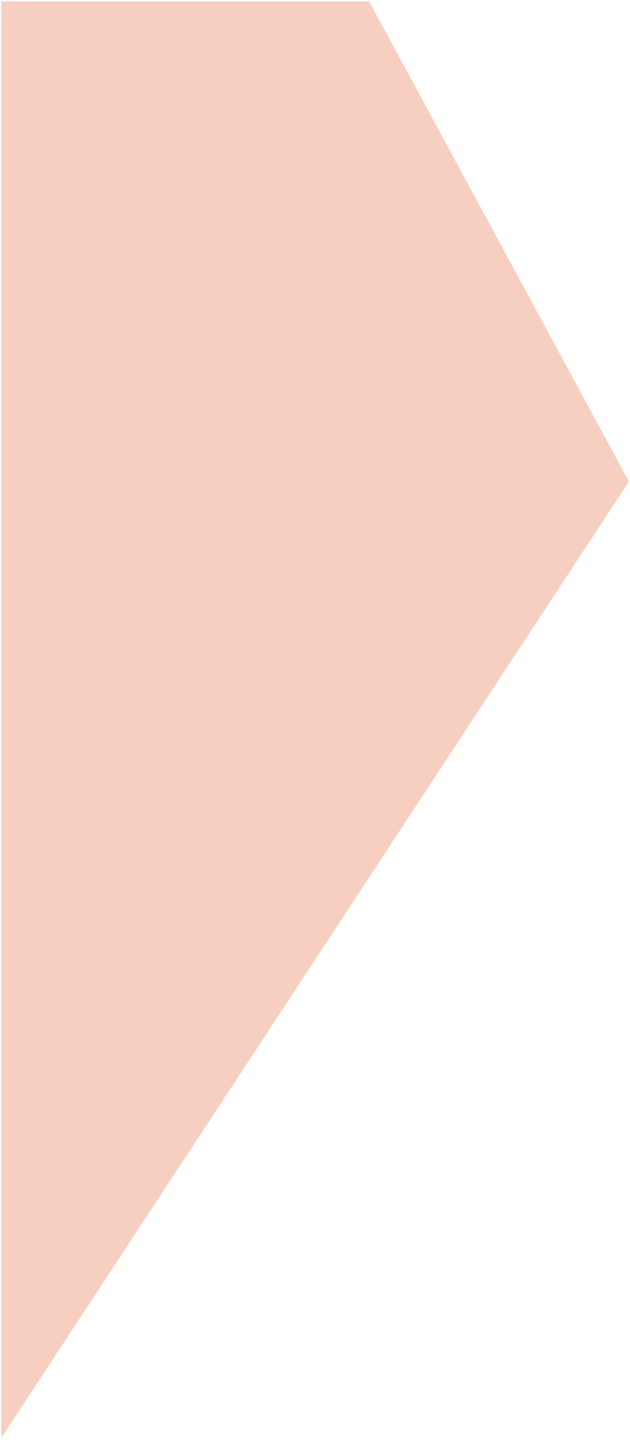
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Introduction

Within the so-called “Balkan routes” of migrants to Western European countries, Serbia is still a current transit country through which migrants pass intensively. Even last year, when we faced the COVID-19 pandemic for the first time and when the state of emergency was in force in the country for almost two months, with significant restrictions on movement, 24,250 migrants entered Serbia.¹ Of that number, only 2,830 were registered as expressing their intention to seek asylum in the Republic of Serbia (*hereinafter*: RS), and only 144 persons² submitted an asylum application. The above figures show that as many as 22,263 migrants resided without a regulated legal status and legal basis, which were not even registered by the police. All of them could potentially be deprived of liberty in various procedures (e.g., in the procedures of preparation for return, execution of forced removal, serving a prison sentence and/or police detention for up to 24 hours due to the committed offence, etc.).

In addition to migrants residing illegally in Serbia, for certain reasons prescribed by law, persons in the asylum procedure may also be temporarily deprived of their liberty. Additionally, foreigners who have been denied entry to the country may be deprived of their liberty at border crossings and transit zones of the airport. Places of detention of migrants, asylum seekers and other categories of foreigners may be different depending on the legal grounds for detention (reception centre for foreigners, airport transit zone, police station, prison, detention unit, etc.). However, in this paper we will primarily deal with the administrative

1 UNHCR Serbia Monthly Update, December 2020, available at: <https://reliefweb.int/report/serbia/unhcr-serbia-monthly-update-december-2020>.

2 Belgrade Centre for Human Rights (BCHR): Right to Asylum in the Republic of Serbia 2020, p. 15, available at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2021/02/Pravna-azil-u-Srbiji-2020.pdf>.

detention of migrants³ under migration regulations, the Law on Foreigners⁴ (*hereinafter*: LoF) and the Law on Asylum and Temporary Protection⁵ (*hereinafter*: LoA), which is usually carried out in the reception centre for foreigners. Without entering into the theoretical consideration of qualifications and differences between deprivation of liberty and restriction of freedom of movement, the main goal of this paper is to qualitatively present the current situation in the Republic of Serbia and offer recommendations for improvement.

3 Administrative detention of migrants is defined as deprivation of liberty *de jure* or *de facto* determined by the executive power and under its exclusive competence, even when judicial review of such a decision is possible later, in: Marko Davinić and Ivana Krstić, A Guide to the Implementation of Relevant Asylum and Migration Regulations, Group 484, Belgrade 2019, p. 136.

4 "Official Gazette of RS", No. 24/2018 and 31/2019.

5 "Official Gazette of RS", No. 24/2018.

Legal grounds and procedures of administrative deprivation of liberty of migrants

Pursuant to the Law on Foreigners, a foreigner may be assigned to stay in a reception centre for foreigners exclusively in the return procedure for two alternatively set reasons: for the purpose of preparing the return or for the purpose of forcible removal.⁶ Accommodation of foreigners in a reception centre is determined if it is assessed that a lenient measure cannot be applied - mandatory stay in a certain place, provided that: 1) there is a risk that the foreigner will not be available to the competent authority for forced removal⁷ or 2) the foreigner avoids or obstructs preparation for return or forced removal.⁸ Therefore, the competent authority is first obliged to see if it is possible to apply a lenient measure, and only then to determine the stay in the reception centre, which should be explained in the decision on the accommodation of foreigners in the reception centre.

The legal basis for the accommodation of a foreigner in a reception centre is also provided by LoA, so that a person who is in the asylum procedure, the Asylum Office (*hereinafter*: AO) may, for certain reasons, temporarily restrict movement by passing a decision on staying in a reception centre for foreigners. Movement may be restricted when necessary for the purpose of: 1) establishing identity or citizenship; 2) establishing the essential facts, evidence and circumstances on which

6 Article 87.

7 According to the wording of the Law on Foreigners, there is a reason to suspect that the foreigner will not be available to the competent authority in the following cases: 1) does not have documents for establishing identity; 2) does not cooperate in the return procedure or obstructs his/her removal; 3) has not left RS voluntarily; 4) does not cooperate in the procedure of establishing identity or citizenship or has given false or contradictory information about himself/herself; 5) uses or has used false or falsified documents; 6) attempts or has already entered the Republic of Serbia in an illegal manner; 7) has not complied with the obligations from the decision on compulsory residence in a certain place; 8) has no relatives or social ties in RS; 9) has no resources for ensuring accommodation, i.e., subsistence.

8 It is considered that a foreigner avoids or obstructs preparations for return or forced removal if his/her identity cannot be established, i.e., if a foreigner does not have a travel document.

the asylum application is based, which cannot be established without restricting the movement of the applicant, especially if there is a risk of absconding; 3) ensuring the presence of the applicant in the asylum procedure when it can be reasonably assumed that he/she submitted an asylum application in order to avoid deportation; 4) protection of RS security and public order in accordance with the law; 5) deciding, within the procedure, on the right of the applicant to enter the territory of RS.⁹ According to the same article, the movement of applicants and foreigners whose intention to seek asylum is registered may be restricted by an AO decision in case of non-compliance with the house rules of the asylum centre or other facility (e.g., reception centre) and if he/she does not cooperate with authorised officials. Additionally, Article 58 of the same law, in addition to the above two reasons, stipulates that the authorised official of the asylum centre or other accommodation facility for applicants will inform AO, which takes measures to restrict movement even if the asylum seeker does not leave the asylum centre or other facility for accommodation of asylum seeker upon the finality of the decision on the asylum application.

In addition to accommodating foreigners in a reception centre for foreigners, a foreigner may be detained on the premises of the competent authority¹⁰ for: 1) establishing identity or 2) determining the legality of his/her stay in the territory of RS, and 3) for his/her escorting to the border crossing if required by reasons for forced removal, in which case it is necessary that a decision on return has already been made.¹¹ However, **the provisions of LoF do not stipulate how detention is determined or how long it can last, as well as the rights of the detained person and the obligations of the competent authority towards the detained person.** As it is stated that the detention is carried out in accordance with the law and other regulations, the question arises whether it refers to LoF or the Law on Police¹² (*hereinafter*: LoP). If this referring norm refers to LoF, then the answers to the mentioned questions could be sought in Art. 87 and 88 of LoF, which regulates the stay in a reception centre for foreigners. However, having in mind the material and accommodation capacities of the competent police authorities (police stations), it would hardly be feasible in practice for persons to stay in other police facilities for more than a few hours. If, on the other hand, we rely on Art. 86 of LoP, these provisions return us to LoF, because they state that a police officer detains a person in the case when it is prescribed by another law, as well as that the decision on detention and acting on the appeal against the decision is made in accordance with by the law on the basis of which the detention was determined.

In order to improve the conditions in the detention facilities, in the first half of 2020, with the help of donor funds, the renovation of 20 detention rooms in police stations was completely completed, and adaptations of another 120 rooms

9 Article 77 of the Law on Asylum.

10 The competent authority is the organisational unit of the Ministry of the Interior, the Police Directorate - outside the headquarters, which performs activities related to the movement and stay of foreigners.

11 Article 86 of the Law on Foreigners.

12 "Official Gazette of RS", No. 6/16, 24/18 and 87/18.

are planned.¹³ However, since these premises are mainly intended for detention for up to 24 or 48 hours, in practice it would be difficult to keep persons in them for a longer period of time, so we assume that amendments to the law, similar to the existing legislation legal framework of North Macedonia and Montenegro,¹⁴ should go in the direction of determining shorter detentions that would be defined by hours.

LoF and LoA precisely determine the maximum duration of accommodation in a reception centre for foreigners, which is much shorter than that provided by the EU Return Directive (6 + 12 months)¹⁵, so that domestic regulations in this regard provide solutions that are above European standards. A foreigner who is in the process of returning can be accommodated in a reception centre for up to 90 days, with the possibility of extension for another 90 days, i.e., a maximum of 180 days, while according to LoA, the restriction of movement can last a maximum of 3 months and can be extended for an additional 3, i.e., a total of 6 months. We can conclude that these deadlines are quite similar, and that the main difference between the deadlines for foreigners and the deadlines for asylum seekers is that in the first case the deadlines are set in days, and in the second in months.

According to LoF, a lawsuit can be filed against the decision on accommodation in the reception centre within 8 days to the Administrative Court, which is obliged to decide about it within 15 days at the latest. Unlike LoF, the provisions of LoA¹⁶ stipulate that a person has the right to file an appeal against the said decision to the competent higher court within 8 days. **Given that in both cases there is an identical measure of restriction of freedom of movement, for more efficient and uniform treatment of the legal remedy, as well as for the purpose of harmonising court practice, it would be good to harmonise these two legal solutions and opt for one competent court and appropriate legal remedy and judicial protection procedure.**

In the period from 1 January 2019 to 30 November 2020, eight cases were resolved in the Administrative Court regarding the accommodation of foreigners in the reception centre, while one case was resolved on the occasion of the extension of accommodation in the reception centre.¹⁷ Of the stated number of judg-

13 UNOPS Republic of Serbia: Support of the Kingdom of Norway to the Ministry of the Interior of the Republic of Serbia, Second Semi-Annual Report for the period from 1 January to 30 June 2020, p. 6.

14 In North Macedonia, a person can be detained for up to 24 hours to ensure removal and a foreigner who refuses or is unable to prove his / her identity may be detained for the purpose of establishing his / her identity for a maximum of 12 hours (Articles 158 and 183 of the Law on Foreigners of North Macedonia). In Montenegro, a foreigner may be detained for up to 24 hours if necessary to ensure his/her presence in the procedure of cancellation of stay for up to 90 days and the procedure of annulment of temporary postponement of forced removal, while he/she may be detained for forced removal up to 48 hours (Article 124 of the Law on Foreigners of Montenegro).

15 Directive 2008/115/EC, Art. 15, paragraphs 5 and 6, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115>.

16 Article 78.

17 Response of the Administrative Court of the Republic of Serbia No. Su II-17a 108/2020 dated 22 December 2020 regarding the request for free access to information of public importance.

ments, three were rendered within the legal deadline of 15 days, while the rest were rendered after the expiration of this deadline, and in some cases only after a few months. Inspecting the court judgments, it can be concluded that no verbal hearing was held in any dispute, although according to international standards, judicial review would imply a verbal hearing.¹⁸ In seven cases, the lawsuit was upheld, and the decision was annulled and returned to the first-instance body for a new procedure. The most common reasons for annulling the decision on determining the stay in the reception centre for foreigners were the following: lack of explanation; decisions were not made by an authorised person; decision number and the date it has been passed are missing; the proceedings are conducted in a language that the party does not understand; the data on the name and surname of the person in the first instance decision differ from the data in the identification card issued by the asylum centre; the dispositive of the decision does not specify the duration of the stay in the reception centre.

18 Excerpt from the 19th General Report, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), point 86, available at: <https://rm.coe.int/16806cce8b>.

Institutions for accommodation of migrants during administrative deprivation of liberty

There is currently one reception centre in the Republic of Serbia, the Reception Centre for Foreigners in Padinska Skela, which is a closed institution under increased police supervision, and is located within the Border Police Department of the Ministry of the Interior (*hereinafter*: BPD Mol). The current accommodation capacities of the reception centre are for about 50 people, but the construction of another facility is underway, with a capacity of 60 places, so that the total accommodation capacities by the end of 2021, when the completion of works is planned, will be for 110 people.¹⁹ During 2020, a total of 200 foreign nationals were accommodated in the Reception centre, most of whom were citizens of Afghanistan (73), followed by Turkey (39), Syria (13), Pakistan (12), Iran (12), Iraq (9), and North Macedonia (6), BiH (4), Libya (3), Algeria (3), Palestine, Somalia, Croatia, and Montenegro (2 foreign nationals each), nationals of India, Tunisia, Morocco, Slovakia, Germany, Romania and Bulgaria (one person each).²⁰ With the existing accommodation capacities, it has not happened so far that this reception centre is overcrowded. The reception centre has two separate annexes - male and female. The material conditions of the accommodation are generally satisfactory, and various adaptations and improvements are constantly being made.²¹ At the moment,

19 Report on the implementation of the revised Action Plan for Chapter 24, point 1.3.1, available on the website of the Ministry of the Interior: http://mup.gov.rs/wps/wcm/connect/6158b60e-d734-4b25-85f42012a3ee2fe2/Final_SRB+I+izvestaj.pdf?MOD=AJPERES&CVID=nzgAW85.

20 Report on the implementation of the Strategy for Combating Irregular Migration for the period 2018-2020, June 2021, p. 24, available at: <http://www.mup.rs/wps/wcm/connect/cf979b30-12ae-42dd-89dc-4d1734ec6025/lregularne++izve%C5%A1taj+18-20-cir.pdf?MOD=AJPERES&CVID=nEp4Se->.

21 NPM Report on the visit to the Reception Centre for Foreigners in Padinska Skela, July 2019, No. 415-11 / 19 of 2 July 2019, p. 19 to 21, available at: <https://www.ombudsman.rs/attachments/article/6419/izvestaj%201.pdf>.

37 police officers are systematised and deployed in the reception centre, but after the expansion of the capacity, the expansion of the systematisation of jobs is also planned, so that the facility could function smoothly.²²

Mobile centres for registration and short-term accommodation of irregular migrants have been established near the border with Romania and Bulgaria - the Reception Centre in Plandište and the Reception Centre in Dimitrovgrad, which are also under the jurisdiction of the BPD MoI, with a capacity of 100 beds each. At the moment, they are primarily recognised as pre-reception centres for the registration of migrants, but it is planned that at the end of 2021 they will be placed in the regime of intensified police supervision,²³ i.e., to have the same purpose as the Reception Centre for Foreigners in Padinska Skela. So far, migrants have not been accommodated in these centres, because they do not function due to minor technical shortcomings and the lack of police officers.²⁴ When their repurposing is completed and when they start working, they will be able to accommodate persons who are in a shortened readmission procedure, and who are currently transported and accommodated in the Reception Centre for Foreigners in Padinska Skela, which is quite far from the stated borders.²⁵

22 *Op. cit.* Report on the implementation of the revised Action Plan for Chapter 24, point 1.3.2.

23 *Op. cit.* Report on the implementation of the revised Action Plan for Chapter 24, point 1.3.1.

24 Response of MoI No. 26-174/20 dated 30 September 2020 to NPM report, available at: <https://npm.rs/attachments/article/971/odgovor%2020.pdf>.

25 This information was obtained from NPM representatives at the online discussion forum organised by Group 484 on 13 April 2021.

Sefguards upon admission to the reception centre for foreigners

According to the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (*hereinafter*: CPT), detained irregular migrants should enjoy three basic rights from the outset of their deprivation of liberty, as should other categories of detainees: (1) access to a lawyer, (2) access to a doctor, and (3) notifying a relative or third party of their choice of deprivation of liberty.²⁶ In addition to these three basic rights, international treaties also recognise the right of a detained irregular migrant to seek consular assistance, but only of his or her own choice.²⁷ Finally, it is important that newly arrived irregular migrants are immediately provided with information about these rights in a language they understand, and to this end, it is necessary to provide a document explaining the procedure applicable to them and clearly and simply setting out their rights.²⁸

Access to a lawyer

Legal aid in the reception centre for foreigners is provided by lawyers and specialised civil society organizations. However, access to a lawyer is not systematically regulated, as finding a lawyer is largely left to foreigners themselves. Civil society organizations that visit the reception centre provide legal assistance only to persons who express their intention to seek asylum or are already in the asylum procedure, while other foreigners are not represented. In addition, the Law on Free Legal Aid²⁹ does not recognise this category of persons as potential beneficiaries of free legal aid, which is below the standards established by the EU Directive on

26 Excerpt from the 19th General Report, published in 2009, CPT / Inf (2009) 27-part, point 81, available at: <https://rm.coe.int/16806cce8b>.

27 *Ibid.* point 83.

28 *Ibid.* point 84.

29 "Official Gazette of RS", No. 87/2018.

the conditions of admission,³⁰ which in the provisions of Article 9 stipulates that migrants in detention should in principle be guaranteed the right to access free legal aid and that this should be prescribed by national law.

In practice, hired lawyers are usually announced the day before, and they are allowed to talk to a foreigner even when they come unannounced. Additionally, if the lawyer came because of one foreigner, and the others want to have an interview with him, they are allowed to do so. Interviews are conducted in a common room or, if the lawyer requests the privacy of the interview, in one of the official offices. The confidentiality of the interview is ensured by the police officer standing in front of the office where the interview is taking place.³¹

In order to improve access to a lawyer, the Ministry of the Interior proposed to the Bar Association of Serbia (*hereinafter*: BAS) to make an inquiry to all lawyers who would be interested in providing services to foreigners, based on which a list of lawyers would be formed and submitted to the reception centre or to find a way with the Ministry of Justice to provide this category of persons with free legal aid.³² As none of the above has been met, the National Preventive Mechanism (*hereinafter*: NPM) has recommended that the BAS establishes a list of lawyers with sufficient knowledge and experience to represent foreigners assigned to the Padinska Skela Reception centre for Foreigners in the return process and to submit it to the reception centre.³³

Access to a doctor

Although medical examination on admission to any closed institution is one of the very important guarantees that a person has not been previously subjected to torture or other forms of inhuman or degrading treatment, there are no conditions in the Reception Centre for Foreigners for the persons to be systematically examined on admission to this institution. Due to this shortcoming, if a person could subsequently complain about injuries inflicted by officials, it would be very difficult or almost impossible to determine whether they were caused by officials during their deprivation of liberty and placing the reception centre or after that, during their stay in the reception centre. Additionally, medical examinations upon admission are important for screening for infectious diseases, which has become increasingly important since the emergence of the COVID-19 pandemic.

30 Directive 2013/33/EU, Art. 11, available at: <https://eur-lex.europa.eu/legal-content/EN/TX-T/?uri=celex%3A32013L0033>.

31 *Op. cit.* NPM Report on the visit to the Reception Centre for Foreigners in Padinska Skela, July 2019, p. 5 and 6.

32 NPM Report on supervision of forced removals of foreigners - January - March 2020, No. 4115-62 / 20 dated 29 June 2020, available at: <https://www.ombudsman.rs/attachments/article/6765/izvestaj%201.pdf>.

33 This information was obtained from NPM representatives at the online discussion forum organised by Group 484 on 13 April 2021.

Notifying a relative or third party

Upon admission, foreigners are allowed to call a relative or third party of their choice either from their mobile phone or free of charge from the reception centre's official phone.³⁴ The reception centre has two mobile phones from which foreigners can make phone calls twice a week at their own expense, and official notes are made about the use of the phone and the made communications, which are kept in the foreigners' files.³⁵

The right to consular assistance

During the accommodation in the reception centre, the foreigner has the right to one free telephone conversation with the diplomatic-consular mission (*hereinafter*: DCM) of the country of which he /she is a citizen. However, according to NPM findings, some interviewees indicated that they would contact the embassy but did not know how to do so.³⁶ The Ministry of the Interior informs the Ministry of Foreign Affairs about the admission of foreigners to the reception centre, which then forwards that information to the DCM of the country of which he/she is a citizen, and in practice, it may happen that the DCM is notified even though the foreigner does not want it, in connection to which the NPM passed a recommendation.³⁷

Informing about rights and obligations in a language that the foreigner understands

Pursuant to LOF³⁸, a foreigner whose stay in the reception centre is ordered is informed as soon as possible, in writing, in a language he/she understands or is reasonably presumed to understand, of the reasons for his/her stay. Following the repeated recommendations of the NPM, this type of notification was compiled and translated into several languages, while other documentation, such as the certificate of temporarily confiscated items, remained in Serbian.³⁹ No translators/interpreters are hired at the reception centre, which has been repeatedly pointed out by the NPM.⁴⁰

34 This information was obtained at the online discussion forum organised by Group 484 on 13 April 2021.

35 Response of MoI to NPM report on forced removals, April-September 2020, p. 7 and 8, available at: <https://npm.rs/attachments/article/1012/Odgovor.pdf>.

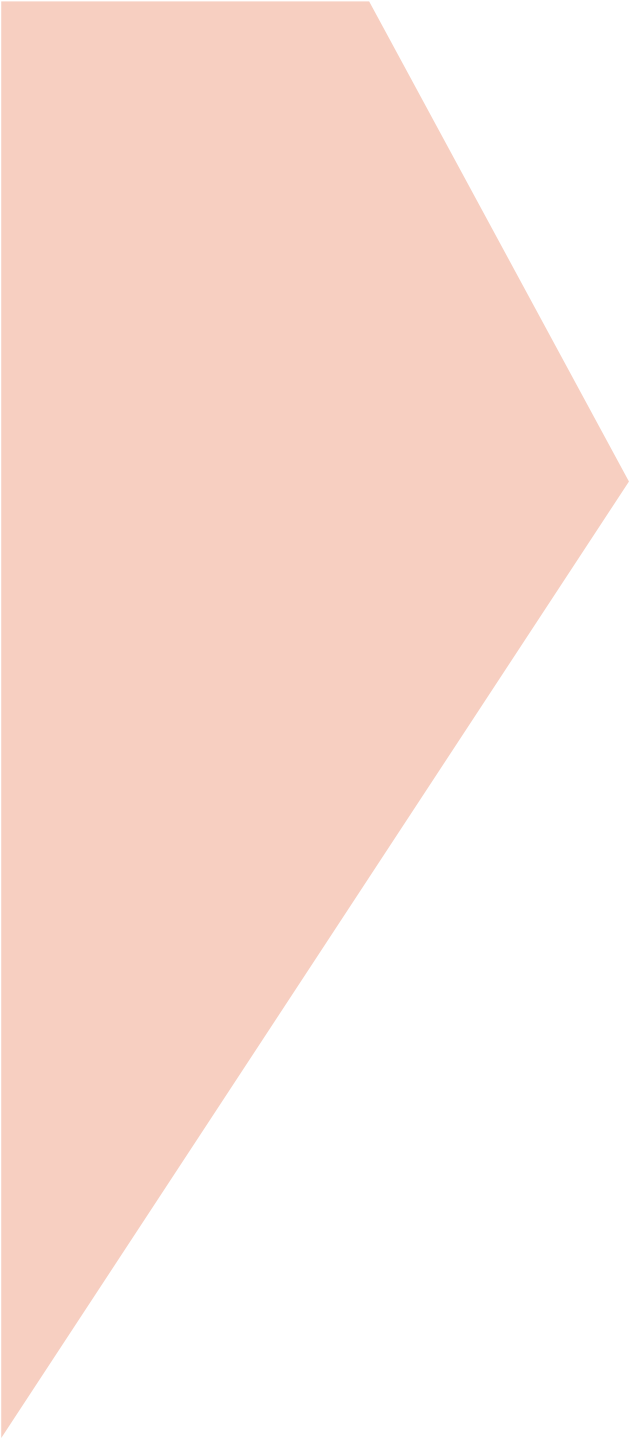
36 *Op. cit.* NPM Report on the visit to the Reception Centre for Foreigners in Padinska Skela, July 2019, p. 11.

37 *Op. cit.* NPM Report on the visit to the Reception Centre for Foreigners in Padinska Skela, July 2019, p. 12.

38 Article 87, paragraph 6.

39 This information was obtained at the online discussion forum organised by Group 484 on 13 April 2021.

40 NPM Report on forced removals, April-September 2020, p. 5-6, available at: <https://www.ombudsman.rs/attachments/article/6989/lzvestaj.pdf>.



Rules during the stay in the reception centre for foreigners

The rules of conduct in the reception centre are regulated by the Rulebook on House Rules and Rules of Stay in the Reception Centre for Foreigners⁴¹ (*hereinafter*: Rulebook on House Rules), which is available in English, French, German, Spanish, Romanian, Bulgarian, Macedonian, Arabic, Albanian, Pashto, Urdu, Farsi.⁴²

Contact with the outside world - visits, correspondence, receiving packages

At the Padinska Skela Reception Centre for Foreigners, there are three ways of communicating with the outside world: by regular mail, by telephone conversations and by receiving visits. Letters are handed over to the police officers, who record them and send them by mail. Mobile phones are confiscated from people, but foreigners have two mobile phones at their disposal, which are given to them by police officers, and they are obliged to pay prepaid credit.⁴³

The Rulebook on House Rules stipulates that the warden or a person designated by him may deny the confidentiality of conversations, in order to obtain information about the identity or provide other information related to the return of the foreigner to the country of origin, and that in that case telephone conversations are conducted in the presence of the reception centre's police officer.⁴⁴ However, the question arises as to whether this provision, as well as the provision on derogation from the confidentiality of letters,⁴⁵ is in accordance with the provisions

41 "Official Gazette of RS", No. 42/2018.

42 Response of MoI-BPD to the recommendations of the NPM, available at: <https://www.ombudsman.rs/attachments/article/6419/odgovor%20MUP.pdf>.

43 NPM Report on forced removal of foreigners - January - March 2020, available at: <https://www.ombudsman.rs/attachments/article/6765/izvestaj%201.pdf>.

44 Art. 24, para. 3 of the Rulebook on House Rules.

45 Art. 23, para. 1 of the Rulebook on House Rules.

of the RS Constitution,⁴⁶ according to which derogation from the confidentiality of letters and other means of communication are allowed only on the basis of a court decision if necessary to conduct criminal proceedings or protect the security of RS, in the manner prescribed by law.⁴⁷ This shortcoming was pointed out by the NPM in the report.⁴⁸

Foreigners have the right to two regular visits a week for up to 60 minutes, in a specially designated room.⁴⁹ During the state of emergency introduced last year, no visits or packages were allowed at the reception centre for foreigners.⁵⁰

Food, hygiene, access to the fresh air

All persons are provided with dry meal packages and cooked meals, and during Ramadan fasting, persons are allowed to carry meals to the dormitories and eat when they want.⁵¹ Access to hot water and conditions for maintaining personal hygiene are adequate, and persons can spend time outside, in the yard.⁵²

During the state of emergency declared due to the COVID-19 pandemic, masks, gloves, and hygiene packages were provided for employees and persons in the reception centre. All rooms were cleaned several times during the day, quarantine was provided in which people would stay for 14 or 28 days, and in that case, they would go for a walk separately and use the living room separately. The obligation to regularly check body temperature with non-contact thermometers was introduced for all employees, as well as for all other persons who come to the reception centre on any basis.⁵³

Health care during the stay

According to the provisions of the House Rules, during the stay in the reception centre, the foreigner has the right to primary health care and basic psychological support.⁵⁴ If the police officer of the reception centre notices that the foreigner has health problems, i.e., if the foreigner complains that he/she has health problems, the police officer in the reception centre immediately takes further meas-

46 "Official Gazette of RS", No. 98/2006.

47 Article 41 of the Constitution.

48 NPM Report on the visit to the Reception Centre for Foreigners in Padinska Skela, pp. 14 and 15.

49 Art. 22 of the Rulebook on House Rules.

50 Thematic report: Implementation of the CPT principles on the treatment of persons deprived of liberty during the coronavirus pandemic, May 2020, p. 7, available at: <https://www.ombudsman.rs/attachments/article/6630/lzvestaj.pdf>.

51 *Op. cit.* Thematic report: Implementation of the CPT principles on the treatment of persons deprived of liberty during the coronavirus pandemic, May 2020, p. 7.

52 *Ibid.*

53 *Ibid.*, page 5.

54 Art. 14 of the Rulebook on House Rules.

ures and actions related to solving the foreigner's health problem, in accordance with health care regulations. The foreigner is obliged to take the prescribed therapy properly, in accordance with the doctor's recommendation.

However, the practice of providing health care and access to a doctor in the reception centre has been unsatisfactory for years, and lately even worsened.⁵⁵ There is no medical staff in the reception centre, so all medical examinations, including the first examination upon admission, are performed only when necessary, i.e., at the request of a foreigner or at the assessment of a police officer that someone needs an examination. The doctor's examination is performed in the room where the person is accommodated, but without other persons accommodated in that room attending the medical examination. The police officer is at the door of the room during the examination, so that he can see but not hear the conversation. If the examination is performed in a health institution, it is attended by a police officer, which endangers the privacy and confidentiality of the examination.⁵⁶

Exercise of religious rights

Foreigners have the right to hold religious rites, but with respect for the religious rights of other foreigners who are accommodated there.⁵⁷ The existence of a special room for religious purposes is also prescribed, but the ritual can also be performed in a room, provided that others in the room are not disturbed. Rituals can also be performed in groups, and on request, they can be attended by a religious elder with the approval of the warden. However, if the performance of religious rites would endanger security, order and peace, the warden may temporarily prevent their performance. The religious rights of foreigners are generally respected in practice.

Applying for asylum during the stay in the reception centre

The intention to apply for asylum may be expressed to the police officer in the reception centre for foreigners as well. Since the Reception Centre for Foreigners in Padinska Skela has the equipment for registration, foreigners register there immediately and are issued a certificate of registration of intent to seek asylum in the RS. AO is then notified, which provides information on the free capacity of the centres within the Commissariat for Refugees and Migration, on the basis of which it is determined where the foreigner will be sent. During 2019, eight certificates were issued, and during 2020, none.⁵⁸

55 Earlier, the doctor of the Penitentiary Facility in Padinska Skela also provided services in the Reception Centre for Foreigners, but after the objection of the Ministry of Justice, this practice stopped.

56 *Op. cit.* NPM Report on the visit to the reception centre for foreigners 2019, pp. 7-10.

57 Art. 21 of the Rulebook on House Rules.

58 *Op. cit.* NPM Report on forced removals, April-September 2020, p. 12.

Disciplinary proceedings for violations of house rules

To a foreigner who violates house rules and rules of stay in the reception centre during his/her stay in the reception centre, the warden may impose a reprimand or a measure of intensified police supervision, which may not last longer than seven days continuously. Intensified police supervision ceases with the expiration of the time for which it was imposed, i.e., when the warden revokes the measure because he estimates that the purpose of imposing the measure has already been achieved.⁵⁹

Complaint procedure

Twice a week, a foreigner may request an appointment with a warden or a person he/she authorises to express his/her dissatisfaction by pointing out irregularities in the procedure, poor treatment, and neglect by police officers of the reception centre, to complain about a reprimand or increased police supervision, and make other complaints indicating poor accommodation conditions.⁶⁰ If he/she is not satisfied with the decision to the complaint of the warden or the authorised person, the foreigner may, in the written form, contact the head of the BPD or the relevant institutions that have the right to supervise and control the work of the reception centre for foreigners. A foreigner has the right and obligation to report every violation of house rules and rules of stay in the reception centre of other foreigners to the nearest police officer on a daily basis, especially bad attitude and inappropriate behaviour towards him/her or third parties, or towards other people's property or reception centre property. Complaints are generally very rarely submitted, and during 2018, one complaint was submitted directly to the Ministry of the Interior and related to food in the reception centre.⁶¹

Accommodation conditions of vulnerable groups

Family members are accommodated together.⁶² However, in practice, it happened that married couples with or without children are allowed to stay together in the women's annex during the day, while male family members stay in the men's annex at night, but after the NPM recommendations, this practice was discontinued.⁶³ Females who are alone are accommodated separately from males, while minor foreigners are accommodated in the same room with their parent,

59 Art. 30 of the Rulebook on House Rules.

60 Art. 31 of the Rulebook on House Rules.

61 *Op. cit.* NPM Report on the visit to the Reception Centre in Padinska Skela from 2019, p. 16.

62 Art. 9 of the Rulebook on House Rules.

63 *Op. cit.* NPM Report on the visit to the Reception Centre in Padinska Skela from 2019, p. 17.

guardian, or legal representative.⁶⁴ During 2020, a total of 11 females were accommodated, while a total of 7 minors were accommodated.⁶⁵

Unaccompanied minors cannot be accommodated in the reception centre. According to LoA, they can be ordered to stay in a social protection institution for minors with increased supervision,⁶⁶ but they are not deprived of their liberty in those institutions. This legal solution and practice are above the standards of the EU Reception Conditions Directive,⁶⁷ which stipulates that unaccompanied minors may in exceptional cases, as soon as possible, be in detention (but not in prison conditions) and must be separated from adults.

A foreigner who has health or mental problems is accommodated in a special room, where he/she stays until the doctor determines his/her health condition, i.e., for a maximum of 48 hours from the moment of admission.⁶⁸ Foreigners with disabilities have not lately been in the Reception Centre for Foreigners in Padinska Skela.⁶⁹

64 Art. 12 of the Rulebook on House Rules.

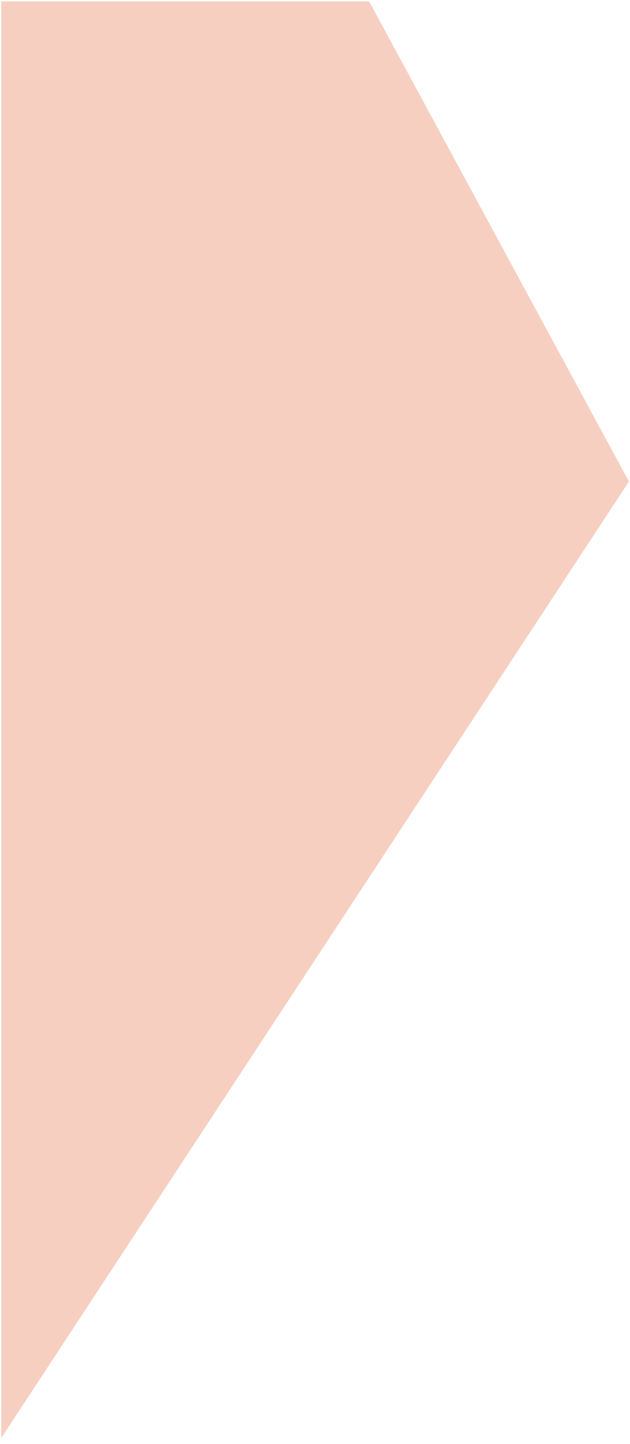
65 *Op. cit.* Report on the implementation of the Strategy for Combating Irregular Migration for the period 2018-2020, p. 24.

66 Art. 78, para. 1, pt. 4.

67 Directive 2013/33/EU, Art. 11, available at: <https://eur-lex.europa.eu/legal-content/EN/TX-T/?uri=celex%3A32013L0033>.

68 Art. 14 of the Rulebook on House Rules.

69 *Op. cit.* NPM Report on the visit to the Reception Centre for Foreigners in Padinska Skela from 2019, p. 18.



Preparation for return and implementation of return from the reception centre for foreigners

If the foreigner does not leave RS within the set deadline, he/she is forcibly removed, and until the removal, he/she can be placed in a reception centre for foreigners. During the procedure of preparation for forced removal, if the foreigner does not have a valid travel document, the travel document necessary for crossing the border is obtained through the competent DCM. However, in practice, it happens that the Ministry of the Interior has not allocated specially earmarked funds for these needs, so police officers face difficulties in this procedure.⁷⁰ However, for those who enter the assisted voluntary return programme, the International Organization for Migration (*hereinafter*: IOM) obtains a travel document, not reception centre officials.

As a rule, foreigners are notified of the removal no later than 24 hours before the removal.⁷¹ Medical examinations on the basis of which the medical capability for the travel would be determined are performed sporadically, i.e., not all foreigners pass them in the process of preparation for removal.⁷² Since foreigners have their mobile phones confiscated during accommodation in the reception centre, it happened that foreigners who were to be removed did not have the opportunity to inform a third person about the upcoming removal, but this problem was recently solved.⁷³ Regarding the verification of the circumstances in the country to which the foreigner is removed in terms of the danger of torture and inhuman

70 NPM Report on supervision of forced removal of citizens of North Macedonia, No. 415–55 / 19 dated 30 December 2019, p. 3, available at: <https://www.ombudsman.rs/attachments/article/6688/lzvestaj%20drz%20S.%20Makedonije.pdf>.

71 NPM Report on supervision of forced removals of foreigners - January - March 2020, No. 4115–62 / 20 dated 29 June 2020, available at: <https://www.ombudsman.rs/attachments/article/6765/lzvestaj%201.pdf>.

72 NPM Report on supervision of forced removals of foreigners, No. 415–80 / 19 dated 30 December 2019, p. 8, available at: <https://www.ombudsman.rs/attachments/article/6689/lzvestaj%20grupni.pdf>.

73 *Ibid.* page 9.

or degrading treatment or punishment, the police officers of the Reception Centre for Foreigners in Padinska Skela do not pay attention to them, because in their opinion their job is only to execute forced removal, and that these circumstances were already verified during the procedure in which the decision on return was made.⁷⁴ The Reception Centre for Foreigners in Padinska Skela did not systematically organise the provision of psychological help and support, in connection with which the NPM sent recommendations.⁷⁵

If the foreigner who is removed from the reception centre is in the programme of assisted voluntary return and reintegration, the IOM is also included, which procures air tickets if the foreigner does not have its own funds, as well as a travel document.⁷⁶ If necessary, an IOM representative comes to the reception centre to talk to the foreigner.⁷⁷ At the entrance to the airport, an IOM officer greets the foreigners who are removed from the reception centre and, with the help of the documentation handed over to him/her by the police officers, checks the foreigner in for the flight.⁷⁸ During 2020, only two persons (one from Ukraine and one from Afghanistan) were returned to the country of origin through the programme of assisted voluntary return from the reception centre.⁷⁹

During the state of emergency declared due to the COVID-19 pandemic, all forced removals were suspended, and the number of foreigners in the reception centre was reduced. Those whose stay had expired were transferred to migrant reception centres,⁸⁰ which were also closed. Given that due to strict restrictive measures and the closure of borders, there was not enough prospect that forced removals could be carried out, there was no purpose or legal basis for further detention of these persons in the reception centre. For the purpose of temporary regulation of their legal status on the territory of the Republic of Serbia, decisions on the postponement of forced removal could be made.⁸¹

74 *Ibid.* page 12.

75 *Op. cit.* NPM Report on supervision of forced removals of foreigners, April - September 2020, pp. 9 - 11.

76 Report on supervision of forced removal of an Indian citizen, No. 415-61 / 19 of 30.12.2019, p. 3, available at: <https://www.ombudsman.rs/attachments/article/6687/lzvestaj%20drz%20Indije.pdf>.

77 *Ibid.*

78 *Op. cit.* NPM Report on supervision of forced removals of foreigners - January - March 2020, No. 4115-62 / 20 dated 29 June 2020, p. 10 and NPM Report on supervision of forced removals of foreigners, No. 415-80 / 19 dated 30 December 2019, p. 11.

79 *Op. cit.* Report on the implementation of the Strategy for Combating Irregular Migration for the period 2018-2020. year, p. 25.

80 *Op. cit.* Thematic report: Implementation of the CPT principles on the treatment of persons deprived of liberty during the coronavirus pandemic, May 2020, p. 8.

81 Article 84, paragraph 1, point 2 of the Law on Foreigners.

Other grounds for administrative deprivation of liberty of migrants

Detention of foreigners at the border or in the transit zone of the airport

Foreigners who do not meet the conditions for entry into the country may be detained in the transit zone of the airport until they wait for the flight that will take them back to the destination from which they came or to another destination for which they meet the conditions for entry.

If the foreigner does not meet the conditions for entry into the country, a decision on refusal of entry is issued, stating the reasons for refusal. The decision form is made in Serbian and English and contains the reasons for rejection provided by LoF,⁸² and the police officer only circles the reason for rejection in the specific case on the form.⁸³ The decision is signed by the authorised police officer and the person who was denied entry. Since it is made on the prescribed form, the decision does not contain an explanation in terms of stating the facts and circumstances, but only contains legal reasons for refusal. **In the following period, it should be considered to change the form of the decision so that it would contain appropriate space for filling in the facts and circumstances of a particular case, as well as linking the facts with legal reasons.**

An appeal against the decision to refuse entry may be lodged to Mol within 8 days. As a rule, the appeal does not delay the execution, unless there are reasons for prohibiting the forced removal.⁸⁴ Exceptionally, a foreigner who is found to have some of the obstacles to entering the country may be granted entry into

82 Article 15 of the Law on Foreigners.

83 The appearance and content of the form are regulated in the Rulebook on the appearance of the form on refusal of entry into RS, on the appearance of the form on approval of entry into RS and the manner of entering data on refusal of entry into a foreigner's travel document, "Official Gazette of RS", No. 50/18.

84 Article 83 of the Law on Foreigners.

the RS if there are humanitarian reasons, the interest of RS, or the international obligations of RS so require.⁸⁵

In practice, a foreigner who is denied entry to the country, until returning to the destination from which he/she came or to another destination for which he/she meets the conditions of entry, is kept in closed premises located in the transit zone of the airport and which are secured by the airport security. However, due to the humane treatment of persons deprived of their liberty and given that the conditions in the said premises in the transit zone are not suitable for longer detention, it happens that persons denied entry at Belgrade “Nikola Tesla” Airport are transferred to the Reception Centre for Foreigners in Padinska Skela, where they wait for a flight back. This is practised if it is estimated that a foreigner should spend more than 24 hours in the transit zone.⁸⁶ For these foreigners who have been denied entry into the country, in addition to the decision to refuse entry, decisions are made to determine the stay in the reception centre for foreigners by direct application of Art. 104 para. 1 of LoP.⁸⁷ An administrative dispute may be initiated against the decision on accommodation in the reception centre on this basis. **Considering that LoF does not envisage as one of the conditions of accommodation in the reception centre a case when a foreigner who cannot be removed immediately is not allowed to enter the country, it is necessary to harmonise the provisions of Art. 104 of LoP and the provisions of Art. 87 LoF and so that Art. 87 is amended with this additional condition. The aforementioned amendment would mutually harmonise the provisions of LoF, given that the provisions of Article 1, paragraph 1, point 28 of LoF, define the reception centre for foreigners also as a facility intended for accommodation of foreigners who are not allowed to enter the country.**

In addition to foreigners who have been denied entry to the country on the basis of LoF, LoA envisages that foreigners who have submitted an asylum application may also be accommodated in the transit zone of the airport. In the transit zone, i.e., at the border crossing, the asylum procedure must be carried out within 28 days.⁸⁸ This procedure can be carried out only if the request can be rejected or denied. It is explicitly prescribed that the asylum procedure cannot be conducted at the border or in the transit area at the request of an unaccompanied minor. Access to legal aid must be provided in this procedure as well. If AO does not make a decision within 28 days, the applicant is allowed to enter the territory in order to conduct the procedure upon the submitted asylum application. An appeal against the decision may be filed with Asylum Commission within five days from the date of submission. The Commission is obliged to decide on the appeal within 15 days, and the appeal postpones the execution of the decision.

85 Article 15, paragraph 3 of the Law on Foreigners.

86 For more information on this procedure, see NPM Report on the visit to the Reception Centre for Foreigners.

87 A foreigner who is not allowed to enter the country ... and who cannot be removed immediately, may, in accordance with the law governing affairs related to foreigners, be ordered to stay under the supervision of the Police, in a facility designated for those purposes during the time necessary for his/her removal from the country.

88 Article 41 of the Law on Asylum.

During 2020, 44 intentions to seek asylum in RS were registered at Belgrade “Nikola Tesla” Airport and all persons were released on the territory,⁸⁹ because in order to carry out the border procedure, it is necessary to provide the asylum seeker with adequate accommodation and food, for which there are still no conditions. Works on the preparation of adequate premises at “Nikola Tesla” Airport are in progress⁹⁰, while at “Konstantin Veliki” Airport in Nis, one container is provided which is suitable only for short stays of persons who do not meet the conditions for entering the country.⁹¹

Moreover, the Law on Border Control⁹² indirectly introduces *de facto* detention at the border in certain articles. Article 36, paragraph 1, point 7 prescribes that during the border check of a person, the police officer is authorised not to allow the person to leave the border crossing until the end of the border checks, which in fact represents a restriction of freedom of movement. As it is prescribed in paragraph 2 of the same article that the performance of the border check is not limited in time, such a solution is quite problematic, because the restriction of freedom of movement is not limited in time, it is not conducted in a formal procedure, the person cannot appeal the detention decision and his/her position is not prescribed in any way during the detention. Additionally, Article 43 of the Law on Border Control stipulates that a person when crossing the state border is obliged to undergo a border check and not to leave the border crossing area until the border check is performed, and a person driving a vehicle crossing the state border is obliged to stop in the area of the border crossing during the border check.

Extradition detention

Extradition detention is regulated by the Law on International Legal Assistance in Criminal Matters (LILACM).⁹³ Pursuant to the aforementioned regulation, the extradition procedure is court-administrative, i.e., after the court decision, the final decision on extradition is passed and signed by the Minister of Justice. Extradition detention may last until the implementation of the decision on extradition, but not longer than one year from the day of detention of the person whose extradition is requested, and it is determined: 1) if there are circumstances indicating that the person whose extradition is requested will hide or flee in order to obstruct the procedure or extradition, or 2) if there are circumstances that indicate that the person whose extradition is requested will interfere with the collection of

89 Data on the number of registered intentions was obtained by NPM representatives during the online discussion forum organised by Group 484 on 13 April 2021.

90 The information is available in the airport’s response to NPM recommendations: <https://npm.rs/attachments/article/966/odgovor%20aerodrom%201.pdf>.

91 NPM Report on the visit of BPS Nis and Constantine the Great Airport in Nis, No. 415-83 / 19 of 27 March 2020, available at: <https://npm.rs/attachments/article/951/lzvestaj.pdf> and the airport’s response to NPM recommendations, available at: <https://npm.rs/attachments/article/951/odgovor%20aerodrom.pdf>.

92 “Official Gazette of RS”, No. 24/18.

93 “Official Gazette of RS”, No. 20/09.

evidence.⁹⁴ Starting from the date of finality of the decision on detention, every two months the court *ex officio* examines whether there are reasons for extension or termination of detention. The final decision on the fulfilment of the preconditions for extradition is submitted with the documents to the minister in charge of justice, and he/she issues a decision by which he/she allows or does not allow extradition.

In practice, a person in extradition detention states that he/she fears that his/her life will be endangered in the country to which he/she is to be extradited or that he/she will be subjected to torture or other inhuman and/or degrading treatment and/or punishment. If this person declares intention to seek asylum in the RS, AO is summoned to conduct the appropriate procedure, and in such cases deciding on the asylum application is practically a priority issue over the extradition procedure and the person should not be extradited before his/her claim is examined and his/her application is decided upon. However, a special problem arises if a person has not submitted an asylum application or the asylum application has been rejected, without going into the merits, because the LILACM does not provide for the court's obligation to examine allegations of persecution in the country of origin, so Article 7 of LILACM should be amended in that direction.⁹⁵

In the previous period, in the Republic of Serbia there have been several cases of asylum seeking by persons in extradition detention, most often citizens of Turkey, Bulgaria, and Romania. One of the positive examples is the case of refusing to extradite a Romanian citizen because he was granted asylum in RS.⁹⁶

94 Art. 22 of LILACM.

95 *Op. cit.* Marko Davinić and Ivana Krstić: Guide for the implementation of relevant regulations in the field of asylum and migration, Group 484, Belgrade 2019, p. 164.

96 Available at: <https://www.bg.vi.sud.rs/vest/1441/odluka-o-molbi-ministarstva-pravde-rumunije-za-izrucenja-ghita-sebastian-aureliana.php>.

Monitoring accommodation facilities and implementing forced removals

Competences and activities of the Protector of Citizens/National Mechanism for the Prevention of Torture

Pursuant to the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁹⁷ (*hereinafter*: the Law on Ratification of OPCAT), in order to determine the accommodation conditions and treatment of foreigners in the Reception Centre for Foreigners in Padinska Skela, since 2014, the NPM has made a total of 8 visits to this institution. “Nikola Tesla” Airport has been visited 10 times, while “Constantine the Great” Airport in Nis twice so far. “Morava” Airport in Kraljevo has not been visited by the NPM, given the low frequency of passengers, of which a very small number of foreigners (during 2020, out of 400 passengers, there were only 20 foreigners).⁹⁸

In addition, pursuant to Article 82 of LoF⁹⁹, the NPM supervised the forced removal, and also visited the Reception Centre for Foreigners in Padinska Skela. By the first half of 2021, seven NPM reports on forced removals have been published on the website of the Protector of Citizens. In 2019, eight forced removal operations were monitored, in which a total of 22 foreigners were removed; in 2020, 18 operations were monitored, in which 40 foreigners were removed, while for the first three and a half months of 2021, two operations were monitored in which two foreigners were removed. Only one removal was done by air, but the NPM team

97 “Official Gazette of SCG – International Agreements”, No. 16/05 and 2/06.

98 Data obtained from NPM representatives at the online discussion forum organised by Group on 13 April 2021.

99 The Protector of Citizens, in line with the competencies from the Law on the Protector of Citizens and the Law on Ratification of OPCAT, supervises the procedure of forced removal of a foreigner.

was present only until the person boarded the plane, while the other removals were by road and were mostly about the readmission procedures.¹⁰⁰

Visits by nongovernmental organisations

The access of nongovernmental organisations to the reception centre for foreigners is also prescribed in Article 16, paragraph 2 of the Rulebook on House Rules by stating that organisations will be allowed unhindered visits to the reception centre. In practice, NGOs visit the Reception Centre for Foreigners in Padinska Skela mainly in situations when one of the persons in the reception centre wants to express an intention to seek asylum or if one of the accommodated foreigners is already in the asylum procedure, so it is necessary to consult with the client or the presence of a legal representative, an NGO representative, is necessary due to certain legal actions in the procedure. As executive partners of the UN-HCR, lawyers of the Belgrade Centre for Human Rights (*hereinafter*: BCHR) go to the reception centre upon invitation. Psychologists from the nongovernmental organisation PIN also occasionally go to the reception centre for foreigners, who occasionally provide psychological help and support to the persons accommodated there.¹⁰¹ In addition to *ad hoc* visits, on call and as needed, BCHR conducts regular monitoring once a month.¹⁰² This organisation also has a permit for access to the transit zone of “Nikola Tesla” Airport, so in case a person who is detained at the airport wants to seek asylum in RS, he/she can get in direct contact with the lawyers of BCHR.

Visits by international bodies (CPT, UN SRT)

The CPT so far visited the Padinska Skela Reception centre for Foreigners in 2004.¹⁰³ During its visit in 2015, the CPT visited the detention facilities of the Belgrade Border Police Station (BPS) at Belgrade “Nikola Tesla” Airport and the facilities for detaining foreigners in the transit zone at the same airport.¹⁰⁴ In the report on the visit, the CPT recommended to the RS authorities that it was necessary for BPS Belgrade’s premises at “Nikola Tesla” Airport to have access to daylight, that it was necessary to provide clean bed linen for the stay during the night, and that foreign nationals should be provided with a minimum of one hour of exercise outside in case they stay in these rooms for 24 hours or longer. With regard to the conditions of detention in the transit zone, the CPT recommended that it is necessary to provide foreigners with a minimum of one hour a day to exercise outdoors if they remain in the transit zone for 24 hours or longer, to obtain

100 This information was collected by NPM representatives at the online discussion forum organised by Group 484 on 13 April 2021.

101 BCHR: Right to Asylum in RS in 2020, p. 98.

102 The findings of the BCHR on the situation in the reception centre for foreigners in 2020 were published in: Right to Asylum in RS in 2020, pp. 94 to 99.

103 Report on the visit is available at: <https://rm.coe.int/1680697c8f>.

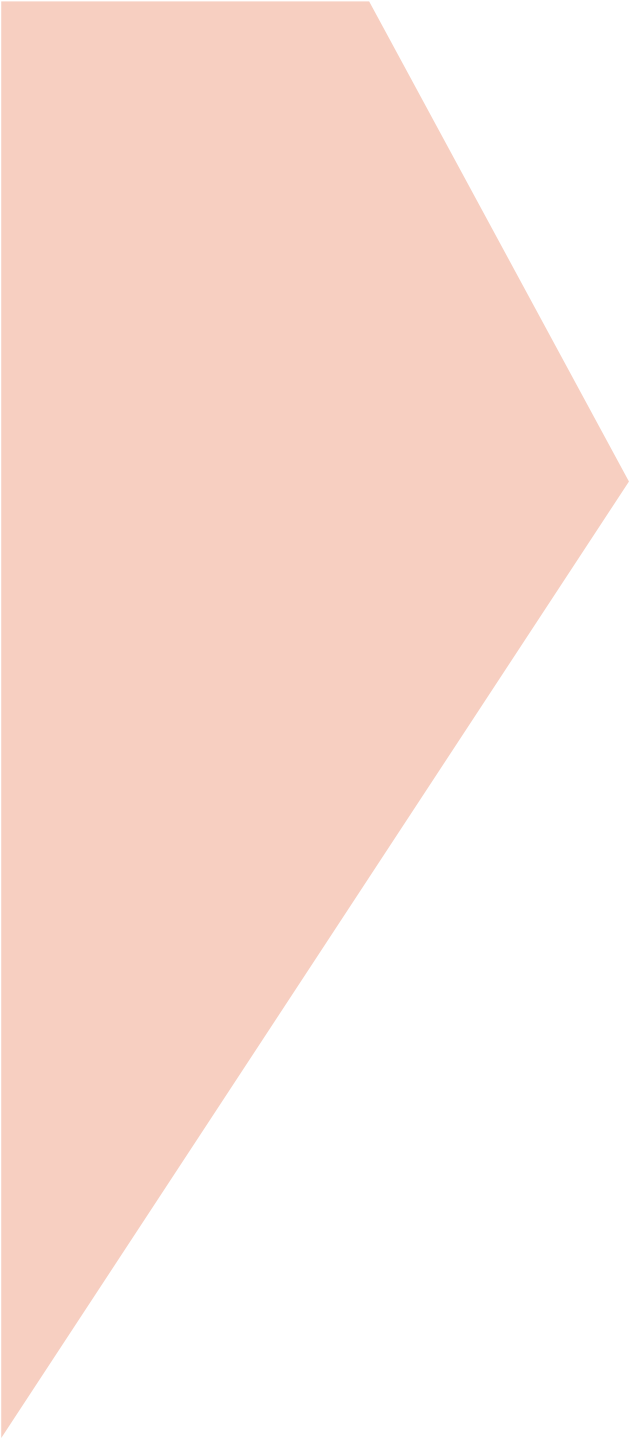
104 Report on the visit is available at: <https://rm.coe.int/1680697c94>.

information on their legal status and rights in appropriate language, as well as to have access to health care if they request it.

The premises at the airport were also visited by the UN Special Rapporteur on Torture (*hereinafter*: UN SRT) during his visit to RS in 2017.¹⁰⁵ In his report on the visit, he recommended to the government of RS to provide adequate conditions in transit zones for the accommodation of persons waiting to be returned, as well as to ensure that the border police carefully records decisions on the refusal of entry and deportation decisions, as well as that these decisions are subject to independent judicial review, and that persons subject to such measures are informed on their rights, including the right to a glasi legal remedy and legal aid in a language they understand.¹⁰⁶

105 UN SRT Report available at: <https://platforma.org.rs/wp-content/uploads/2019/03/Report.pdf>

106 UN SRT Report, point 108, paragraphs a) and b).

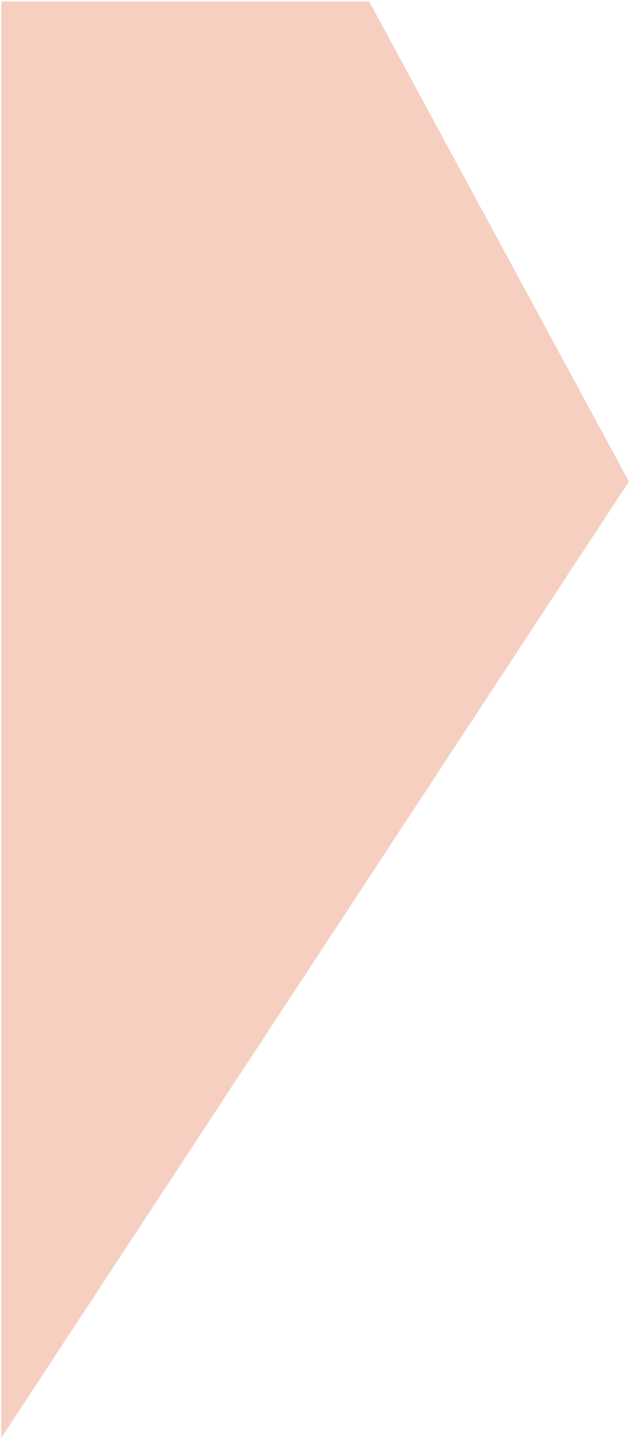


Alternative measures to detention

Under the provisions of LoF, as a lenient measure of restriction of freedom of movement, the competent authority may impose a mandatory stay in a certain place.¹⁰⁷ According to LoA, measures alternative to accommodation in the reception centre for foreigners are: 1) a ban on leaving the asylum centre, certain addresses, or certain areas; 2) regular reporting at a certain time to the regional police department, i.e., the police station in the place of residence; 3) temporary confiscation of a travel document.¹⁰⁸

¹⁰⁷ Article 93 of the Law on Foreigners.

¹⁰⁸ Article 78 of the Law on Asylum.



Conclusion and recommendations

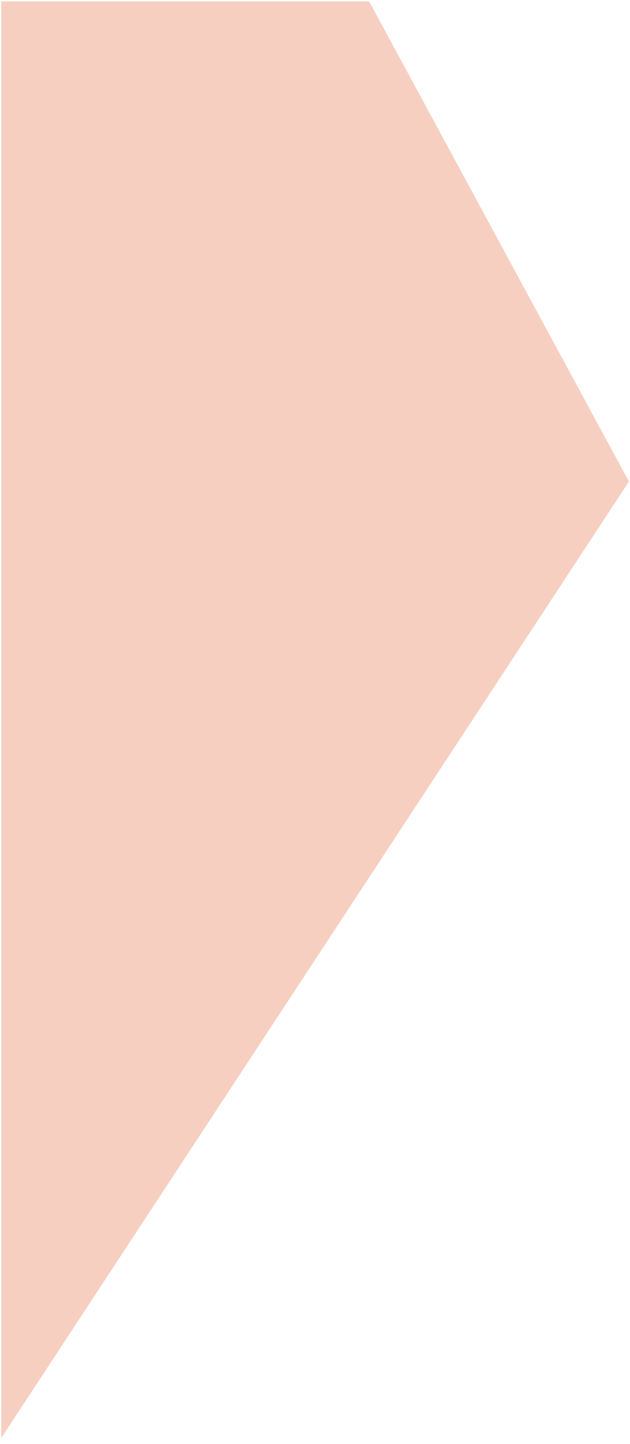
Having in mind the lack of knowledge of the local language, regulations, and other circumstances, which makes them especially vulnerable, it is very important to precisely regulate the position of migrants deprived of their liberty and provide them with adequate support and protection in exercising their rights. At the same time, it is necessary to meet the requirements of public order and security, but also to provide humane, professional, and fair treatment during various types of restrictions and deprivation of liberty of migrants. In this regard, certain changes, amendments and harmonisation of regulations are needed, and some of the most significant would be the following:

- The provisions of LoF and LoA should be harmonised regarding the legal remedy against the decision on determining the stay in the reception centre for foreigners in terms of opting for a unified solution regarding the court that would have jurisdiction (administrative or higher court).
- Due to the existence of legal gaps pointed out earlier in the text, the provisions of Article 86 of LoF relating to detention in the premises of the competent authority must be amended in the direction of determining the complete procedure, the duration of detention, the legal remedy against the decision on detention, and other important issues.
- The provisions of Article 87 of LoF should be amended by refusing to enter the country as one of the grounds for determining stay in the reception centre for foreigners.
- In order to provide access to a lawyer, it is necessary to amend the provisions of the Law on Free Legal Aid, which would include persons deprived of their liberty in the context of migration regulations, as well as persons sentenced to more lenient measures since they can be altered into a measure of accommodation in the reception centre.
- The Law on Border Control needs to be supplemented with provisions that would regulate the procedure, maximum duration, legal remedies, and other important issues in case of restriction of freedom of movement at the border crossing.

- LILACM needs to be supplemented with provisions that oblige the judge to examine the existence of grounds for suspicion that a person is threatened with persecution in the country of origin, and that if this is established, the person cannot be extradited.
- It is necessary to examine the constitutionality and legality of the provisions of the House Rules relating to derogation from the confidentiality of letters and other means of communication.

In addition to normative changes and additions, improvements in practice are also necessary, and the following is especially important:

- Migrants deprived of their liberty should be given the right to an effective and efficient legal remedy against the decision to deprive them of their liberty, for which it is necessary to provide appropriate professional and accessible legal assistance, as well as the participation in oral hearings and translation if needed.
- Judges deciding on legal remedy submitted, as well as legal representatives, should attend continuous professional training on the status of migrants, the prohibition of violations of the principle of non-refoulement, refugee law, and other important areas.
- In the reception centre for foreigners, it is necessary to improve the provision of health care and psychological help and support.
- In order to facilitate daily communication with migrants deprived of their liberty, as well as communication during various types of processes and procedures, it is necessary to ensure the continuous presence of interpreters/translators in the reception centre for foreigners.
- Employees of the reception centre for foreigners must be trained to recognise the danger of torture and inhuman or degrading treatment or punishment in the country of origin of migrants awaiting forced removal.
- Without further delay, it is necessary to provide conditions for the operation of reception centres for foreigners in Dimitrovgrad and Plandište.
- In order to be able to make short terms detentions in the premises of the competent authority, it is necessary to further improve the conditions and adapt the detention facilities.
- It is necessary to create conditions for the accelerated procedure at the border and to provide adequate premises for accommodation of persons who are in the border asylum procedure, as well as for appropriate accommodation of persons who are not allowed to enter the country at Belgrade "Nikola Tesla" Airport.



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