CHALLENGES OF FORCED MIGRATION IN SERBIA
POSITION OF REFUGEES, INTERNALLY DISPLACED PERSONS, RETURNEES AND ASYLUM SEEKERS

Step Forward

Under the EU-funded ‘Strengthening Serbia-EU Civil Society Dialogue’ Project
CHALLENGES OF FORCED MIGRATION IN SERBIA

POSITION OF REFUGEES, INTERNALLY DISPLACED PERSONS, RETURNES AND ASYLUM SEEKERS

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The contents of this publication are the sole responsibility of Group 484 and can in no way be taken to reflect the views of the European Union.
The goal of this publication is to raise the level of understanding of the complex problems of forced migration in Serbia in the territory of the former Yugoslavia in the context of the obligations in the process of European integrations, as well as to encourage cooperation and exchange of knowledge and experience among national and international institutions, civil society, the academic community and interested individuals.

The policy paper on the status and problems of refugees, internally displaced persons, asylum seekers and returnees under readmission agreements, "The Challenges of Forced Migration in Serbia", coordinated by Group 484, was developed by a team composed of representatives of NGOs dealing with these issues: Humanitarian Centre for Integration and Tolerance, Praxis, Society for Peace, Development and Ecology, International Aid Network, Ecumenical Humanitarian Organization, the Red Cross of Serbia, the “Protecta” Centre for Civil Society Development, Serbian Democratic Forum, Novi Sad Humanitarian Centre, Union, Educational Centre Leskovac, Balkan Centre for Migration and Humanitarian Activities, Belgrade Centre for Human Rights, Belgrade Centre for Security Policy, and the Initiative for Development and Cooperation.

NGO representatives participated in four working groups to agree on a common policy paper that should also be the basis for advocating for the rights of forced migrants in the state institutions of Serbia and the EU bodies. Working group members were to shape the document in accordance with the existing issues of forced migration in Serbia in the context of European integration, but they had full freedom in structuring the text. As a part of the consultative process, contribution to the publication was also made by representatives of state administration, local government and non-governmental organisations, with their participation and suggestions at round tables in Nis, Novi Sad, Kraljevo and Leskovac.

Through training sessions on EU standards in the field of forced migration (November 8 to 10, 2010) and training sessions for conducting advocacy campaigns (December 15 to 17, 2010), representatives of civil society and state institutions were familiarised with the EU standards in the field of migration, as well as the most effective mechanisms and strategies for advocating for the rights of forced migrants. Training sessions were conducted by representatives of the European Council on Refugees and Exiles (ECRE), the most prominent pan-European organisation for the protection of the rights of migrants, based in Brussels.

We would like to thank everyone who has participated in the creation of the publication.

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Introduction

Serbia is a country of origin, transit and refuge to many people who have been forced to flee their homes. This text discusses the issues of refugees, internally displaced persons, returnees from Western Europe and asylum seekers in Serbia. They differ in their position, social status and rights as realised in Serbia, but have in common the fact that they have migrated against their will. In order to be able to decide on their future, it is impossible to focus only on the policy of Serbia. The exercise of rights in Croatia, Bosnia and Herzegovina and in Kosovo and Metohija requires the full engagement of both Serbia and the international community. The restitution of rights in the country of origin, and the creation of conditions for the protection of previously acquired rights are of great importance not only for permanent return, but also for any other durable solution, i.e. integration.

Furthermore, the expectations from international and European integrations, though often unrealistic, allow the European and international communities to seek the fulfilment of international commitments and insist that the rights of returnees, refugees and IDPs are exercised under the same conditions in the entire region. Durable solutions and fair compensation for refugees as direct victims of the war should be the essence of the reconciliation process after the wars in the former Yugoslavia.

In 2008, the UNHCR included Serbia among the five countries in the world with a protracted refugee situation whose solution requires joint action, and the cooperation of regional countries and the international community. With 86,000 refugees from Croatia and Bosnia and Herzegovina, and 206,000 internally displaced persons from Kosovo, Serbia is still the first country in Europe for the number of refugees and IDPs. There are willingness and the initiatives of the Serbian authorities, UNHCR, European Commission and international donors to find additional funds to facilitate the position and find durable solutions for refugees and displaced persons. However, despite the considerable support, huge gaps have remained. In the region of the former Yugoslavia, the process of resolving issues of refugees, the Road Map, that to which the authorities of Croatia, BiH, Serbia and Montenegro have been committed by the Sarajevo Declaration, has been stalled primarily due to unresolved issues of tenancy rights. In Serbia, despite government efforts to integrate refugees, the institutional and legal framework has not been reformed in that direction.

As for displaced persons from Kosovo and Metohija, the right to return remains a priority for the Government of Serbia, but the status of long-term displacement has been gradually recognised for the vast majority of these people. After the self-proclaimed independence of Kosovo, the Serbian authorities have continued to invest in the Serbian community and parallel institutions in Kosovo. Due to the sensitivity of the issue, the Serbian authorities refuse any cooperation with bodies associated with Kosovo statehood. The dialogue of the authorities of Serbia and Kosovo about “technical issues”, as they put it, should result in solutions to at least some of the contentious issues being initiated. The current status quo largely hinders the position both of people in Kosovo and IDPs in Central Serbia.
Within the European integrations and according to the Law on Asylum, in 2008 the Serbian authorities completely took over from the UNHCR the procedure for determining the refugee status of people outside the former Yugoslavia. In 2010, a total of 522 people expressed an intention to seek asylum in Serbia, mostly Afghan nationals (311). Often they are people who are caught while attempting to reach Western Europe illegally via Serbia. An asylum policy is a new experience for Serbia, and the necessary institutions have yet to be built.

Serbian nationals, mainly Roma, who have been refused asylum or whose temporary protection has been terminated, continue to return from Western Europe. Many have been returning without any property and accommodation after having spent ten or even 15 years abroad. The Strategy and Action Plan for Reintegration of Returnees have been adopted, but the issue of financing projects that would lead to the humane and safe reception of returnees is still unresolved. One year after the abolition of visas for travelling to EU countries, many citizens of Serbia understand the right to visa-free travel as an opportunity to solve their social problems by filing asylum claims. It is an abuse of the asylum system as a back door for illegal migration, and the Serbian authorities have failed to respond. Because of such a trend, the EU and the member states have set up a visa requirements review regime for Serbia and other Western Balkan countries.

The contribution of international organisations to solving the problem of forced migration is huge, but the fact is that the funds from foreign donors are limited and that in the process of European integrations, priorities must be set. It is now necessary to develop national development programmes in order to solve the social problems of vulnerable groups. In circumstances where there is even less foreign aid for the most vulnerable, the Serbian government should accurately decide on the priorities and funds from the state budget, international donors, local and other authorities, along with providing comprehensive information and a clear definition of the responsibilities of all stakeholders in charge of solving the problems of forced migration. By working with migrants, recognising their needs, analysing the problems and pointing out the irregularities, civil society organisations are an important factor in policy-making with regard to the interests of these people and their places of origin or the places in which they have found refuge.
I REFUGEES FROM CROATIA AND BOSNIA AND HERZEGOVINA

Introduction – Exile in figures

The interethnic conflicts in the territory of the former Yugoslavia have resulted in massive violations of human rights, numerous crimes and the destruction of commercial, residential, cultural and infrastructure facilities. Fifteen years after the conflict in Bosnia and Herzegovina and Croatia, the region still has a large number of refugees whose problems have not yet been resolved.

According to data from the first census of refugees of 1996, the Republic of Serbia hosted 537,937 refugees (44% from Bosnia and Herzegovina, 54% from Croatia) and 79,791 war-affected people. The number of refugees fell by more than 80% in the period between 1996 and 2010. According to data of the Serbian Commissariat for Refugees, on November 1, 2010, there were 86,155 persons with the formal status of refugees, of which 72% were from Croatia and 28% from Bosnia and Herzegovina. These data indicate that the return of refugees from Serbia to BiH has taken place with less obstacles and difficulties compared to the return to Croatia.

The reduction in the number of refugees is largely the result of their integration in the Republic of Serbia. About 300,000 refugees have acquired the citizenship of the Republic of Serbia. Through the process of return, implemented with varying success in BiH and Croatia, the number of refugees has decreased by another 149,000. It is also estimated that 49,000 refugees have found refuge in third countries.

The number of refugees who, regardless of the formal recognition of their refugee status in Serbia, need help for local integration or repatriation is estimated at about 300,000. In 2008, the UNHCR included Serbia among the five countries with a protracted refugee situation whose solution requires joint action and cooperation in the region, with the support of the international community.

With 86,155 refugees and 210,148 internally displaced persons, Serbia is the first country in Europe as regards the extent of forced migration. Furthermore, according to the data as of June 1 2010, Serbia still has 60 collective centres that accommodate 4,791 refugees and internally displaced persons.

In Serbia as well, the war conflicts have reinforced the tendency towards ethnic homogenization (the influx of Serbian refugees from BiH and Croatia and the departure of more than 20,000 people of Croatian nationality, generally to the Republic of Croatia).

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2 Ibid.
3 UNHCR, Protracted Refugee Situations: Revisiting the Problem, EC/59/SC/CRP.13, June 2008 (According to the UNHCR, the following countries are on the list of countries with protracted refugee situations: Afghanistan refugees in Pakistan, Rohangi refugees in Bangladesh, refugees from Croatia and BiH in Serbia, refugees from Burundi in Tanzania and refugees from Eritrea in eastern Sudan)
4 www.kirs.gov.rs, Comparative Review of the Commissariat for Refugees of the Republic of Serbia
5 www.kirs.gov.rs, Collective Centres
In Bosnia and Herzegovina, more than half the population, i.e. about 2.2 million people, were displaced or fled from their homes during the 1992-1995 war. Of these, about 1.2 million people sought refugee protection worldwide, and about a million have been displaced within BiH. 15 years after the war, the territorial ethnic distribution is radically changed, as well as the overall ethnic structure of BiH. Many municipalities where either Bosniaks, Serbs or Croats used to compose the majority of a multi-ethnic population in 1991 have lost their multi-ethnic profile. All three nations have homogenised, and the Brcko municipality is practically the only one without an absolute majority of one of the three nations.

In Bosnia today there are about 117,000 internally displaced persons, among them about 7,500 residents in collective centres. In Bosnia and Herzegovina there are 6,941 registered refugees from Croatia, most of them in the territory of the Republic of Srpska (in the period 1991-1995, BiH received between 40,000 and 45,000 refugees from the Republic of Croatia).

The official statistics have registered more than a million returns to BiH, including 450,000 refugees and 580,000 internally displaced persons. In BiH, there are about 470,000 so-called minority returns registered. The returnees, especially the so-called minority returnees, are mainly the elderly. As estimated by the Ministry of Human Rights and Refugees, the rate of the so-called minority returns calculated according to the assumed number of people who have left their pre-war homes in relation to the number of returnees, is 32% in the BiH Federation and 28.5% in Republika Srpska, where the return rate of Bosniaks is 35% and of Croats, 8.5 %. According to the status revision of displaced persons, there has been an increase in the percentage of Serbs in the total number of displaced persons in BiH. By participation in the national structure of displaced persons, 69,099 displaced persons (55.2%) are of Serbian nationality, 47,907 or 38.3% of Bosniaks, and 7,450 or 6% of Croatian ethnicity, and the remaining 616 (0.5%) of other ethnicities.

In the Republic of Croatia, according to the UNHCR estimates, there were about 550,000 displaced persons in the period 1991-1992. In the same period, the country received about 400,000 refugees from Bosnia and Herzegovina, of which 120,000 (mostly of Croatian origin) have acquired Croatian citizenship. On March 31, 2010 according to the UNHCR, there were 809 refugees from BiH and 2,246 internally displaced persons in Croatia.

According to the data of the UNHCR Mission to the Republic of Croatia of March 2010, 132,451 persons of Serbian nationality (out of a total of more than 400,000 exiled Serbs) returned to Croatia, where for 15,929 returnees from Serbia the earlier refugee status could not be verified. Of that number, 93,786 refugees returned from Serbia and Montenegro, 15,434 from BiH. Another 23,231 refugees of Serbian nationality from other parts of Croatia returned as well. According to the Study of the Sustainable Return of Minorities in Croatia of 2007, commissioned by the UNHCR, the rate of sustainability of return is only about 54%, which means that there is almost a half of formally registered returnees who reside in Croatia only

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6 Ministry of Human Rights and Refugees, presentation of the minister Mirsad Keba, Sarajevo, January 12, 2006
7 Joint Discussion Paper Conference, Conference on Durable Solutions, Belgrade, March 25, 2010
8 Collecting requests for the status revision in the territory of entire BiH was completed by March 31, 2005
10 Joint Discussion Paper Conference, Conference on Durable Solutions, Belgrade, March 25, 2010
occasionally, or visit it from time to time. The fact that the option of return as a durable solution is increasingly present in the refugee population is illustrated by the data on the continuous reduction of the annual number of returnees - from 20,716 in 2000, when the annual number of returnees reached its peak, through 11,867 returnees in 2001, 11,048 returnees in 2002, and 1,147 returnees 2008, to 710 returnees in 2009. The field research, conducted jointly by the UNHCR and the Commissariat for Refugees of the Republic of Serbia in 2008, showed that only 5% of refugees were considering the possibility of repatriation.

In Croatia as well, the wars have led to territorial ethnic homogenisation (the number of Serbs was reduced from 12.2% in the 1991 census to 4.5% of Croatia's total population by the census of 2001, while the number of Croats increased between the two censuses from 78.1% in 1991 to 89.63% in 2001 i.e. by 11.53%), Croatia has thus become ethnically the most homogeneous republic of the former SFRY (before the war it was Slovenia).

1. The missing

According to the International Red Cross data, 15 years after the war in BiH, about 8,000 missing persons are still being searched for. Their mortal remains are still hidden in mass or individual graves throughout BiH. According to the “Veritas” data, published in the counter-claim of Serbia for genocide, during the war in Croatia there were 2,132 people of Serbian nationality missing, including 1,430 civilians and 569 women. Under the current list, 1,029 people of Croatian nationality are missing. In Croatia, there are 624 registered burial places that have not yet been exhumed. Most were from the “Flash” and “Storm” periods of military operations.

The process of opening the graves and identifying victims is slow, despite the constant appeals of families of missing persons and occasional pressure from the international community. Addressing the issue of missing persons is a humanitarian issue of paramount importance to families of missing persons, but it is also an significant political issue whose resolution is also extremely important for the reconciliation process in the region. It constitutes the responsibility and obligation of the competent authorities towards the families of missing persons who are entitled to know the truth about the fate of their loved ones.

2. Process of European integrations and closing the refugee chapter in the territory of the formed SFRY – democratic changes as a prerequisite for closing the refugee issue

Key problems related to the position of forced migrants (refugees and IDPs) and the slowness of the search for durable solutions arise from the lack of broad and fundamental democratic changes in the countries of the former Yugoslavia encompassed by the conflict.

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12 Ibid.
15 www.veritas.org.rs
The ethnic-based discriminatory approach in national legislation and in the actions of state institutions has not yet been eradicated, thus violating numerous rights of refugees, among them, the right to choose a permanent solution as guaranteed by the UN Convention on the Status of Refugees of 1951 and the peace agreements for the former SFRY. From what has been said above, it can be concluded that the main problems of refugees are focused on the issues of their equality and discrimination in their countries of origin. Consequently, the priority in solving problems of refugees should be given to legal and political means, in order to establish the more efficient rule of law, which is not possible to achieve without the equality of citizens.

Due to the absence of a genuine internal political will to solve the existing problems of refugees, we have had a situation in which all important positive developments, including solving some of the many legal problems of refugees, have been made under pressure or by direct interference of the international community, as is the case in BiH, or have been the condition for achieving higher national and state interests, such as membership in the European Union, in the case of Croatia. In BiH, with its practical and specific role the international community has managed to make up for the deficit of the effective, practical internal political will, while in Croatia, such a deficit is still substantial, and the international community has failed to overcome it. This has led to apparent differences in accessing rights of refugees in their countries of origin, i.e. in Bosnia and Croatia. The access to rights and the return of refugees from Serbia to Bosnia has taken place with fewer obstacles and difficulties compared with the access to rights and the return to the Republic of Croatia. It is related primarily to the accelerated and effective implementation of property laws in the form of return of housing units to their pre-war owners and tenancy rights holders. This practice, which testifies to the lack of internal political will in Croatia to substantially solve these problems, tells us that these problems cannot be brought down mainly or exclusively to the bilateral level, but that further mediation is necessary, as well as the establishment of monitoring mechanisms and pressure from the international community on how to solve the existing problems of Serbian refugees from Croatia.

2.1 For a balanced regional approach to solving the existing refugee problems

A permanent solution to refugee problems, particularly the return, is hindered by an uneven regional approach to solving some of the key legal issues, such as the issues of restitution of property and tenancy rights, participation in privatisation and the like, which create double standards for the same issues in the region. Consequently, there are differences in the positions of refugees from the two countries. In one case, refugees in the country of origin (BH) have recovered possession of the state-owned flats and been allowed to purchase them. In addition, the same refugees have been given flats in the country of refuge (Croatia) that have been taken from other refugees. Not only have the other refugees not been returned their flats (they are denied the right to return to their original homes in Croatia, where they lived before the exile, a right required by Resolution 1120 of the UN Security Council of July 14, 1997) but they have not been given any other flats. They are only offered, as a humanitarian programme and an act

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17th Note 3. Reaffirms the right of all refugees and displaced persons originating from the Republic of Croatia to return to their homes of origin throughout the Republic of Croatia;” (RESOLUTION 1120 (1997) Adopted by the Security Council at its 3800th meeting, on 14 July 1997)
of state mercy, and not a programme of restitution of their lost rights, housing under very restrictive and discriminatory conditions that can only be met by a small number of refugees. Some refugees have the right to participate in privatisation based on their years of service (in BiH), and others are denied that right (in Croatia). Refugees from Croatia living in BiH, on the basis of final court decisions in Bosnia and Herzegovina and the Republic of Srpska on cancellation of contracts for the replacement of residential property, are evicted from housing units exchanged with refugees from BiH living in Croatia, while in Croatia the institute of recognition of foreign court ruling is not applied. Consequently, the refugees from BiH living in Croatia have acquired property in both states, while the refugees from Croatia living in BiH have lost property in both states.

The resolution of certain rights or refugee problems based on different principles and standards in the region usually results in almost insurmountable obstacles and difficulties in the protection of the human rights of refugees, especially the right to return. Without equal standards and practices relating to these fundamental issues, it will be difficult to ensure the effective protection of the rights of all refugees and establish a stronger and continuous chain of returns. Therefore, the international community should perceive these problems regionally and apply pressure so that basic human rights of refugees are exercised on equal terms. Given that the refugee problem is the regional problem of four countries - Bosnia and Herzegovina, Montenegro, Croatia and Serbia, the European and international community should additionally encourage the governments of these countries to regionally seek ways and means for faster resolution of the problems of refugees.

2.2. Regional initiatives and activities

On the initiative of the European Commission, OSCE and UNHCR, representatives of countries in the region: Bosnia and Herzegovina, Croatia, Serbia and Montenegro, adopted the Sarajevo Declaration in January 2005, which obliged them to allow the process of return or local integration in their countries. They also agreed about joint activities and mutual cooperation. However, despite the additional incentives and initiatives of the international community, little progress has been achieved in the implementation of the Declaration. This process should have closed the refugee chapter in the region by 2006. While Serbia has continued, to a greater or lesser extent, working on its roadmap, little has been discussed about the implementation issues, either bilaterally or regionally. Serbian authorities took part in a meeting on the protracted refugee situation, organised by the UNHCR in Geneva in December 2008. In December 2008, the competent Serbian institutions distributed an unofficial document which identified the unresolved issues related to the implementation of the Sarajevo Declaration. However, little has been done in that direction.

As stated in a joint statement by the Foreign Ministers of Bosnia and Herzegovina, Republic of Croatia, Montenegro and the Republic of Serbia on March 25, 2010 in Belgrade at the International Conference on "Durable Solutions for Refugees and Internally Displaced Persons - cooperation in the region", the problems of refugees and internally displaced persons in any of these countries have not been fully resolved, and it is necessary to intensify regional cooperation to achieve a fair, comprehensive and durable solution, particularly for the most vulnerable. This
would contribute to the further development of good neighbourly relations, regional stability and mutual support in the process of European integrations. Foreign Ministers of countries in the region, along with representatives of the European Commission and international community agreed in Belgrade to intensify cooperation in order to solve the problem of refugees and displaced persons. The cooperation will be pursued through the relevant national professional services which will meet twice a year, and more often if necessary. The ministers agreed to organise an international donor conference in nine months aimed at establishing a multi-donor fund, to assist in the process of return or local integration of refugees and internally displaced persons, the closure of collective centres and assistance to the most vulnerable.

The Agreement on Succession Issues, signed by representatives of the successor states of the former SFRY on June 29, 2001 in Vienna, is very important for resolving the refugee issues. Annex G of this Agreement protects private property and the acquired rights of citizens or other legal persons of the SFRY. Annex G under Article 2 (1) sub-paragraph (a) recognises the rights to movable and immovable property located in a successor state and to which citizens or other legal persons of the SFRY were entitled on 31 December 1990, and that they will be recognised, protected and restored by that state in accordance with established standards and norms of international law and irrespective of the nationality, citizenship, residence of those persons. The persons unable to realise such rights will be entitled to compensation in accordance with civil and international legal norms. (b) Any purported transfer of rights to movable or immovable property made after December 31, 1990 and concluded under duress or contrary to sub-paragraph (a) of this Article will be void. Article 6 of Annex G of the Agreement stipulates that the domestic legislation of each of the successor states, which refers to "tenancy", applies equally to persons who were citizens of Yugoslavia and who enjoyed such rights without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

In practice, however, all the internal legal and other requirements to comprehensively implement the provisions of Annex G have not yet been met. As the Agreement on Succession was created with the assistance and various pressures of the European and the international community, after more than a decade of negotiations, the failure to extend such a role by the European and the international community could hardly lead to significant revitalisation of the Agreement in practice. This is particularly related to the rights of refugees. In any case, each new step in approaching and engaging successor countries of the former Yugoslavia in the European integration structures is encouraging for durable solutions of refugee issues, since each new step necessarily requires the adjustment of the behaviour of national governments to European legal and democratic standards.

### 2.3. Serbia in the process of European integrations and solving the refugee issues

In addition to the principal and binding general international standards for refugees, the strategic EU framework further underlines the need to effectively address the issues of refugee populations, in the context of achieving the defined timetable goals for the Republic of Serbia’s joining the EU. The EU Council Decision No. 2008/213/EC of February 18, 2008 on the

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principles, priorities and conditions contained in the European Partnership (EP) with Serbia in
the part of Annex 2 on regional issues and international obligations of Serbia stipulates, among
other things, “providing the right to a real choice between sustainable return and integration”
(short-term goal) and “facilitating the integration of refugees who decide not to return” (medium-
term objective). The Stabilisation and Association Agreement of the Republic of Serbia in the
Preamble affirms the “right to return for all refugees and internally displaced persons, the right
to protect their property and other related human rights”.

The European Commission Progress Report for Serbia in 2010 emphasises that “The number of
collective centres has decreased. Changes were made to the law on refugees, enabling refugees to
buy their apartments when these had been built from donations. The programme to support
municipalities that prepared local action plans for the improvement of the status of refugees and
IDPs who opt for local integration has continued. An additional 81 municipalities have received
donations for the implementation of their plans. However, the situation of refugees and IDPs
remains very difficult. Further improvement is needed to address the housing situation. Many
refugees and IDPs are unemployed and live in poverty. The national strategy on refugees needs
to be revised.”

3. Integration – legal and institutional framework

In accordance with the international instruments and standards, the Republic of Serbia is obliged
to facilitate and accelerate the process of naturalisation of refugees (their admission to
citizenship of the Republic of Serbia) and to reduce, to the greatest extent possible, the fees and
cost of that procedure. Changes in the Law on Yugoslav Citizenship in March 2001 and the new
Law on Citizenship of the Republic of Serbia 2004 formally facilitated the naturalisation of
refugees by reduced requirements and simplified procedure.

The basic document in the Republic of Serbia that regulates the status and rights of refugees
originating from the republic of the former SFRY is the Law on Refugees. The law stipulates
the state’s obligation to provide assistance to refugees, whose permanent return to areas from
which they have fled is not possible, to settle or work in a particular place. The law sets high
standards for the right to employment and education, which equates the refugees from other
former Yugoslav republics in Serbia with the citizens of Serbia, except when it comes to working
in the civil service, which requires Serbian citizenship. The scope of these rights exceeds the
minimum standards established by the Convention on the Status of Refugees of 1951.

The National Strategy for Resolving the Problems of Refugees and Internally Displaced
Persons, adopted by the Government of the Republic of Serbia in 2002, is very important for

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19 EU Council Decision no. 2008/213/EC of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership (EP) with Serbia, including Kosovo, as defined in Resolution 1244 of 10 June 1999, pg. 8 and 14
21 “Official Gazette of RS”, No. 18/92, 45/2002 and 30/2010
22 http://www.kirs.gov.rs/docs/nacionalna_strategija_izb_i_irl.pdf
the integration of refugees in Serbia. According to the National Strategy, the main goal of local integration is to prepare refugees for an independent and, in relation to other citizens, an economically and socially equal life. The prerequisites for a successful local integration, according to the strategy, are to find solutions for the housing and employment issues, for refugees accommodated in collective centres, and for improving the property and legal status of refugees. The National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons is undergoing a revision in accordance with the present situation, its needs and real possibilities, and should be completed in the fastest possible manner.

The objectives, strategies, measures and activities aimed at facilitating integration of refugees in Serbia are contained in numerous documents of the government of the Republic of Serbia and more than 15 national strategies. These documents show the complexity and comprehensiveness of the integration of refugees, which has to involve almost all state and other public organisations. As stated in the Poverty Reduction Strategy, the institutional and organisational network is sufficiently developed, but poorly coordinated. The scope of this work indicates that it can be successfully completed only with more intensive interagency cooperation, greater accountability of ministries and the full involvement of the government as a whole.

3.1. Restricting circumstances for integration

The position of refugees in Serbia and the possibility for their integration largely depend on the condition of their rights and the access to these rights in the countries of origin. Therefore, it is not possible to speak about conditions for rapid and successful integration of refugees in Serbia without examining the cross-border aspect of this issue. The lack of willingness to comprehensively and equitably address the problem of the deprived housing rights of refugees from Croatia undoubtedly affects the possibility of solving one of the key problems of the integration of refugees in Serbia, which is the housing problem. It is therefore essential to strengthen diplomatic activities at the international and inter-governmental level in order to overcome difficult or impossible access to the acquired and other rights of refugees in their countries of origin, without effecting their status or residence.

The protracted refugee situation in Serbia has not only been caused by the human rights situation in their countries of origin, but also by circumstances in Serbia. The possibilities for the integration of refugees in Serbia, chosen as a permanent solution by many refugees, have been affected by particular circumstances in the territory of Serbia, which have made their integration difficult. First of all, it is a country that at one time hosted more than half a million refugees and which still has more than 300,000 refugees and former refugees. This does not include war-affected persons who did not have refugee status in Serbia, or internally displaced persons from Kosovo and Metohija. Refugees in Serbia have shared the fate of the local population, which means that they tried to integrate in a country that during the nineties experienced an economic and social collapse with a dramatic drop in gross national product (about 50%), large unemployment, a huge drop in the living standards of citizens, a country exhausted and worn out by wars, bombing, economic sanctions and isolation, and without a complete transition strategy. The country is at risk of new social problems and new forms and areas of poverty.
In addition to these restrictive conditions for the integration of refugees in Serbia, we should bear in mind that the integration of refugees in Serbia had long been a taboo subject both nationally and internationally, especially with major international humanitarian organisations, due to fears that in that way they might appear to indicate an acceptance of the consequences of ethnic cleansing policies. Only after the democratic changes of 2000 did that issue in the former Yugoslavia slowly start to open up. However, for almost ten years, up until 2000, little had been done in a socially organised way to facilitate integration of refugees in Serbia. The ten lost years, when it comes to the integration of refugees in Serbia, are one of the main causes of the protracted refugee crisis in Serbia. Legal options to facilitate the naturalisation of refugees in Serbia, as a necessary step prior to their integration, were created as late as March 2001, when amendments to the Law on Yugoslav Citizenship came into force. In 2002, almost 11 years after the onset of mass refuge on its territory, Serbia adopted the National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons, which is still essentially a list of imaginary measures and activities on paper, because, among other reasons it has almost entirely relied on international sources of funding.

The local integration of refugees in Serbia is not only voluminous, but also an expensive process, the nature and financial extent of which go beyond humanitarian programmes. The primary responsibility for integration lies with the Government of the Republic of Serbia. However, the still fragile economy and high level of poverty among the general population in Serbia make an environment in which it is difficult to set aside sufficient funds for various integration programmes. Therefore it is necessary to attract the attention of donors that support the development programmes of the Republic of Serbia. To achieve this, it is essential that integration of the refugees finds its adequate place in the wider system of social and development policy, and that refugees are treated as one of the vulnerable population groups, with all their specific characteristics.

4. Return

4.1. Bosnia and Herzegovina

The issue of return of refugees and internally displaced persons and the realisation of their rights in Bosnia and Herzegovina, despite the existing problems, is a positive example for all countries in the region. Nevertheless, there is still much to be done in order for refugees, displaced persons and returnees to fully enjoy unfettered access to all the rights defined in Annex 7 of the Dayton Peace Accords. There are still significant differences in achieving a satisfactory level of restitution of acquired rights in Bosnia-Herzegovina, taking into account the different areas in which the acquired rights are exercised (property rights, labour rights, pensions, etc.).

The return of refugees to Bosnia and Herzegovina is no longer a political and security issue. Despite isolated incidents, such as attacks on returnees and their property, the security of returnees has never been the biggest obstacle to return. The return has been slowed down or prevented by the difficult living conditions caused by the lack of employment and economic activity, education by the programmes adapted to the nationality of returnees as well as by the lack of confidence in the possibility of prosperity in the communities where returnees are the minority community.
4.1.1. Restitution of property

The most important result has been achieved in terms of restitution of property rights in Bosnia and Herzegovina, since more than 99% of property has been returned to their legal owners, either to those living in BiH or in exile. Annex 7 of the Dayton Peace Agreement stipulates that everyone is entitled to restitution of immovable property or compensation instead of return. Legal interventions of the High Representative initiated the process of establishing specific legal mechanisms for housing and property restitution in Bosnia. All the administrative, judicial and other acts were annulled that terminated the tenancy rights of tenancy rights holders, and thereby pre-war tenancy rights holders were able to come into possession of these flats and buy them on favourable terms. The principle that the rights to return and repossession of a home and property are individual and unconditional has been accepted, and that it does not depend on whether the rights of other persons are respected or not. That is another reason why the High Representative took the view that the right of ownership has priority over the right of occupancy of temporary users.

4.1.2. Restitution of military flats

The only issue where the right to restitution of immovable property has been disputed is the issue of the so-called “military flats”, the flats from the housing stock of the former JNA. This issue is important because of the relatively large number of such flats (16,000 of about 250,000 flats in BiH). The issue of military flats is approached differently in the entities of BiH. The Republic of Srpska has returned flats to the former JNA officers, regardless of whether they moved to Slovenia, Croatia, Serbia, Macedonia, Montenegro or the Federation after the war. In the BiH Federation, the legislation in this area ranged from complete denial of the right to restitution, through gradual facilitation of the conditions necessary for people to be entitled to restitution of “military flats”, to some setbacks even and changes in the law that left the applicants for restitution in a more disadvantaged position compared to the previous situation. As the legislative changes mainly consisted of the interventions of the High Representative of the United Nations for BiH, who had the right to issue decrees on changes in the law, it can be concluded that progress in terms of restitution of “military flats” in the Federation ceased when the High Representative had lost his interest in this area. Such a situation lasted until May 2010, when the European Court of Human Rights in Strasbourg ruled in the case of Branimir Djokic against BiH. The complainant in this case did not, according to the regulations of the Federation of BiH, fulfil the conditions for restitution of the flat, although the flat had been purchased, because after the war in BiH he was a member of the armed forces outside BiH (Yugoslav Army). The Strasbourg Court found a violation of the right to peaceful enjoyment of possessions and committed Bosnia and Herzegovina to pay him compensation at the amount of the market value of the flat (60,000 Euros). This verdict directly confirms that the most direct federal legislation in this area is not in accordance with Annex 7 of the Dayton Agreement. The key provision of Article 1 of this annex contains the following clauses: “All refugees and displaced persons have the right to freely return to their homes of origin. They shall have the right to restitution of property of which they were deprived in the course of hostilities starting from 1991

23 Law on the Sale of Apartments with Occupancy Rights, published in Official Gazette of Federation BiH No. 27/97, 11/98, 22/99, 27/99, 7/00, 32/01, 61/01, 15/02, 54/04, 36/06, 51/07, 72/08 and 23/09
24 Decision on the case Đokić versus BiH (Application No. 6518/04)
and to be compensated for any property that cannot be restored to them.” It is realistic to expect that after this verdict, despite the disapproval and announcements by political structures in the Federation that the verdict will not be implemented, a fair solution of the only unresolved issue in the field of restitution of property rights in BiH will be reached.

4.1.3 Length of administrative proceedings, administrative disputes and disputes before regular courts

A large number of requests for property restitution have been returned from administrative disputes to administrative proceedings and vice versa, and this is constantly being repeated. Therefore, some cases have been pending for many years, which is in any case contrary to the need for accelerated resolution of property restitution. Administrative and judicial authorities in administrative procedures and administrative disputes should consistently adhere to the relevant provisions of the Law on Administrative Procedures and Law on Administrative Disputes, to ensure faster resolution of property proceedings/disputes, with a view to faster and more complete implementation of Annex 7 of the Dayton Peace Accords. Furthermore, problems related to the duration of civil proceedings before the competent courts are much in evidence, in cases where the court has to decide upon a preliminary issue (e.g., cancellation of contract on the property replacement). It is therefore recommended to the competent courts in BiH to solve the cases/claims related to preliminary issues regarding cancelled administrative procedures with the local housing authorities on an expedited basis, and thus contribute to the timely completion of procedures for property restitution, as well as to raising the level of legal security.

4.1.4. Impossibility of return of displaced persons and refugees to their pre-war homes

Some owners and tenants are unable to in fact realise their right to restitution of property because the property does not exist, or exists but has other purposes. Restitution mechanisms should be established so that the authorities responsible for restitution of housing units that have been destroyed, expropriated, or where zoning and regulatory plans have been changed by third parties, etc., should make possible the return to the previous status through restoration, assignment of other housing units or equitable compensation.

4.1.5. Special cases

1. There are a substantial number of unsolved cases related to Article 4 of the Law on Housing Relations. This Article regulates the issue of assignment of flats for temporary accommodation, such as temporary workers' flats on construction sites, barracks and suchlike, flats assigned ex officio, facilities for emergency shelter, for which tenancy rights could not be acquired. The laws that regulated property restitution and judicial practice that emerged from these laws have


According to the records of the Association of Military Pensioners, another 300 former member of JNA have not managed to restore property in FBiH, and experts in property-rights issues claim that the authorities will have to treat each person individually in accordance with the final decision of the court in Strasbourg. (http://www.nacional.hr/clanak/89233/dw-federacija-bih-u-strahu-od-bankrota-zbog-vojnih-stanova)

prevented a significant number of people from returning to their pre-war homes. The restitution mechanism should be constructed so that the relevant entity, cantonal and municipal authorities ensures to the displaced people, whose residential units were under Article 4 of the Law on Housing Relations, return to their pre-war homes. In cases where this is not possible, and returnees meet the necessary legal requirements, relevant authorities should urgently settle these cases through social housing programmes/projects.

2. A specific problem concerning the return of property and tenancy rights is present in the Republic of Srpska and refers to restitution of property and flats that were the subject of the transfer of the right of disposal (replacement, sale, etc.) during the controversial period between the Republic of Croatia-Bosnia and Herzegovina, mainly in the territory of the Republic of Srpska. In such cases, the administrative proceedings were terminated, and the competent courts resolve as a preliminary issue the validity of the contract on transfer of the right of disposal, and after the verdicts, the administrative authorities in the Republic of Srpska continue the enforcement proceedings. In resolving the fate of the replaced property, unilateral enforcement of final court judgments occurs only in Bosnia and Herzegovina and the Republic of Srpska, and so one side has the right to purchase the flat in two countries, while the other side has lost this right in both countries. Therefore, in these legal situations it is necessary to ensure that foreign court judgments are recognised, i.e. that the courts in Croatia recognise the judgments according to which the enforcement procedure would be simultaneously conducted based on the principle of reciprocity. In this way, the parties that were partners in the replacement of property would be enabled to come into possession of their property and the property that has been the subject of transfer of the right of disposal.

4.2. Compensation

Apart from the right to return freely and the right to property restitution, Annex 7 of the Dayton Peace Accords guarantees the right of all refugees and displaced persons to compensation for property that cannot be returned. It also provides the mechanism for exercising the right to compensation. A large number of refugees and displaced persons have filed compensation claims with the Commission for Displaced Persons and Refugees, while others have filed a lawsuit in courts for the same purpose. Meanwhile, the mandate of the Commission for Displaced Persons and Refugees (CRPC) in Bosnia and Herzegovina has ceased, since when the authorities in Bosnia and Herzegovina have formed the local Commission for Property Claims of Displaced Persons and Refugees. Its mandate is to resolve requests for reviewing decisions of the Commission for Property Claims of Displaced Persons and Refugees, received during the mandate of the “Dayton” commission, but which could not be considered and resolved. During its mandate, the “Dayton” Commission did not solve the issues of rights to compensation, but only confirmed the property, and the tenancy rights of the immovable property of displaced persons and refugees. Compensation has still remained inaccessible in practice. Even 15 years after the Dayton Peace Accords were signed, there is still resistance to the introduction of formal compensatory mechanisms in Bosnia and Herzegovina. The reasons for that are numerous and varied, including the high costs and burdens for the state budgets that any form of compensation scheme could bring about.
The explanation of the OHR on the meaning of this restitution under Annex 7 of the Dayton Peace Agreement has been generally accepted, i.e. that it is only about compensation for a housing unit or home. Therefore, the compensation is not an attempt to achieve an overall compensation for all losses that people have suffered in war. In other words, the compensation in terms of Annex 7 is currently the way to assist people who cannot return in finding a lasting solution, by accessing the right to a home. Therefore, the amount of the compensation should be limited to an amount adequate to ensure minimum living conditions in accordance with the existing regulations.

4.3. Reconstruction of destroyed or damaged housing units – specific form of housing and property restitution

Out of about 1.1 million housing units recorded in the last population census of 1991, in the period from 1992 to 1995 453,000 housing units in Bosnia and Herzegovina were destroyed or damaged, representing about 42% of the pre-war housing stock. Destruction of the housing stock has continued even after the Dayton Peace Accords, and in the period after 1995 additional 14,000 housing units were devastated, of which most (80%) is in the territory of the Federation.27

About 317,000 residential units have so far been reconstructed in BiH, which makes for a reconstruction rate of about 68%. Of this number, about 232,000 housing units were rebuilt in the Federation, about 72,000 in the Republic of Srpska, and about 12,000 in the Brcko District. It is estimated that nearly two thirds or about 200,000 housing units have been reconstructed by international and local donations, while the remaining third, mostly less damaged buildings, were rebuilt with the private funds of owners and tenancy rights holders. Based on data collected in the field from competent municipal services, there are still 150,000 unreconstructed housing units in BiH, or 32% of all damaged or destroyed housing stock. Most of these housing units were badly damaged, to the point of complete devastation. In the Federation of BiH there are about 80,000 unreconstructed housing units, which makes for the rate of 26% destroyed and damaged housing stock in the Federation, in the Republika Srpska about 66,000, or 48%, and in the Brcko District about 3,000 unreconstructed housing units, which makes for the rate of 20% of the destroyed and damaged housing stock.

According to the indicators identified in the requests to return submitted up to early 2008, it is urgently necessary to restore at least 45,000 housing units, and the value of the renovation is estimated at around 300 million euros. It is also necessary to restore about 450 apartment buildings with 2,500 flats, or about 1% of this type of housing stock from 1991.

The planned budget funds are insufficient for dynamic reconstruction and there is no general plan and programme of reconstruction. The general legal framework has also not been determined, so that refugees and internally displaced persons in BiH, whose residential property has been damaged or destroyed, can be guaranteed by the state the right to reconstruction under the equal conditions.

27 Revised Strategy of BiH for the implementation of Annex 7 of the Dayton Peace Accords, Sarajevo, October 2008
A significant number of reconstructed housing units are not used or used only occasionally, since not all the necessary conditions for sustainable return have been simultaneously created, from the construction of infrastructure to employment opportunities.

4.4. Employment and the right to work

Employment opportunities in BiH are very limited, given the difficult condition of the economy. There is still a large part of the economy that consists of the activities of the international community - both in terms of direct foreign assistance and the money that a large number of international representatives and officials in the country spend while performing their duties. The total number of unemployed workers in BiH is 502,301. The average unemployment rate in BiH is 42.1 percent, and the Republic of Srpska is 35.1. This means that the unemployment rate is higher than 49 percent in the Federation. Particularly worrying is the fact that among those who seek employment, 22,856 are university graduates, and the fact that in BiH only 688,636 people are employed. The picture is even grimmer given the fact that BiH has a population of about 3.8 million people. Of the total number of the unemployed, 142,074 people are looking for jobs in the Republic of Srpska, 351,444 in the Federation and 10,000 people in the Brcko District.

Regarding the issue of restitution of acquired rights in other areas, the situation is far from the accomplishments achieved in the restitution of immovable property. The return to pre-war jobs is not secured in any entity of Bosnia and Herzegovina, and this is largely caused by the severe state of its economy and very little employment opportunities. In this regard, the Federation, unlike the Republic of Srpska, made an attempt to resolve this issue in 1999, when the application for the restitution of the employment status was made possible. Unfortunately, this attempt was unsuccessful, because the rights of those who had received a positive decision on his application, based on subsequent changes in the law, have been reduced to the formal establishment of legal employment status, termination of that status after six months and a symbolic severance pay. The inefficiency of this process can be illustrated by the fact that some of the procedures related to the execution of the restitution of employment status are still pending.

When it comes to the right to participate in the privatisation of socially-owned enterprises, that right was available to all persons who were citizens of BiH and had pre-war residence in its territory. The issue of payment of old foreign currency savings has been gradually resolved, although slowly and in a way that does not satisfy many depositors.

4.5. Rights arising from the pension and disability insurance

The rights related to pension and disability insurance belong to the most important acquired rights, both because of their volume and the fact that they are practically the only source of livelihood of the oldest refugee population. The many years of vacuum in establishing relations in the field of social security between Serbia and Bosnia and Herzegovina, have deepened the existential problems of many refugees.

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28 Jobless event with the university diploma, Politika, December 5, 2009
29 Labour Law (“Official Gazette of FBiH”, No: 43/99, 32/00 and 29/03)
The problem of paying pensions acquired before the war and pensions earned by 2004, when the Agreement on Social Insurance between BiH and Serbia (SR Yugoslavia)\textsuperscript{30} came into force, is still a subject of court proceedings in BiH. It must be emphasised that most of the pensioners in that period received pensions from the Pension Fund of Serbia, which in certain periods, were lower, higher or equal to the pensions they would receive from the fund in which had acquired their pensions. In May 2010, by signing the amended Agreement on Social Insurance between BiH and Serbia, the injustice was corrected that, at the expense of pensioners and the reduction in their pensions, debts were settled between the pension funds of the two countries.

The persons who fled from Bosnia and Herzegovina and who acquired years of service in that country\textsuperscript{31}, most often face the following problems in realisation of rights related to pension and disability insurance:

- Most of the insured have the problem of obtaining the documents needed for retirement eligibility, since many were destroyed or disappeared during the war in BiH.\textsuperscript{32} In addition, the widespread practice of the competent authorities in BiH entities is to ask citizens to obtain various documents concerning the facts about which they or other agencies or services keep official records and which, by law, they are obliged to obtain;
- Cross-border procedures for the settlement of the rights related to pension and disability insurance are too long. The cooperation is not always at such a level that enables the efficient implementation of the Agreement on Social Security between the FRY and BiH;
- Although the law obliges authorities to provide assistance to parties to the proceedings and provides a precise deadline for carrying out actions in the procedure, in practice the assistance is often lacking, and the legal deadlines are exceeded repeatedly;
- It is the practice that after a complaint has been filed, the documents are held too long illegitimately by the authorities that had resolved the case in the first instance, instead of being immediately sent to the competent appellate authority, as specifically provided by law.

5. Croatia

The sustainable return of refugees to the Republic of Croatia largely depends on the access to their property and other acquired rights, such as:


\textsuperscript{31} In Serbia, there are around 4,000 pensioners from BiH. Approximately the same number lives in BiH, but has earned their pensions in Serbia.

\textsuperscript{32} Years of service, at least formally, can be proved by the following documents: the workbook, legal decision on the years of service, decision on the employment relationship, the decision on the deployment to a certain position and the decision on termination of employment, information on personal income and insurance period, a copy of a health insurance card or other document. In practice, these documents are not always sufficient for the realisation of rights arising from pension and disability insurance.
5.1. Tenancy rights and housing

Besides employment, housing is the most important precondition for the return of refugees and their families. According to estimates of the OSCE, about 100,000 Serbian refugees from urban areas have been deprived of tenancy rights in Croatia. Resolution 1120 of the United Nations Security Council of July 14, 1997 confirmed the right of all refugees and displaced persons originating from Croatia to return to their original homes in Croatia or the homes in which they had lived before their exile. Instead of treating the issue of deprivation of tenancy rights of exiled Serbs as a human rights issue, as stipulated by the Resolution, as a solution Croatia has offered the Housing Programme as a humanitarian and social measure, arising from the Croatian position “that there are no legal obligations to the former holders of tenancy rights”. “According to the government, the provision of housing assistance, in this context, would not be a form of reparation or substitution for the past dispossession, but rather an act of benevolence”, is how it is written in the HRW report.

33 The OSCE Mission to Croatia, Housing Options of Former Tenancy Rights Holders, April 2005. In Serbia and Montenegro alone, there were 43,283 former holders of tenancy rights in Croatia (according to the registration of refugees and other war-affected persons in Serbia in 2001 and the registration of refugees in Montenegro, 2001). A part of them was able to sell flats or replace them, but the majority was deprived of tenancy rights. The OSCE Mission to Croatia, in its document Access to Housing for Refugees of April 2005, reported that about 30,000 families were deprived of tenancy rights. The same data can be found in the Human Rights Watch’s report: Croatia, broken promises - obstacles to the return of refugees to Croatia, of September 2003. Of that number more than 23,800 tenancy rights were suspended in individual court cases in the towns outside the areas of special state concern, owing to the absence of tenancy rights holders for longer than six months. Around 6,300 flats were confiscated by force of law after the expiry of the 90 days of absence of tenancy rights holders in the areas of special state concern.

34 In late January 2010, the Committee on Migration, Refugees and Population of the Council of Europe adopted a Resolution on Resolving the Housing Issues of Refugees and Displaced Persons, which would facilitate the return of the property they lost in the context of war. The Committee recommends the adoption of the so-called Pinheiro Principle of residential housing and property restitution for refugees and displaced persons, which was in 2005 compiled by the Centre for Housing Rights and Evictions (COHR), consulting the UN agency. The Pinheiro Principles relating to the holders of occupancy rights are: “States should ensure the recognition of the rights of tenants, tenancy rights to socially owned apartments and other legal residents under the program of return, i.e. restoration of rights. States should, in the broadest possible scope, ensure the return and the introduction of the possession and use of their housing, land and property in a manner similar to that applied to the formal owner.” The Pinheiro Principles and the Resolution of the Council of Europe believe that the restitution or return of the houses and flats in which refugees and displaced persons lived earlier, is the optimal method of their compensation, and must thus be given priority over other forms of compensation. The Principles and the Resolution very strictly define the circumstances under which restitution is not possible, as in cases where the property is destroyed and no longer exist or when the victim has voluntarily accepted some other form of compensation. In addition, the resolution requires that the “tenancy rights in the former communist systems for homes and possessions be recognised and protected, and that the absence of tenancy rights holders who were forced to leave their homes” is “deemed as reasonable.” The Pinheiro Principles emphasise that “right to return should not be subject to arbitrary or unlawful time limitations,” as was the case in Croatia, and that the right to property should not be prejudged, which means that it should not be conditional upon the return of refugees themselves in Croatia. The Committee believes that Croatia still needs to fulfil its obligation under the Sarajevo Declaration of 2005, to provide a "fair and square" solution for former tenancy rights holders who do not intend to return to Croatia, or otherwise cannot benefit from housing schemes.

Such an attitude is found expressed in the case of *Vojnović v. Croatia* before the UN Committee for Human Rights. The Croatian government believes through the assignment of the flat by the housing programme, Vojnović was enabled to “regain his pre-war de facto position with regard to his housing situation. The newly protected status of the tenant and obtained rights are essentially identical to the status he had as a former holder of occupancy rights, including rights of family members. The Croatian Government therefore believes that by giving the apartment, appropriate compensation was ensured, as stated in paragraph 10”.

The UN Committee on Human Rights in this particular case considers that the abolition of tenancy rights under Croatian law is an arbitrary interference with the right to a home, which is a violation of Article 17 of the International Covenant on Civil and Political Rights. Termination of tenancy rights is considered arbitrary, as it has been done in an unjust and discriminatory manner. The Committee, citing a violation of Article 17, states that any interference in housing should be lawful and not arbitrary or illegally. Since the termination of occupancy rights was in accordance with Croatian law, the question before the Committee was whether the termination was arbitrary. The Committee emphasised, in regard to the concept of arbitrariness in Article 17, "... That even interference provided by law shall be in accordance with the provisions, goals and objectives of the International Covenant on Civil and Political Rights (ICCPR) and should be, in any case, justified by particular circumstances." On the basis of the threats and intimidation experienced by Dusan Vojnovic and his family as members of the Serbian minority, and bearing in mind the armed conflicts that took place in Croatia during the relevant period, the Board has formed the opinion that the departure of the prosecutor and his family from Croatia "was caused by duress in relation to discrimination.” The Committee concluded that in these circumstances, revocation of occupancy rights was arbitrary and in violation of Article 17 of the ICCPR.

While international documents and decisions place the issues of deprived tenancy rights in the human rights framework, the Croatian government treats them only as a humanitarian issue. The current policy on solving the problem of deprived tenancy rights is based on the reduction of human rights to a humanitarian problem, and therefore, not on a legal but on a non-legal standpoint, as a humanitarian programme, not a compensation programme (in kind or cash), and in a discriminatory manner. The housing programme, as an expression of the state’s mercy towards returnees, introduces lower housing standards and therefore discriminates against housing beneficiaries compared to the vast majority of citizens of Croatia who have privatised (purchased) flats. In addition, it has created unjustified differences (different legal status) even among certain groups of housing beneficiaries, thus allowing discrimination against citizens or putting one group in a disadvantaged position compared to another.

The Government of the Republic of Croatia with its Decision of September 2, 2010 enabled housing beneficiaries (holders of deprived tenancy rights) outside the areas of special state concern to purchase (privatise) the apartments that they lease. The Decision stipulates

36 UN Doc CCPR/C/95/D/1510/2006 (April 28, 2009)
37 The Decision on the Sale of Apartments owned by the Republic of Croatia was published in “The Official Gazette” No. 109 of September 20, 2010 and came into force on September 28, 2010. The housing programme is realised in compliance with the Conclusion of the Croatian government on housing for returnees who do not own a house of a flat but who lived in socially-owned flats (former tenancy rights holders) in the territory of the Republic of Croatia (“Official Gazette”, No. 100/03, 179/04 and 79/05).
conditions for the purchase of flats which are less favourable than those that were applicable to all other Croatian citizens in the privatisation of flats. Citizens differ in the extent of the rights they are entitled to, including in the different ways of calculating the purchase price of the apartments – some citizens are able to privatise flats at a cost of 10% of their market value, others at a cost of 30% of their market value, the third group at a cost of 50% and more than their market value, and the fourth group get them for free.

It is undisputed that the legislature can help the position of vulnerable social groups. However, in order to introduce measures of so-called affirmative action, there should be a reasonable and objective justification for differences in treatment between different groups of housing beneficiaries. Are the newly received Croatian citizens, former refugees from BiH, whose flats in BiH have been returned to them, in a more vulnerable social position than refugees and displaced Croatian citizens of Serbian nationality, whose flats have been seized and not returned, or is the situation reversed? The former, to whom flats have been given away in Croatia in the areas of special state concern, have not paid any contributions for the construction of their flats in Croatia, while the latter have, and by the Decision they are prescribed conditions that are less favourable than those that were valid for all other Croatian citizens in the privatisation of flats.

It is obvious that the so-called different treatment justification test has not been fulfilled. Therefore, the introduction of an unequal legal regime for housing beneficiaries and the different treatment of nationals and the placing of one group in a far better situation than another in defining rights to purchase a flat, when their situations are entirely comparable, lead to direct discrimination, since the distinction is based on nationality. In this case, it is the legislation which puts members of one ethnic group in a privileged position in relation to members of other ethnic groups, even though they have similar status and are in a similar situation.


The Decision imposes an excessive burden of proof on housing beneficiaries, i.e. means of evidence (documents) when applying for the purchase of a flat. With a request to buy a flat, it is necessary to submit at least 14 documents for the tenant and a similar number of documents for each member of his/her immediate family, and then, among other items, proof of residence or temporary residence in the flat that is the subject of sale and for all places of residence since May 30, 1990. The obligation to submit such a large number of documents is not in accordance with the standards of international humanitarian law, with respect to the causes and nature of refugee status, and requires from the states a simplification of procedures and easing of the conditions for accessing the rights of refugees, by determining, among other matters, the minimum obligation for the most necessary documents or means of providing evidence.

Housing beneficiaries who have concluded a lease agreement, can apply to purchase the flat within one year from the effective date of this decision or the date the lease agreement is signed.
Given the difficult material and overall socio-economic situation of most of the refugees who are present and future housing beneficiaries, as well as the large number of documents that need to be obtained, the one-year deadline to apply for purchasing a flat is not long enough. Furthermore, the stipulated deadline should take into account the principle of equality of citizens. Unequal stipulated deadlines for purchasing, leading to inequalities in the positions of buyers, would be inconsistent with the Constitution of the Republic of Croatia.

Due to the current very restrictive conditions, the Housing Programme will provide housing for a very limited number of holders of deprived tenancy rights (covering only about 5% - 10% of the existing housing problems). 38

Having in mind the severity of these problems, their continuing negative consequences for some 100,000 refugees who have been denied return to their homes, mostly in urban areas, it is necessary to finally resolve this issue in a comprehensive, equitable and sustainable manner, in accordance with international human rights standards and the international legal obligations of the Republic of Croatia. The negotiations and alternative measures implemented so far to fulfil the needs of victims have been a complete failure.


Croatian legislation has not regulated housing in uniform manner, but by particular regulations, each of which is applied only in a part of the territory of the Republic of Croatia. What is more, they are at a different legal level (and with different legal powers) from the hierarchy of the legal system, with its organs and legal documents. Housing inside the areas of special state concern care is regulated by laws passed by the Croatian Parliament as a legislative body, and outside the areas of special state concern, by a conclusion or decision passed by the Croatian government as the executive authority.

The consequence of such a fragmented legal framework is the existence of an unequal legal regime for all housing beneficiaries in the territory of the Republic of Croatia. Croatian citizens are not in the same legal position as to the condition for the realisation of housing, the content and scope of the law, deadlines, possibilities for using legal remedies and the conditions for privatisation of houses and flats. 40

38 According to the Croatian authorities, by September 1, 2009, 13,655 housing claims were received, including 4,576 outside and 9,119 inside the areas of special state concern.
39 - Decision on Housing of Returnees – former tenancy rights holder outside areas of special state concern, Official Gazette, No. 29 of March 09, 2011.
- Regulation on the Purchase of a Family Home or Flat owned by the State inside the areas of special state concerns, Official Gazette, No. 19 of February 11, 2011.
40 The report by Raquel Rolnik, the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, states that in Croatia she “was faced with problems caused by cumbersome and complex administrative procedures and regulations whose effects are slow, and by non-transparent processes where clear responsibility is lost. Overlapping laws, regulations and by-laws have created a complex framework that has opened a space for discretionary decisions and the adoption of a variety of solutions for people who during the socialist and pre-war era enjoyed the same tenancy rights.”
The latest Decisions of the Croatian government have resumed the practice of regulating housing by particular regulations, which results in maintaining and deepening differences among Croatian citizens in terms of housing.

5.1.2. Decision on housing of returnees – former tenancy rights holders outside the areas of special state concern

This Decision tightens the conditions stipulated by the Conclusion regarding the territorial framework, i.e. the condition that a person does not own or co-own another habitable family house or flat; and thus the condition extends territorially (not only into the countries of the former SFRY, as was stipulated by the Conclusion, but also into other countries where the person resides - in other words, anywhere on Earth).

In contrast to the Decision, the Conclusion does not contain the adjective habitable, i.e. that a person does not own or co-own another habitable family house or flat,... or that they have not sold, donated or otherwise alienated it. The requirement for housing, according to the Decision, is therefore also fulfilled if a person owns or co-owns another uninhabitable family house or flat.

5.1.3. Comparative review of the Decision and the Law on the Areas of Special State Concern

According to Article 10 paragraph 3 of the Law on Areas of Special State Concern, the right to housing can be achieved also by a beneficiary who co-owns a house or flat, and whose area is less than that required by the Law on Reconstruction (35 m² for the first member and 10 m² for each subsequent family member). Neither the Conclusion nor the Decision contains this legal provision.

With regard to the above mentioned conditions for housing, matters stipulated by the Decision are sub-standardised, which results in different conditions for housing. Thus housing applicants inside and outside the areas of special state concern are in an unequal position.

the most striking examples concerns the right of the former holders of tenancy rights to stay in their homes and buy them at very favourable terms,” noted Rolnik. “Although a large number of tenancy rights have succeeded in that, those who lived in privately owned or military housing, and returnees who during the war were forced to leave their homes, were in fact prevented from doing so”. Rolnik strongly recommends that the government “reconsider and reopen the application process for programs that will provide permanent housing solutions, which would include areas outside of special state concern.” She also urges the Government to determine and institute uniform procedures relating to the tenancy of all people with similar starting occupancy rights, including the ability to purchase houses in which they live under favourable conditions. (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Ms. Raquel Rolnik, Mission to Croatia - 4 to 13 July 2010)

41 The Decision was adopted by the Government in the closed part of its session on March 3, 2011 and entered into force on the day of its publication in the Official Gazette on March 9, 2011. On the day of its entry into force, the Conclusion on housing of returnees who do not own a house or flat and who lived in socially owned apartments (former holders of tenancy rights) in areas of Croatia, which are outside the areas of special state concern ceased to be valid (Official Gazette No. 100/2003, 179/2004 and 79/2005).

42 Article 24 of the Law on Restitution (Official Gazette, No. 24/96, 54/96, 87/96 and 57/00).
5.1.4. Decision of the sale of flats owned by the Republic Croatia and the Regulation on the conditions for the purchase of a family house or a flat owned by the state in the areas of special state concern

According to this Regulation (Article.5, paragraph 2), the tenant is obliged to submit, along with the request for purchasing a house or flat in the area of special state concern, only a confirmation that he/she is not entitled to housing under some other regulation and at the expenses of the state budget.

Unlike other tenants in the ASSC, tenants who, because of the war situation, could buy flats, do not have the right to buy a flat in the Croatian Danube region if they have another habitable residential unit in the territory of the Republic of Croatia. This also goes for those tenants who have sold, donated or otherwise alienated a habitable residential unit since October 8, 1991, and those tenants who have been housed by another regulation, at the expense of the state budget (Article 4, paragraph 3 of the Regulation).

From the above mentioned, it can be concluded that the conditions for sale vary depending on whether the flat is inside or outside the ASSC, and, inside the ASSC, also depending on whether the flat has been given to be used within the housing programme or not.

Obviously there are very different conditions for buying a flat and in that respect people are not in an equal position.

Purchase prices, determined by the Decision and the Regulation, as a rule, are not in line with the socio-economic potential of housing beneficiaries. The financial difficulties of tenancy rights holders have proved to be the most important problem in the realisation of the purchase of most socially-owned flats in Croatia, although these flats have been privatised at the price of only 10% of their market value. The financial difficulties of housing beneficiaries in terms of purchase opportunities are even greater because the purchase price, determined by this Decision, is several times higher than the purchase price at which the majority of socially-own flats in Croatia have been privatised. In addition, housing beneficiaries had or still have refugee status and, as refugees, are among the most vulnerable social groups, and therefore it is necessary to define additional programmes and measures of affirmative action, i.e. introduce positive discrimination in order to overcome their vulnerable social position. However, by this Decision, they are put in the least favourable position when it comes to the method of calculation and the amount of the purchase price of flats.

5.1.5. Comparative analysis of the Decision, Regulation and Law on ASSC with regard to privatisation of houses and flats

The Croatian legislation has not regulated the privatisation (purchase) of flats in a uniform way, but by particular legal regulations of different legal force, which require unequal conditions for the privatisation of flats. Citizens differ in the extent of the rights they are entitled to, including in the different ways of calculating the purchase price of the flat.
The particular regulations establish unequal conditions for the privatisation of flats, as some citizens are entitled to the privatisation of flats at the cost of 10% of their market value, others at a cost of 30% of their market value, the third group at a cost of 50% or more of their market value, but some free of charge.

Table of unequal conditions in exercising the right to purchase a flat

<table>
<thead>
<tr>
<th>Type of regulation</th>
<th>Purchase price of the flat</th>
<th>Discount when paying in advance</th>
<th>Time limit for instalment payment</th>
<th>Annual interest rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law on the Areas of Special State Concern</td>
<td>Free of charge for certain housing beneficiaries (Article 10, paragraph, 2, sub-paragraph 3 of the Law)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Law on the Sale of Flats with Tenancy Rights</td>
<td>10% of the market value</td>
<td>30%</td>
<td>Up to 25 years</td>
<td>1%</td>
</tr>
<tr>
<td>Regulation on conditions for the purchase of a family house or a flat owned by the state in areas of special state concern</td>
<td>30% of the market value</td>
<td>50%</td>
<td>Up to 25 years</td>
<td>2%</td>
</tr>
<tr>
<td>Decision on the sale of apartments owned by the Republic of Croatia</td>
<td>50% and more of the market value and in some cases at the market value or even more</td>
<td>15%</td>
<td>Up to 20 years</td>
<td>4%</td>
</tr>
</tbody>
</table>

The principle of equality of citizens before the Law requires that the legal status and legal regime for people who are in the same or a similar legal situation must be regulated in an equal manner for all. This table shows that the unharmonised legal framework has created a basis for discrimination against citizens.

Examples:

- Newly admitted Croatian citizens who are former refugees from BiH of Croatian nationality, have not only been returned flats and houses in Bosnia, but on top of that, they have been given the flats of Croatian citizens of Serbian nationality who have been deprived of their tenancy rights,
- Refugees of Serbian nationality have not only been deprived of the flats in which they lived before the war, but are not entitled to be given a flat owned by the state, unlike in the case with former refugees from BiH of Croatian nationality,
- The new Law on Areas of Special State Concern eases conditions for giving a house or a flat to Croatian citizens who are former ethnic Croat refugees from Bosnia and Herzegovina, so that they can keep returned houses and apartments in Bosnia and Herzegovina and in addition be given a flat or a house in Croatia, because the condition for the realisation of the right to housing of not having another housing unit refers only to a housing unit on the territory of the Republic of Croatia (until the new Law on Areas of Special State Concern came into force, the condition was not having ownership or co-ownership of a family house or flat in the territory of the states formed upon the disintegration of the SFRY).
- The new law does not ease the conditions for the realisation of the right to housing for ethnic Serb Croatian citizens. On the contrary, it makes them more difficult, as it now stipulates that the condition is not only not having ownership or co-ownership of another habitable property in the territory of the states formed upon the disintegration of the SFRY, but also in any other states in which they reside anywhere in the world, or that they have not sold or gifted or in any other way disavowed such property since October 8, 1991, or acquired a protected leasehold.

5.1.6. Concluding remarks

Besides employment, housing is the most important precondition for the return and integration of refugees and displaced persons and their families. The solution of this important and painful issue for many refugees and displaced people should be sought in accordance with international human rights standards and the international legal obligations of the Republic of Croatia. It is necessary to significantly improve the current housing pattern in such a way as to introduce the same legal regime for all potential housing beneficiaries in the territory of the Republic of Croatia, primarily in terms of the contents and scope of rights, including as regards the right to purchase a flat, deadlines and possibilities of legal remedies. Croatian legislation should establish a legal framework that will solve the problems of all holders of deprived tenancy rights (not just returnees) in a just and comprehensive way.

5.2. Restoration of property

The greatest progress in the realisation of returnee rights in Croatia has been made precisely in the reconstruction of houses owned by Serb returnees. Around 147,000 houses have been restored so far, with two thirds of that number referring to Croat owners. In the second instance proceedings, there are more than 5,000 requests for reconstruction. This high number of requests for reconstruction shows that the reconstruction of destroyed or damaged houses and flats will not be completed within the announced deadlines.
Inconsistent and uneven practices in the implementation of the Law on General Administrative Procedure\textsuperscript{44}, especially in the first instance, as well as numerous errors in the procedures for assessing damage, have prolonged the settlement of the reconstruction requests for several years. There are cases where the reconstruction has not even started, although it has been more than three years since the reconstruction agreement was concluded. Therefore, the definition of deadlines for the completion of reconstruction works, without any additional requirements, is one of the basic conditions for the return of refugees.

Reconstructions are not followed by appropriate investment in the development of these predominantly rural areas, which are economically underdeveloped and devastated. Reconstruction alone, without programmes of economic support for reintegration through job creation, including the renovation and construction of the necessary infrastructure, cannot ensure the sustainability of return. Due to the lack of living conditions for sustainable return, many owners of restored houses do not reside permanently in these facilities. By referring to the circumstances of impermanent residence in reconstructed housing units, the competent Public Prosecutor's Office in the Republic of Croatia has been increasingly instituting legal proceedings against refugee owners of the restored residential units for a refund of the reconstruction funds with the corresponding legal interest, and placing them under threat of losing the residential property, which drives refugees into a hopeless existential situation.

5.3. Employment

Economic development and employment in the areas of return is one of the key conditions for sustainable return to Croatia. According to the Study of the Sustainable Return of Minorities in Croatia of 2007, the returnee population is older and poorer than the average population in Croatia. The average age of returnees is 51, while the average age of the general population is 39. More than 37% of returnees are older than 65 and every fifth household includes a person who is approximately 67 years old. About 11% of returnees have no other income other than humanitarian assistance, and 46% are retired. About 40% of working age refugees are unemployed, compared with 12% of the general population.

This age-related social structure requires the initiation of special programmes for assistance to the elderly population, as well as to young people who are in specific situations.

Although a system of support for entrepreneurs in the creation of jobs has been established, these incentives have mainly bypassed the areas of special state concern. Furthermore, active measures to attract foreign capital and foreign investment are particularly missing, including for Serbian business people, whose economic investment and business in Croatia is subject to restrictions. Employment in the public sector is nominally limited or completely eliminated, and the number of Serbs in the civil service is well below their share in the total population of Croatia. There has not been any significant progress in ensuring proportional representation of the Serbian ethnic community in the state administration and judicial bodies. For the Croatian government, the reason for that is the adverse climate caused by the recession, which is a universal excuse which often conceals the absence of effective political will and of real concrete measures to resolutely implement the provisions on the proportional

\textsuperscript{44} “Official Gazette”, No. 53/91 and No. 47/09
representation of members of the Serbian ethnic community in the state administration, judicial authorities and administrative units of local governments.\textsuperscript{45}

In support of such an assessment can be included some elements of negative evolution in this field as regards legal practice in Croatia. Specifically, the latest changes and amendments relativise the provisions of the Constitutional Law on National Minorities of mid-June 2010\textsuperscript{46} on the rights of national minorities to proportional representation in state administration bodies, and in judicial and government bodies, by adding the words “in accordance with the provisions of the special law and other legislation on the employment policy in these bodies” and “in accordance with the provisions of the special law that regulates local and district (regional) governments and other legislation on the employment policy in these bodies”. Thus a legal basis is provided for concealing a policy of inaction and lack of concrete measures to encourage the employment of ethnic minorities in the relevant bodies.

The economic prospects of the returnee are also radically hampered by the fact that refugees from Croatia, in contrast to other Croatian citizens, and unlike the refugees from BiH who have realised that right in BiH, are excluded from the process of ownership transformation (privatisation) and from the exercise of rights to shares, on grounds of employment and work experience, and are thus deprived of their acquired rights.

In the current bad economic situation in Croatia, marked by the high unemployment rate, with many Croats unemployed, employment opportunities for Serb returnees are minimal, as well as economic and existential opportunities for returning to Croatia.

5.4. Rights arising from the pension and disability insurance

The rights related to pension and disability insurance in the case of refugees originating from the Republic of Croatia are among the most important acquired rights, both because of their scope and the fact that they are practically the only source of livelihood of the oldest refugee population. The fact that for a very long time there has been no progress in establishing relations in the field of social security between Serbia and Croatia, has widened the existential agony of many refugees.\textsuperscript{47} Here, we will describe the problems of refugees from Croatia\textsuperscript{48} in this field.

\textsuperscript{45} In the opinion of the Government of the RC, the legal framework enables the achievement of minority representation in the bodies of the state administration and judiciary, but that goal, despite the measures undertaken, has not been achieved, among other things because of adverse conditions caused by the recession. In some bodies of the state administration and judiciary, in the respective units of local government, the implementation of Article 22 para. 2 and 3 of the Constitutional Act is not realised. The central statistical monitoring of employment has not been ensured. (Report on the Implementation of the Action Plan for the Implementation of the Constitutional Law on National Minorities for 2008 and 2009, Zagreb, September 2010. page 69)

\textsuperscript{46} “Official Gazette”, No. 80/10

\textsuperscript{47} The Agreement between the Republic of Croatia and the then Federal Republic of Yugoslavia on Social Insurance, signed on 15 September 1997 was ratified by the Federal Assembly of the FRY as late as May 2001, (Official Gazette - International agreements, No.1/01) and the Croatian Parliament ratified it even later - in late November of that year (Official Gazette - International agreements No. 14/01). It entered into force in April 2002 and began to apply almost a year later.

\textsuperscript{48} According to the data of the Commissariat for Refugees of Serbia, 20,000 applications for the realisation of pensions in Croatia have been filed.
5.4.1. Problems related to establishing and verifying years of service

The most widespread problem is the lack of years of service records at the Croatian Institute for Pension Insurance, coupled with a variety of problems and obstacles to proof. The records are missing long periods of completed years of service (sometimes as much as one third or even more of the total), and because of that, the insurant applicants for pension entitlements are being hurt. The missing period in their years of service is not recognised, although it would refer to a period before 1991, when by law it was not possible to pay the net salary without the payment of different contributions, including contributions to the pension insurance. This is especially related to the insurants who worked within the jurisdiction of the Regional Office of the Croatian Pension Insurance Institute in Gospic, where there are many people with years of service unaccounted for.

When these problems are detected - and they are very easily detected by obtaining certificates of the years of service from the Regional Offices or the Central Office of the Pension Insurance Institute - then the process of proving and establishing the years of service is lengthy and arduous and with a very uncertain outcome. The burden of proof is on the persons who apply for pensions, not on the bodies responsible for maintaining the records of years of insurance.

Out of dozens of refugee beneficiaries of the NGO Humanitarian Centre for Integration and Tolerance (HCIT) who are undergoing procedures for proving their years of service, only a small number have managed to prove their years of service and obtain a positive solution, while most people are still involved in long procedures before pension insurance bodies or in administrative proceedings.

5.4.2. Problem of pensions due but unpaid

During the nineties of the last century, about 50,000 pension beneficiaries, who either continued living in the Serb-controlled territories managed by the UN or who fled, were left without pensions because their payment was withheld by the unilateral act of the Pension Fund of the Republic of Croatia, owing to the interruption of payments between the Republic of Croatia and the areas in the Republic of Croatia under the protection of the United Nations (Republic of Serbian Krajina). The last compensation paid to insurants was on August 31, 1991.

Although the administrative and judicial bodies in Croatia admit the fact that the interruption of payments and suspension of pensions were due to the circumstances of war, administrative and judicial practice in Croatia applies a legal provision under which the right to receive payment of due but unpaid pensions expires if the suspension of payments occurred under circumstances caused by the insurant.

According to the Law on Pension Insurance, the payment of due but unpaid pensions expires only in the case of the insurant having caused the circumstances for the suspension of payments. However, given that the suspension of payments was caused by the war, the right to due but unpaid pensions has not legally expired.
In Croatia, in connection with the obligation to pay due but unpaid pensions there have been changes of the official position - from the recognition of the right to due but unpaid pensions, to the denial of that right after the Law on Convalidation was passed in late September 1997, with the explanation that “... there is no basis for payment of another pension for the same period on the same grounds”. As a basis for the refusal of payment of the due but unpaid pension for that period, Article 89 of the Pension Insurance Act (PIA) is mentioned, which provides that if an insurant becomes entitled to two or more pensions from the mandatory pension insurance based on intergenerational solidarity, he or she can only receive the pension of their choice. In order to apply the legal provision that an insurant entitled to two or more pensions can receive only one pension, all individual acts and decisions are recognised concerning the pension payments of the so-called “para-fund” of the Republic of Serbian Krajina under the Law on Convalidation, even if the regional offices or their branch offices do not have any records and other data on insured persons in the “para-fund”. On the basis of that, the payment of due but unpaid pensions for the period 1991-1995 is rejected.

However, in order to implement the aforementioned legal provision of Article 89 of PIA, it is necessary that the act of the "para-fund" is previously convalidated in a process of convalidation initiated only at the request of a party, and there have been no such requests. Since individual acts of the "para-fund" are not convalidated, i.e. legally empowered to have the character of individual acts, there are no legal grounds for the view that the pensioners from Krajina under Croatian legislation are entitled to two pensions. In addition, the “para-fund” has passed no other acts (decisions) that would have the character of an administrative act, and which would decide upon the recognition or non-recognition of the right to a pension, and so there was nothing to convalidate.

Secondly, Croatian pensioners have paid pension contributions to compulsory pension insurance based on generational solidarity in the Croatian Pension Insurance Fund, not the "para-fund", and the Pension Fund is obliged to pay pensions to them, not the "para-fund". The "para-fund" has the character of social assistance provided on account of the fact that the Republic of Serbia used to finance the "para-fund".

Thirdly, even when the position concerning two Croatian pensions was accepted, in order for the provision to be applied, the legal requirement is that pensioners have freedom of choice to receive one of two or more pensions, and that freedom, because of the war, was not enjoyed by

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49 The existence of the right to the payment of due but unpaid pensions can be also confirmed by the competent public authorities of Croatia, for example:
- Director of the former Republic Pension Fund of Croatia (RFMIORH), in a letter sent in October 7, 1996, (Class: 140-13/96-02/2963; No: 341-99-01/1-96/1), to all regional offices, stating that all beneficiaries of pensions who have the right to receive insurance according to regulations MIO RC and who had a residence in the former occupied territories of Croatia or found themselves there in circumstances of the war, should be paid due and unpaid benefits as requested, from the date of suspension of payment.
- the Central Office of the former RFMIORH in Zagreb sent a response to the request of Milos Rašković on September 05, 1997 with the following content: “In connection with your request for payment of due but unpaid pensions, I am providing you with the following response. There is the right to due but unpaid pensions, but due to the lack of funds, the Fund has temporarily terminated the payment of the related pensions”.

37
Croatian pensioners in areas that were under UN protection or administration. For that reason, the above legal provision that denies payment of due but unpaid pensions is questionable.

Pensions are an acquired and inalienable right. Having not met the legal requirements for the due but unpaid pensions or for the application of the provision that a pensioner can only receive a pension of their choice, it is necessary to ensure a legal position for these pensioners equal to that of other Croatian pensioners, by ensuring there are mechanisms for payment of due but unpaid pensions.

5.4.3. Convalidation of years of service

For many refugees, the issue of the convalidation of completed years of service in the territories of Croatia that were under Serb control and/or under the protection or authority of the United Nations in the period 1991 – 1995, remains unresolved.

The proposed legal framework for addressing convalidation is not adequate for the complexity of the problem, especially because of the high demand for legal assistance in connection with the proving of insurance in respect to the proceedings of proof required by the Croatian laws (Law on Pension Insurance and the Law on General Administrative Procedure Act). The statement of the State Secretary of the Ministry of Labour and Social Welfare Vera Babic, given in Jutarnji list on July 24, 200, is relevant in this context: "To all who have worked in the so-called RSK, Croatia will recognise years of service and all rights incidental thereto, as the documentation of pension and health funds are well preserved, and will not be a problem with the recognition of service." However, in practice there are major problems with the recognition of insurance, as the competent bodies often point out that no such documentation exists and the applicants are required to provide relevant evidence.

In addition, in fulfilling the requirements for the provision of means of evidence for determining the state of affairs is often extended, so that as relevant evidence not only the original workbooks or school records and health cards, etc. are required, but also additional written evidence. Prescribing an obligation to provide a large number of documents and imposing an excessive burden of proof is not in accordance with the standards of international humanitarian law, which with respect to the causes and nature of displacement, require the states to simplify procedures and facilitate the conditions of accessing the rights of refugees, inter alia, by determining the minimum obligation for the most necessary documents or pieces of evidence.

After all, the Pension Insurance Act in Article 99 Paragraph 2 provides that the property of the insurant and the years of service, when it is impossible to obtain the data owing to circumstances caused by the recent war, may be proven by witness statements. Furthermore, the Law on Administrative Procedure in Article 70 provides that if for the establishment of certain facts there is no other evidence to determine these facts, a statement by the party can be taken as evidence.51

Accordingly, Article 110 Paragraph 4 of PIA expressly provides that for furnishing the facts about years of insurance, wages, insurance base and other facts affecting the acquisition and determination of pension benefits, the statements of witnesses cannot be the only means of evidence, except in the case of the mentioned Article 99 Paragraph 2 and 3 of this Act.

50 “Official Gazette”, No. 47/09

51
In contrast to international standards and the cited legal provisions, the Rules of Procedure of Convalidating Decisions and individual acts in the field of pension insurance\(^{52}\) in Article 4 Paragraph 4 provides that witness statements can only be additional and not independent evidence. Given that many refugees have no written evidence, and are unable to obtain relevant evidence in Croatia, as officials claim that these documents do not exist, the requests for convalidation of service are resolved negatively. Therefore, all citizens who have worked in war zones should be allowed by an uncomplicated and simplified bureaucratic procedure to realise their right to convalidation of years of service, in order to exercise the rights of labour and pension benefits under equal conditions to those of all other citizens.

**Recommendations**

- It is necessary to intensify inter-state cooperation in the region to achieve a fair, comprehensive and lasting solution to the problem of refugees. The monitoring mechanisms, mediation and international assistance are still necessary in order to accelerate the resolution of the existing problems of refugees through the implementation and strengthening of the rule of law in the region.

- In order to remove various discriminatory and legal obstacles to the realisation of the rights of refugees, to the protection of human rights and to the creation of conditions for the rule of law and implementation of international legal standards, nongovernmental organisations should continue to put internal pressure, through the institutions of the legal and political systems, joint lobbying, advocacy, campaigns on specific issues, and external pressure, through various initiatives of lobbying and proceedings before European and international institutions, and by the constant insistence on the active role of the international community. These are the two main roads, the two basic types of activity for nongovernmental organisations in assisting refugees in finding a permanent solution for their problems. For this purpose, it is necessary to strengthen the regional cooperation of NGOs, especially through joint information-sharing and the presentation of activities at the regional website.

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\(^{52}\) “Official Gazette”, No. 53/08
II INTERNALLY DISPLACED PERSONS FROM KOSOVO
Between integration and return

Introduction – Is there willingness to solve the key problems of internally displaced persons?

As regards the number of internally displaced persons (IDPs), with its 205,000 displaced people from Kosovo and Metohija, Serbia ranks among the first 20 countries in the world. Most of the displaced include Serbs (68%), followed by Roma (12%) and Montenegrins (8%). Internally displaced persons differ from refugees in terms of status, as well as the way in which their problems are being solved. Bearing in mind the fact that they have not crossed international borders, as well as that there is no obligatory international system to protect them, their native country is above all responsible for their position as internally displaced persons, which has to ensure their equality with other citizens. In practice, as is the case in Serbia, displaced persons are exposed to numerous problems in the exercise of their fundamental civil, economic and social rights, such as obtaining personal documents, realization of property rights, access to health care and social assistance, and the exercise of the right to adequate accommodation. Without special protection measures, instead of the legal equality which the displaced allegedly have, it is often impossible for them to realize human rights and they experience difficulties in accessing public services, i.e. they are discriminated against.

Internally displaced persons belong to the group which is most endangered by poverty. According to the Living Standard Measurement Survey from 2007, poverty is more than double within the group of the displaced if compared to the population in general. Of the total number of the displaced, 14.5% lived under the lowest poverty line, while the percentage in the entire population was 6.8%. It should be mentioned that the survey was conducted before the economic crisis, which significantly impoverished the majority of Serbian citizens. The displaced Roma have found themselves in the most difficult situation.

The position of internally displaced persons from Kosovo can be characterized as lingering in the gap between return, which has numerous difficulties and takes place very slowly and on a very small scale, and life in the places of displacement, where support programs are limited and therefore are not available to all who require them. The situation is additionally made difficult by

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53 Internal Displacement Monitoring Center (IDMS), Global Statistics, 2010; UNHCR Representation in Serbia: Population of concern as of 1st July 2010
58 UNDP, UNHCR Analysis of IDPs LSMS in Serbia, 2008.
numerous obstacles and hardships related to the realization of the rights acquired in Kosovo and Metohija.

Serbia still does not support local integration of displaced persons, and therefore integration programs become unavailable to all the displaced persons who register their residence in the places of dislocation, outside Kosovo and Metohija. At the same time, the government of Serbia does not have any formal contact with Kosovo institutions, which poses yet another difficulty with different procedures in practice regarding the exercise of the rights of internally displaced persons.

After taking over the competencies from UNMIK, Kosovo’s bodies institutionally fulfill all the obligations for the restoration of the rights of displaced persons – diverse return offices and associations have been formed and municipal return strategies defined, while Albanian politicians in Kosovo and Metohija have on many occasions invited the displaced to return. However, the data on (a very small) number of returnees, as well as the fact that there are no official data on the number of displaced persons who have been physically returned their property, indicate quite the opposite.

From June 1999, the international community has exercised civil and military authority for a number of years through UNMIK and KFOR. After a relatively long-term process, the support mechanism for return was established, but was later marked as complicated and inefficient, and failed to achieve adequate results. Now that return is the responsibility of Kosovo government bodies, the OSCE Mission in Kosovo finds that “the limited political will or commitment by some municipalities to support returns is one of the main obstacles to the adoption and effective implementation of policies, strategies and projects aimed at assisting displaced persons and returnees.”

By way of comparison and in order to support the answer to the title question, while local communities in Kosovo and Metohija are motivated to accept returnees only by community development programs (paving streets, construction of the water supply network, etc) – which does not lead to the expected results – in Bosnia and Herzegovina, international representatives have penalized the lack of realization of property rights of returnees and displaced persons by dismissing municipal structures which had been blocking the return of property, i.e. the return. The differences in the effects of these two approaches are huge and they clearly support the one implemented in Bosnia and Herzegovina.

In the second half of 2010, the European Union published the initiative for the initiation of a new dialogue between Belgrade and Pristina, which finally resulted in opening dialogue on practical issues, under the patronage of the European Union, in Brussels, on 8 March 2011. The two

59 OSCE Mission in Kosovo, Municipal responses to displacement and returns in Kosovo, November 2010.
60 The Key argument for the hypothesis that lack of political will lies behind the lack of realisation of individual rights of IDPs in Kosovo and Metohija can be found in the neighbouring Bosnia and Herzegovina: by applying the mechanism set up by the same international actors, during 11 years – which also is the time passed from the end of conflict in Kosovo and Metohia, in Bosnia and Herzegovina 98% of the usurped property has been returned to their owners. On the other hand, the data available after the HPD terms of office expired and based on the work done so far by KPA indicate only the number of solved cases, which does not have any importance in evaluating the success of the process of property repossession.
delegations were headed by the Political Director of the Serbian Ministry of Foreign Affairs Borko Stefanovic and the Vice-President of the self-proclaimed government of Kosovo, Edita Tahiri. The negotiations were clearly focused on solving practical issues affecting the quality of life of the people in the whole region, so their opening gave birth to the hope that favourable conditions for solving also all those questions which are the most painful for the displaced persons from Kosovo and Metohija would be created.  

1. Return and exercise of rights in Kosovo and Metohija

As seen by the OSCE Mission in Kosovo, „sustainability of returns remains a challenge due to a number of factors, such as limited access to property, economic integration and the real or perceived physical security of the returnees; and lack of funds and co-ordination in regard to the issue of the repatriation of returnees”. 

In the last 10 years, nobody has produced an all-encompassing analysis of the process of return of internally displaced persons to Kosovo and Metohija, so relevant data about this issue only come from the process of returns monitoring. Such monitoring is done by UNHCR, UNMIK (Office for Return – OCRM, previously ORC) and UNDP, the Ministry of Kosovo, and in the last few years also by the Kosovo Ministry for Communities and Return. The huge differences between the data provided by the given agencies and bodies as regards the success of the returns process are a consequence of the inconsistency of criteria, methodology and periods of monitoring the population of returnees, as well as an imprecise definition of the key term – *successful return*.

Here we will use only the data provided by UNHCR and the Ministry for Kosovo by following the sustainability of return, taking into account a significant loss of data which occurred during the process of transfer of authorities for the returns process from UNMIK, OCRM and UNDP Kosovo to Provisional Institutions of Self-Government (PISG).

The engagement of UNHCR as regards internally displaced persons in the region is based on the request of the UN Secretary-General directed to the UN High Commissioner for Refugees in October 1991. UNHCR was appointed the leading entity for organized voluntary return of refugees and displaced persons within former Yugoslavia. The role of UNHCR was also explicitly mentioned in the Resolution 1244 of the UN Security Council: „to monitor the safe, free and unhindered return of all refugees and internally displaced persons to Kosovo as defined by UNMIK, and within the context of joint cooperation between the bodies.”

It is important to understand what the data of UNHCR and the Ministry for Kosovo indicate. Although it is most often considered that these data suggest the success of the returns process, this is actually not the case. The concept of successful return is mostly synonymous with the *sustainability* of returnees at the place where they come back. In reality, however, sustainability

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61 The issues of cadastral records and birth certificates were discussed in the first round of negotiations. In addition, the questions of energy, telecommunications and freedom of movement were also raised in the first three rounds of negotiations.

and success of return are not synonyms. The success of return depends, above all, on the compliance with the conditions regarding the sustainability of return, i.e. access to civil, economic and social rights.

In order to define the policy of sustainable return, only 9 municipalities in Kosovo during 2010 adopted local strategies of return, as opposed to 19 municipalities in 2009.

"However, effective implementation of these strategies continues in many cases to be hampered by lack of funding for return activities and projects, lack of political commitment, structural problems, and challenges to return on the ground. Such challenges include the real or perceived lack of security, access to public services, housing and property rights related issues, and socio-economic opportunities. Ensuring appropriate conditions for safe and dignified returns continues to represent a major challenge."**

Numerous examples of places of return in which returnees are faced with many challenges - from the issues of physical safety to the lack of economic and social prospects - support the fact that sustainable and successful return to Kosovo is still difficult.

"The spontaneous returns of Kosovo Albanians to Brdjani/Kroi i Vitakut in northern Mitrovica/Mitrovicë and Kosovo Serbs to Zallq/Zač in the Pejë/Peć region are examples of these difficulties. In both cases, violent attacks against the spontaneous returnees attempted to halt the implementation of the returns."**

Srpski Babus in the Urosevac municipality is a place of return with a somewhat different experience. Within the 2006-2008 period, through the returns project worth approximately 3 million euro, 74 houses, a school, were rebuilt, and therefore the return was considered highly sustainable, while only about 10 people live in the village at present. On the other hand, return to Osojani is considered undoubtedly sustainable. The return was realized rather a long time ago, in 2001, and there are about 124 households living in Osojani today. These people have been financially supported, subsidized and assisted throughout by the Serbian government, i.e. the Ministry for Kosovo and Metohija.

The question has been raised as to whether such sustainable return, based solely on the fact that the returnees have been there for the last ten years, may also be considered as really successful. Donors (excluding the Ministry for Kosovo) are principally not interested or do not have the

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63 In Kosovo, UNMIK has also stressed the right to return home and the rights of property that are associated with this return. However UNMIK has also gone further, by describing the right to return as a “right to sustainable return”. This is defined specifically in the Manual on Sustainable Return as encompassing four areas: security and freedom of movement, access to public services (public utilities, social services, education, and healthcare), access to shelter (i.e. through effective property repossession or housing reconstruction assistance) and economic options, through fair and equal access to employment opportunities. Evolving public policies that promote the right to return are beginning to require attention to much more than the logistics of moving across borders. Richard Black, Saskia Gent, Sustainable Returns in Post Conflict Context, Sussex Centre for Migration Research, University of Sussex, Brighton, UK, 2006, pg 24

64 OSCE Mission in Kosovo, Communities Right Assessment Report, December 2010, page .21

65 Ibid.
possibilities to finance in such a way and for such long periods of time the sustainability of returnees in other return locations in Kosovo.

Local municipalities still do not show full commitment to supporting the returns process and reintegration of returnees. In the economic crisis, the issue of employment in the private sector is relevant to all citizens, and it remains unclear why minority communities have not been represented adequately in the public sector. „The level of employment of non-majority communities within the Kosovo civil service remains insufficient. Lowering the percentage requirement by law cannot bring about any positive development. Employment of non-majority communities in municipal bodies is still largely unsatisfactory, since they are generally excluded from public life and decision-making mechanisms.”

The methodology of monitoring the returns process is defined in such a way that the obtained data indicate the total number of returnees during a certain period of time, but not any other data about the actual functioning of returnees’ communities (such as about activities which provide income or about the income levels for certain households). Judging by all this, it can be concluded that there are no data on the actual success of the returns process.

The number of registered internally displaced persons from Kosovo has varied during the last decade, although there was no significant decrease in this number. It should be mentioned here that after the census of internally displaced persons from 2001, carried out in partnership between the UNHCR and the Commissariat for Refugees of the Republic of Serbia, on the territory of the Federal Republic of Yugoslavia without Kosovo, the number of registered internally displaced persons in the database decreased only in accordance with the records of returnees to Kosovo. A new census of internally displaced persons has never taken place, and the returnees to Kosovo were registered by the UNHCR Office in Pristina and these records were sent to the UNHCR Belgrade Office.

The data on the number of internally displaced persons quoted in this document refer to displaced persons residing outside the territory of Kosovo, in compliance with the usual practice. These data, therefore, do not include all those IDPs residing in Kosovo. According to the UNHCR records, there are 20,000 displaced people in Kosovo, out of which 10,000 are of Serbian nationality and 7,000 are Albanians from the regions of Kosovo where they were an ethnic minority before the war conflict.

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66 Ibid, p. 23
67 As explained in the text, an inadequate methodology of monitoring returnees, limited to only three months after the completion of the project on returning, caused the situation in which all internally displaced persons included in the returns projects to Kosovo were registered as returnees, although many of them returned to Central Serbia or Montenegro, as a secondary displacement from Kosovo. In most cases, these IDPs only occasionally went to the places of return, and are therefore informally called “weekend returnees”. Nearly all of them kept their IDP identifications.
Table 1. The number of registered IDPs (on the territory outside Kosovo), the total number of returnees to Kosovo and Metohija and the number of returnees from certain ethnic communities, in the period between 1999 and 2010

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of IDPs from Kosovo and Metohija</th>
<th>Number of returnees – TOTAL</th>
<th>Number of returnees of Serbian nationality</th>
<th>Number of returnees from RAE communities</th>
<th>Number of Bosniak and Gorani returnees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>176,014</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2000</td>
<td>197,500</td>
<td>1,906</td>
<td>1,826</td>
<td>20</td>
<td>60</td>
</tr>
<tr>
<td>2001</td>
<td>201,700</td>
<td>1,426</td>
<td>679</td>
<td>747</td>
<td>0</td>
</tr>
<tr>
<td>2002</td>
<td>206,000</td>
<td>2,460</td>
<td>966</td>
<td>1,272</td>
<td>222</td>
</tr>
<tr>
<td>2003</td>
<td>205,000</td>
<td>3,557</td>
<td>1,550</td>
<td>1,469</td>
<td>538</td>
</tr>
<tr>
<td>2004</td>
<td>208,135</td>
<td>2,461</td>
<td>818</td>
<td>1,023</td>
<td>620</td>
</tr>
<tr>
<td>2005</td>
<td>207,445</td>
<td>2,077</td>
<td>740</td>
<td>962</td>
<td>375</td>
</tr>
<tr>
<td>2006</td>
<td>206,859</td>
<td>1,616</td>
<td>615</td>
<td>769</td>
<td>232</td>
</tr>
<tr>
<td>2007</td>
<td>206,071</td>
<td>1,801</td>
<td>585</td>
<td>893</td>
<td>323</td>
</tr>
<tr>
<td>2008</td>
<td>205,842</td>
<td>636</td>
<td>231</td>
<td>281</td>
<td>124</td>
</tr>
<tr>
<td>2009</td>
<td>205,211</td>
<td>1,067</td>
<td>439</td>
<td>495</td>
<td>133</td>
</tr>
<tr>
<td>2010</td>
<td>205,032</td>
<td>237</td>
<td>90</td>
<td>119</td>
<td>28</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>19,244</strong></td>
<td><strong>8,539</strong></td>
<td><strong>8,050</strong></td>
<td><strong>2,655</strong></td>
<td></td>
</tr>
</tbody>
</table>

Source: UNHCR, OCRM Pristina, STATISTICAL OVERVIEW, Update as at end of February 2010

According to the presented data, obtained from the UNHCR, the number of returnees is 19,244. The data on returnees of Albanian nationality have been omitted, as the UNHCR clearly states that they are not complete. The Ministry for Kosovo and Metohija believes that less than 4,000 members of the Serbian community have achieved a sustainable return.

The data clearly show that the number of returnees of Serbian nationality (8,539) and the number of returnees from the communities of Roma, Ashkali and Egyptians (RAE) (8,050) are almost at the same level, although the RAE minority accounts for only 12% of the total population of internally displaced persons from Kosovo. This means that approximately one-third (31.57%) of the displaced RAE population were beneficiaries of the returns project, i.e. were given assistance during their return to Kosovo. Compared to this, the same data indicate that only 4.59% IDPs of Serbian nationality participated in the returns projects and were given support. The data indicate that displaced persons of Serbian nationality form less than a half of the total number of persons involved in the returns process, although they form more than two thirds in the population of the displaced. An ethnic imbalance of such importance undoubtedly requires explanation.

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68 The number of Albanian returnees registered by UNHCR during 1999–2010 equals 842, thus bringing the total number of returnees, according to the UNHCR data, to 20,086 persons.
69 Source: Branislav Ristić, Assistant Minister for Kosovo and Metohija
1.1. Brief chronology of defining institutional support for the returns process of IDPs to Kosovo

The process of organized return of IDPs to Kosovo started with projects of assistance for the return to Bic and Grabac, implemented by UNHCR, and the project of the return to Osojani, implemented by the Coordination Center for Kosovo in 2000 and 2001.

Immediately after the realization of these projects and the statements of Serbian and also a few UNHCR, officials that necessary and sufficient requirements for the sustainable return of IDPs to Kosovo were not fulfilled, during 2002 and 2003 the then UNMIK administration established a special office with the aim of creating a policy and mechanism for the returns process of IDPs to Kosovo – Office of Returns and Communities (ORC) of the UNMIK administration. In the same process, the Manual for Sustainable Returns was produced, and a mechanism of working groups for returns was created – at municipal, regional and central levels.

Although relatively well conceived, the established mechanism and instruments of return have fallen short of expected results.

The procedures specified by the Manual did not define the participation of IDPs in the basic organizational structures of the returns mechanisms – in municipality working groups – and did not provide for the possibility of IDP return to places in Kosovo preferred by the displaced, but exclusively to the places they originated from (places from which the potential returnees had been displaced from). The return attempt of IDPs from the village of Koretin who wished to return to the neighboring village of Berivojce did not succeed simply because the Manual did not stipulate such a possibility, despite the fact that the Coordination Center directly negotiated with UNMIK ORC.

Essential deficiencies of the established mechanism are reflected in its voluminousness, which includes four levels of decision-making about every separate project proposal for return, which has resulted in a situation that the very decision-making process itself, from the moment of a specific displaced family expressing the wish to return till the approval of the project proposal, lasts as long as 3-4 years. This situation is also the consequence of the absence of the Law on Renovation, which would regulate in a simpler and more efficient way the issue of returns and the renovation of the devastated property of returnees, for whose application significant amounts from central and local budgets should also be allocated.

The fact is that UNMIK administrators – at all levels of the return process and especially the municipal – very rarely applied the provisions of the Manual which regulate the accelerated adoption of project proposals in cases of clear obstacles from the acceptance community. At the same time, they often returned project proposals for additional processing, concluding that they were not in accordance with the interests of the accepting community.

UNMIK established the institutions competent for the returns process of the displaced person only in 2002, so they became operational in 2004, i.e. five years after the displacement.
After 2003 and after the massive violence in March 2004, the returns process was almost halved and this negative tendency continued for the next few years. The returnees have not since reached the numbers from 2003.

Although UNMIK revised the Manual by harmonizing it with the accepted international solutions for the rights and return of IDPs, this happened only in 2006. Seven years after the displacement, UNMIK managed to create the Revised Manual on Sustainable Returns, later supplemented by the Protocol on Voluntary and Sustainable Return, and thereby for the first time established procedures in harmony with international documents regarding this issue.

In 2006 and 2007, the new transfer of authorities from UNMIK to Provisional Institutions of Self-Government was initiated, including the competencies related to the returns process. Although the Protocol on Voluntary and Sustainable Returns was signed and the Revised Manual adopted at the same time, the number of registered returnees remained at a far lower level than in the previous years. The momentum for the return which existed in the first years, and especially since 2001, was irretrievably lost.

The representatives of internally displaced persons and the representatives of local government in Kosovo have completely opposite viewpoints as regards the responsibility for such a state of affairs. The associations of IDPs claim that that they were a major source of information on displaced persons and their individual interest and wish to return, and that they regularly participated in the work of municipal working groups, but that their information had never been used significantly in planning returns projects. On the other hand, central and municipal authorities in Kosovo regularly stated that all the conditions for the return were created, but that there was no interest for the return.

In cooperation with the Ministry for Kosovo, the Commissariat for Refugees of the Republic of Serbia and the UN High Commissioner for Refugees, registration for the return of internally displaced persons from Kosovo was initiated on 6 April, 2009. The aim was the identification and registration of displaced families wishing to return to Kosovo in 2009, under the existing circumstances, as well as an estimation of their needs. This was the opportunity to apply practically the mechanism from the Protocol on Sustainable Return, signed after negotiations by both Serbian and Albanian parties on 6 June, 2006. It is a document describing a very simple mechanism in which it is clearly defined which tasks are done by which bodies and within which deadlines the participants in the process are obliged to realize the undertaken obligations. Although the registration, as cited, had a limited character, during the registration process in 2009, 1,212 families i.e. 4,875 people participated in the registration i.e. expressed their will to return to K&M. Over 10% of registered families are members of ethnic minorities (Gorani, Roma and Muslims). During 2010, 325 families with 1307 members were registered.

The Danish Refugee Council survey encompassed 858 households (530 in Central Serbia and 328 in Kosovo). In Central Serbia, 24% of the interviewed Serbs wished to return, as compared to 6.1% Roma, Ashkali and Egyptians, while in Kosovo 34.1% of the displaced Serbs stated they wished to return.70

70 DRC, IDPs From and Within Kosovo: Vulnerabilities and Resources, June 2009.
It is the general opinion of all the participants in the process so far that the Protocol on Sustainable Return (from 2006) represents the simplest and most operative mechanism. However, the last activity of the UNHCR which relied on the mechanisms as defined in this document did not achieve the expected results. In 2009, the total of 631 persons returned to Kosovo and Metohija, including 187 persons under the concept of registration. The return of the remaining returnees was organised by international organisations and PISG. According to the initial UNHCR data, 402 persons returned in 2010, including 238 persons on the basis of registration. Later, the UNHCR Priština came out with the data of 876 returnees.

The Kosovo Progress Report for 2010 points out the establishment of some important institutional prerequisites, such as the strategy adopted on 12 February, 2010, empowering the status of municipal commissioners for return, the official promotion of the safe and dignified return of refugees and the displaced, the assignment of certain financial resources for returns projects and the long-term renting of state-owned land (99 years) to the returning families which do not possess land. However, occasional incidents and acts of violence have been recorded, while the report recognizes the problems with the realization of property rights (restricted access to property and delayed restitution procedures), as well as the scarcity of employment opportunities and profitable activities in the places of return, as major obstacles to sustainable return.

It is clearly recognized that the institutions in charge of minority and return communities are not sufficiently coordinated and that stronger integration of these communities in Kosovo society requires a higher level of political commitment.  

Recommendations:

- It is necessary for the acting representatives of institutions competent for the return of the displaced persons to Kosovo on both the Serbian and Albanian sides to reconfirm their agreement with the Protocol on Sustainable Return and to undertake measures to fully implement it.

- State bodies and political parties in the Republic of Serbia should strongly encourage internally displaced persons returning to Kosovo, as well as representatives of Serbian communities in Kosovo, to take part in the civil society activities and all social activities in local communities in Kosovo. Local communities in Kosovo should be supported in developing resources and mechanisms leading to the involvement of returnees and communities in social life.

- In the returns support process, it is necessary to clearly define and monitor the fulfillment of the responsibilities of Kosovo as regards the obligation to create an environment for the free return of internally displaced persons and their access to all local government institutions in the accepting community. Kosovo needs to show a clear political will for a better coordination of local and central government authorities, which should be the responsibility of the Ministry of Return and Communities, with full support of international organizations involved in the return support process.

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- It is necessary that the central and local authorities in Kosovo undertake all necessary measures in order to facilitate the sustainable, safe and dignified return of minority communities through an efficient access to all civil, economic and social rights, above all rights to property, adequate housing and employment.

- Kosovo municipalities need to show readiness to provide municipal land to the returnees who are not in the possession of land, these as a rule including representatives of the RAE community.

1.2. Property Rights of IDPs

One of the most important issues in solving the problems of displaced persons is the issue of immovable property repossession. According to the estimate of the OSCE Mission in Kosovo, „a pressing concern is that of limited access to property, blocked or delayed property restitution proceedings and the illegal occupation of property, including private, commercial and agricultural land. This obstructs returns and provides a serious challenge to municipalities, the Kosovo Property Agency, and the courts, the latter two being responsible for ruling on property claims“. 72 The European Commission, however, clearly states that property rights in Kosovo are not protected and that the major reason for this is poor implementation of legal provisions in this field. The fact that the majority of delayed cases include litigations related to property rights and that trials regarding property rights are often repeated due to irregularities occurring in the bringing of verdicts or during the proceedings is especially to be noted.

It is also clearly stated that inter-ethnic disputes concerning property are unduly prolonged and that many of the delayed cases include a multi-ethnic dimension. The present situation in the Justice system „undermines inter-ethnic relationships and the exercising of property rights.“ 73

Regardless of the question whether IDPs would opt for the return to their former place of residence or for integration into the new environment, complete repossession of property rights represents the most important support to the permanent solution of every individual situation of displacement.

The issue of repossession of property rights has been differently solved in the legal systems of the Republics of Croatia, Bosnia and Herzegovina, and Kosovo, the territories from which the majority of refugees and displaced persons come in the region of the former SFRY. It is always in the interest of refugees and displaced persons to have the return process as simple and as brief as possible, and the experiences of Croatia, Bosnia and Herzegovina and Kosovo are different, as were the methods of solving the problem of the property of refugees and displaced persons. However, it has been the common experience that this problem has not been tackled without bringing new, special regulations, such as the so-called regulations from the period of peace, which generally elaborate on the issue of property rights protection, envisaged too complicated and slow a procedure, inadequate in terms of the size and importance of the problem to be faced.

72 OSCE Mission in Kosovo, Municipal responses to displacement and returns in Kosovo, Novembar 2010.
Regional differences are also reflected in the level and type of international community influence in passing and implementing the regulations in terms of the efficiency of the mechanisms defined by these regulations.

As the international influence in Kosovo was present on a larger scale than in Bosnia and Herzegovina, it could have been expected that the return of property would be realized as efficiently as, if not better than, in Bosnia. Unfortunately, this was not the case. In Kosovo, not even 11 years after the end of the conflict, effective mechanisms for immovable property return have not been applied, although they had been already implemented in the region before, such as with the introduction of the responsibilities of local bodies for the protection of property and powerful international monitoring of this kind of protection.

It is possible to break this issue down into different problems regarding repossession of property rights: repossession of residential property, repossession of business property and land (construction and agricultural), reconstruction of facilities, and compensation for the damage for destroyed or ruined immovable property.

As regards repossession of residential property, the process of confirmation of the right has been finalized. This process implied submission of an application and obtaining a decision on the acknowledgement of the right to residential property, regardless of whether the ownership or tenancy right was in question. Although the reports of HPD state that 29,133 applications were filed and that all of them were decided upon, the problem which existed with the execution of these decisions has not yet been overcome. The displaced persons were not able, as was the case with the refugees from Bosnia and Herzegovina, to take over possession of the residential units, lock them and return to their places of displacement, being sure that no one would usurp their property again, until they decided whether they would sell that property, rent it or return to use it. Execution of the decisions, i.e. handing over possession of residential property, was the responsibility of the HPD, which would empty out the facility following the owner’s request and hand over possession of it. The majority of the displaced persons, however, did not decide to formally request and actually take over possession of their property. Except in cases where the owner decided to sell the property, such an act was simply irrational: after taking over possession, the property owner did not have any efficient mechanism of protection from new usurpation, damage or destruction. The only efficient protection was to stay and live in the owned residential property, which was not a realistic option for the majority of displaced persons owing to numerous reasons. Apart from the feelings of insecurity and lack of opportunities, especially in urban areas, securing at least the minimum income (i.e. basic living conditions) was also an issue.

After having taken possession of the property, the owner depended exclusively on the inefficient judicial system of Kosovo for further property protection, thus being placed in a more difficult situation than before entering the property – as now there was not any international protection.

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74 Housing and Property Directorate
75 The European Commission, in a 2010 Progress Report, stated that the overall efficiency of the Kosovo court system was very low, and found that low levels of implementing court decisions were a major obstacle in developing trust in courts. Apart from this, it was concluded that the majority of registered corruption cases were related to courts, and that political influence on the justice system was a reason for serious concern.
Not even selling the property, as one of the possible ways of dealing with it, could be considered in such circumstances as an act of free will. Therefore, it may be concluded that only somewhat fewer than a thousand apartments for which rents are paid are under full legal protection.

It is the responsibility of UNMIK that, at least formally, the possibility of paying rent to the owners of residential property, as stipulated by the Regulation 1999/23, was not realized until the end of 2006. The extent to which this issue was approached politically, instead from the point of view of human rights protection (the right to the peaceful enjoyment of property) is seen from the quote of the Annual Report of the Kosovo Property Agency for 2009: „Section 1.1(b) of UNMIK Regulation 1999/23 provided for a rental scheme to be put in place for properties under administration whereby rental money received from the property would be lodged in a separate account on trust for the rightful owner. Proposals for such a scheme were made throughout HPD’s existence, but due to the politically sensitive nature of this matter the scheme only received the requisite approval in August 2006, and became operational in October 2006."

The option of renting property for displaced persons is not available in an adequate scope even today. According to the abovementioned report, the renting system includes somewhat less than 1,000 residential units. As a reminder, according to the report of HPD, out of the 29,000 applications, 9,000 were filed for destroyed property. This means that out of (approximately) 20,000 residential units which could potentially be rented – in case dealing with property was optional indeed – rent was paid for only about one in twenty residential units.

The issue of access to property is still one of the fundamental preconditions of sustainable return and even today it remains unsolved in Kosovo. The establishment of Kosovo Property Agency – KPA in 2006 and definition of its mandate that encompassed both commercial and agricultural property, corrected the illogical mandate of HPD too late, as HPD was in charge of decisions regarding only the right of residential property return. Such a mandate, apart from all other obstacles, hindered the return to Kosovo, as a person whose living was based on agriculture, production, services or renting business premises, could restore the possession of his/her residential space, but not the property which provided him/her with means for existence. The Kosovo Property Agency received more than 40,000 applications, out of which approximately 90% were filed through the KPA offices in Serbia. An aggravating cause of the recovery of rights to immovable property of displaced persons was the fact that the operations of KPA were suspended in Serbia from June 2008, when its activities were defined by the law passed by the Parliament of Kosovo, until May 2010, when the mandate of KPA in Serbia was re-established under the auspices of UNHCR. During the suspension period, all communication of displaced persons with KPA had to be channeled through their offices in Kosovo. As an indication of the hardships that followed this process there is the information from the 2009 annual report of this Agency stating that the decisions were brought for 23,262 claims, while in October 2010 the same web site stated that a little less than 9,000 claims were solved.

The reason for such an illogical situation lies in the immense number of decisions declared ineffective due to wrong notification system, i.e. physical registering of land that was the subject

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76 Kosovo Property Agency 2009 Annual Report
77 Law no. 03/L-079, adopted by the Assembly of Kosovo, by which UNMIK Regulation 2006/50 was adopted and amended
of claims. Notification of claims serving to notify the potential other party in the process, which had or believed they had a legal interest in filing a claim for the same property, were assigned to the wrong lots. Due to this, the number of decisions brought according to the data from the KPA web site, was reduced by more than 10,000. These activities were carried out in cooperation with the Kosovo Cadastral Agency. In recent years, Kosovo cadastre has been in creation, i.e. producing new cadastral records, and one of the reasons for such a huge number of mistakes in the notification is the inexistence of complete cadastral records. However, it has to be emphasized that, according to the experience of HPD and KPA, bringing decisions in proceedings with two opposite parties claiming the recognition of right to the same property can be expected only in the final phase of KPA operations. Then the cases such as having a petrol station, residential building or the like constructed on somebody else’s property will be dealt with.

The issue of archives and, among them the most important – the issue of cadastral records dislocated from Kosovo in 1999 is very important for the creation and future functioning of an efficient mechanism for the protection of human rights. The aim of the dislocation was to prevent all potential abuses and illegal activities which could be treated as rational and legitimate immediately after the end of the conflict. The present situation requires an agreement which would provide for the return of the dislocated cadastral records and unhampered and regular insight of Belgrade representatives into cadastral records and the collection of documents based on which new entries were made. Cadastral records are a live issue which needs to be frequently updated and which should register the changes in immovable property, while its major goal is to provide legal security, without which there can be no economic progress. Cadastral records into which no changes have been entered for more than 11 years are approaching the position where they would only have historic, but not practical value.

1.2.1. Reconstruction

The problem of destroyed and damaged immovable property of internally displaced persons who left their homes in Kosovo after the arrival of KFOR and beginning of UN Mission in Kosovo, has been present for more than 10 years. It may be concluded today that, unfortunately, we are not any closer to the solution of this problem if compared to the period when the property of IDPs was destroyed on a massive scale. The present system of Kosovo does not offer any adequate and efficient mechanism by which internally displaced persons could exercise the right to the reconstruction of their damaged immovable property or the compensation right for destroyed property. A very small number of residential facilities of internally displaced persons has been reconstructed, while reconstruction has always been related to the issue of return, i.e. return was a precondition for reconstruction. The displaced from Kosovo are in a worse situation than the refugees from Bosnia and Herzegovina and the Republic of Croatia where, apart from the tardiness of the process, lack of means and difficulties related to fulfilling rigorous conditions, there still is a legally binding framework for filing claims for the reconstruction of residential facilities.
1.2.2. Compensation Claims

There are different estimates regarding the number of destroyed residential and other facilities in Kosovo and Metohija owned by IDPs. However, we know for certain that Kosovo courts have received somewhat more than 18,000 compensation claims relative to the destroyed IDP real estate. Almost all these claims were filed in 2004 and this was because of the expiry of the five-year objective statute of limitations for compensation claims, as provided for in the Contract and Torts Act (Zakon o obligacionim odnosima – ZOO). In most of these cases, action was brought against the following defendants: Kosovo institutions, municipalities where the property is located, KFOR and UNMIK. Dillemas about who should be indicated as defendant and about their capacity to be sued (passive capacity) had existed even at the time of filing of the compensation claims, mainly due to a Decree of the Special Representative of the Secretary General (SRSG) which granted the KFOR and UNMIK immunity from any liability for any damage they may cause. There was also an issue of who should represent the socio-political community at a time when the institutions of the Republic of Serbia ceased to operate based on the UNSC Resolution 1244 and Kumanovo Agreement, whilst the Provisional Institutions of Self-Government had still not taken their mandate. After consultations with legal experts, a viewpoint prevailed that all four above mentioned parties should be indicated as defendants. This process was supported by the then Kosovo and Metohija Coordination Centre mainly by sending the claims to UNMIK’s Court Liaison Office in Gracanica. This Office further transferred the claims to the courts in Kosovo and Metohija to which they were intended. A copy of each claim bearing the court’s stamp indicating the date of receipt would then be returned to the KiM Coordination Centre which distributed them to the claimants.

Not long after the receipt of these claims, UNMIK’s Department of Justice instructed the courts, in August 2004, not to process the claims, explaining that this might clog up Kosovo courts as they did not have sufficient capacity to try such cases. Even though this suspension was withdrawn in September 2008, the situation regarding the processing of these cases has not changed substantially. Such a situation brings into question the respect of Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, i.e. the right to fair trial.

In 2009, a smaller number of courts in Kosovo and Metohija (Srbica, Vučitrn, Klina) started hearing the compensation claims, and in all the finished first-instance proceedings they

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78 The legal basis for compensation claims was contained in Article 180 of the Contract and Torts Act (CTA) which establishes the liability of the ‘socio-political community’ (municipalities, republics and provinces, and the State) for any damage incurred by the destruction of property owned by natural persons in the event of acts of violence or terror. LCT also specifies that the compensation claim may be filed within three years of the date of discovery of the damage, and no later than five years from the event of the damage. At the time of destruction of the property and the time of filing of compensation claims, the CTA was part of the applicable legislation in Kosovo (Decree 1999/24). As the IDP property was destroyed mostly in June 1999, following the withdrawal of Serbian security forces from Kosovo and Metohija, and in the following several months, in the same period of 2004 the objective time limit to file claims was due to expire. The above referenced Article of the CTA was the single legal basis on which a compensation claim could be grounded. Interestingly, the Republic of Croatia suspended, for a certain period following the war, the application of a corresponding article from its Contract and Torts Act (Zakon o obveznim odnosima RH) exactly for the purpose of exonerating the State from liability for this type of damage.

79 Decree No. 2000/47
dismissed the claims for lack of passive capacity of the defendants. It is reasonable to expect that other Kosovo courts too will hold the same position, once they start hearing the claims.

1.2.3. Enforcement of Inheritance Decisions

Problems concerning the enforcement of succession decisions issued by regular courts in Serbia, where the decedent died in Serbia, emerged following the declaration of independence of Kosovo. Kosovo Cadastre Agency now requests that the succession decisions be issued by Kosovo courts. In the cases when such decisions were enforced, the problem arose of differing cadastre data contained in the succession decisions (issued based on the data held by the relocated cadastre office in Krusevac) and the data from the records held by the Kosovo cadastre service. The problem of non-recognition of Serbian regular courts’ inheritance decisions would be less severe if the powers of attorney given in succession cases were recognised in Kosovo. Verification of authenticity of such powers of attorney is now requested, and the verification procedure lasts for at least six months. All this made the procedure for resolving IDP succession cases yet another difficult barrier for the implementation of their property rights. On the other hand, when individuals living in Kosovo wish to instigate a succession procedure in a Serbian court, they face the problem the relevant Serbian authorities will not recognise any document bearing Kosovo State symbols, including death certificates.

1.2.4. Issuing of copies of title deeds

A number of municipalities in Kosovo and Metohija require a certificate testifying that the property tax has been paid before they issue a title deed, which is incompatible with one of the fundamental principles in cadastral record operations, i.e. the principle of openness. Any individual is entitled, after paying the stamp duty for the issuing of the extract, to gain access to these records, and if this principle is neglected there can be no legal security.

1.2.5. Court taxes for submissions sent to courts

The number of difficulties faced by IDPs when attempting to recover their property rights in Kosovo and Metohija can be seen from the fact that they are requested to pay 20 Euros in court fees for any submission filed with Kosovo courts, even when filing a request for an expedited court procedure. As a rule, court fees are paid for submissions instituting a court procedure and for court decisions terminating such a procedure. Nowhere in the region are the court fees paid for all types of submission and such practice in Kosovo creates an absurd situation where a party waiting for years for the court proceedings to finish, or to start, now has to pay a court fee even when they file a submission asking the court to hear their case.

80 Information provided by NGO Justicija from Priština, 2009.
81 Information provided by the head of Court Liaison Office in Gračanica, 2008.
Recommendations

- It is necessary, by means of amendment of relevant regulations, to establish the competences and responsibilities of local judicial and police bodies for the execution of decisions on property repossession and protection of property from new occupation and destruction.

- It is necessary also to establish a body comprised of representatives of international missions and organizations, and Kosovo authorities, to provide for the full application of the rule of law and protection of property rights, as well as to undertake measures against those responsible for the cases of violation of property rights. Taking into account the fact that it is not possible to enjoy the protection of the European Court of Human Rights, it is necessary to consider the possibility of setting up an international court institution which would offer efficient protection of human rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms.

- It is necessary for Belgrade and Pristina to agree upon the acknowledgement of documents (court decisions, powers of attorney, birth certificates, pension-related documents) within the shortest terms possible in future negotiations.

- It is important that Kosovo Cadastre Agency, as regards issuing of copies of property certificates, fully observes the principle of publicity in keeping cadastre records.

- It is necessary that the Republic of Serbia and Kosovo government as soon as possible reach an agreement on the return of cadastral records to Kosovo, the harmonization of the two existing cadastre data, and the joint monitoring of cadastral records and documents based on which new entries are made.

- The legal system in Kosovo is necessary to be supported by the establishment of an efficient legal mechanism (Law on Renewal) so that internally displaced persons could exercise their right to the renewal of destroyed immovable property or the right to compensation for the destroyed property regardless of whether or not they wish to return to Kosovo.

1.3. Privatisation in Kosovo and the rights of internally displaced persons

The privatisation process in Kosovo and Metohija started formally in 2002 with the adoption of Regulation No. 2002/12 of 13 June 2002 establishing the Kosovo Trust Agency (KTA), and in practice in May 2003, when the tender for the first group of enterprises was invited. By October 2010, the sale of 46 groups of enterprises was announced, and by the end of 2009, the sale of 258 socially-owned enterprises was published and about EUR430 million in revenue were generated. Until May 2008 the privatisation process had been implemented by the Kosovo Trust Agency, and after this body had ceased to exist, the process was regulated by the Law on the

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82 2009 Annual Report of the Kosovo Privatisation Agency
Kosovo Privatisation Agency.\textsuperscript{83} This new body is now responsible for the privatisation process. The amendment does not only refer to the Agency's name, but also to important changes as regards the activities and mode of operation of the Agency which, unfortunately, have had a negative impact on the rights of internally displaced persons in the privatisation process. The importance of this issue is reflected in an estimate of the former Coordination Centre of the Government of the Republic of Serbia for Kosovo and Metohija, according to which, among the internally displaced persons, there are 50,000 employees of the socially-owned enterprises from Kosovo and Metohija.\textsuperscript{84}

The privatisation process in Kosovo and Metohija is, in a very important segment, different from the privatisation processes that have taken place in other areas of the former SFRY and East Europe, as regards the rights of employees of the enterprises that are privatised. In privatisations that have taken place in these areas in the past two decades, the rights of employees have been, to some extent, protected by giving free shares to workers, enabling them to purchase shares on preferential conditions, or by establishing the rights to the acquisition of vouchers or deposit money intended for the purchase of shares. Some privatisation laws prescribe obligatory social programmes in privatisation agreements. In contrast to this, in the Kosovo privatisation process, the rights of employees are protected through the institute of "the right to a share of the proceeds from the privatisation on a priority basis", which specifies that 20\% of the enterprise's sales price should be distributed for the benefit of the enterprise employees. So far, about EUR20 million have been paid for this purpose to employees in Kosovo and Metohija.\textsuperscript{85} The realisation of the right to some financial resources is, in a way, for internally displaced persons, a minimum compensation for their loss of jobs and financial resources necessary to meet basic living costs. In the situation when the potential return of the majority of internally displaced persons seems rather far away, and the return of their jobs even less likely, the introduction of this right into the Kosovo legal system is certainly a step forward as regards the protection of human rights. Unfortunately, in practice, the level of the realisation of this right is not even close to the goal that has been set.

It is interesting that the right to a priority share of the profit from the sale of an enterprise has been introduced by a regulation which could not formally be deemed to belong to the set of regulations in this field. This is Regulation 2003/13 “On the transformation of the right to use socially-owned immovable property”. This Regulation stipulates that those persons who are registered as employees with the socially-owned enterprise at the time of privatisation and are established to have been on the payroll of the enterprise for not less than three years are the persons entitled to a share out of the 20\% of the sales price of the enterprise. It should be emphasised that it is not shares that are distributed to employees, owing to the fact that being on the list of employees of an enterprise does not entail the right to manage the enterprise nor the right to a part of revenues from future profits. The distribution of resources which make one fifth of the enterprise sales price has, if compared to, for instance, the privatisation process in Serbia, the characteristics of a social programme. Only those who are registered as employees with an enterprise at the time of its privatisation (but not former employees, pensioners, and heirs of deceased employees) are entitled to the financial resources. The same Regulation, however,

\textsuperscript{83} Official Journal of Kosovo, year III, No. 30/15, June 2008
\textsuperscript{84} Kosovo Perspectives, No 10, of 7 July 2006
\textsuperscript{85} 2009 Annual Report of the Kosovo Privatisation Agency
prescribes the following: "This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber of the Kosovo Supreme Court". This provision gives the right to internally displaced persons in the complaints procedure to prove their right to be on the list of eligible employees entitled to a share of the proceeds from privatisation on a priority basis. This right is indirectly referred to in a provision on the obligation of the Kosovo Privatisation Agency to publish the official list of eligible employees, together with the notice of the right of complaint, not only in major Albanian language publications, but also in major Serbian language publications. In the privatisation process so far, the lists of employees have been published in daily papers in the Albanian language, and, depending on the time period, in the daily papers Danas, Kurir and Blic which are published in Belgrade, as well as in the Podgorica-based daily paper Vijesti.

Although the provisions of Regulation 2003/13 "On the transformation of the right to use socially-owned immovable property" give the right to internally displaced persons to be on the lists of eligible employees entitled to the proceeds from the sale of an enterprise, the procedure to realise this right is rather long and complicated. The first reason for this is the fact that the lists of eligible employees are drafted in the following manner: "The representative body of employees in the Socially-Owned Enterprise concerned, in cooperation with the Federation of Independent Trade Unions of Kosovo, shall establish on a non-discriminatory basis and submit to the Agency a list of eligible employees entitled to receive payments…". In a word, these are trade unions currently active in Kosovo and Metohija whose members are not internally displaced persons.

Leaving aside the details that do not essentially change anything, we could say that until the beginning of 2007, the Kosovo Trust Agency had published the lists of eligible employees of an enterprise only once, and the complaints about the list had been considered by the Special Chamber of the Kosovo Supreme Court. A by-law from 2006 stipulates that the Agency is obliged to publish the list of eligible employees of a company twice, first as a provisional list and then as a final list of eligible employees. Complaints after the former list is published may be lodged with the Agency, and after the publication of the latter one, they may be filed with the Special Chamber of the Kosovo Supreme Court, in both cases within 20 days of the day the list is published. Thus, the status of internally displaced persons was improved, and now they practically have two 20-day time periods to lodge a complaint about being omitted from the list of eligible employees. Therefore, the employees of the socially-owned enterprises in Kosovo and Metohija for which the lists of eligible employees have been published after the beginning of 2007 are in a more favourable position as compared to those employees for whose companies the lists of eligible employees had been published by the end of 2006. More importantly, at least for some of the employees, better procedural requirements in realising the right to be on lists of eligible employees entitled to a share of proceeds from privatisation on a priority basis were put in place.

86 Regulation 2003/13 – „On the transformation of the right to use socially-owned immovable property”
87 Administrative Direction No. 2006/17 Amending and Replacing UNMIK Administrative Direction No. 2003/13 Implementing the UNMIK Regulation No. 2002/13 – „On the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters”
Internally displaced persons frequently complain about the manner in which they are informed about the publication of the lists of eligible employees and claim that sometimes many internally displaced persons who are eligible to be on the lists do not find out in time that the list has been published. On the other hand, notifying the employees through the notifications in daily newspapers in the Serbian language is not something one could object to. The potential individual notifying of interested persons is neither legally founded nor actually possible.

In cases when internally-displaced persons find out in time that a list of eligible employees has been published, problems occur with writing, providing the evidence for, and filing the complaint in time. When a provisional list of eligible employees is published, the contents of the complaint are not a problem owing to the fact that the Kosovo Privatisation Agency provides a complaint form in the text of the notification. However, although writing complaints about provisional lists of eligible employees is not a problem as regards its form and contents, the form of complaints about final lists of eligible employees, on which the Special Chamber of the Kosovo Supreme Court decides, requires thorough knowledge of the regulations. For the majority of internally displaced persons, this means that without legal aid they cannot file the complaint. It is not unusual that for filing petitions with a Supreme Court it is necessary to be familiar with specific regulations, but in areas where internally displaced persons live, and in Serbia in general, very few lawyers deal with these matters, i.e. few of them are familiar with them to a satisfactory extent.

In the notifications in which lists of eligible employees are published, in the notice of the right of complaint, it is laid down that a copy of an employment booklet or another appropriate proof should be submitted as well, in a copy verified by a competent authority. In practice, the displaced persons who can submit together with the complaint a verified copy of their employment booklet in which their employment in the enterprise, whose list of employees they are filing a complaint against, has not been officially terminated, may almost certainly expect to be included in the final list of eligible employees, after the consideration of their complaint. The problem is, however, that the employment booklets of a large number of internally displaced persons remain with the enterprises (in Kosovo and Metohija) in which they had worked until 1999, and therefore they are not able to submit them to the Agency or to the Special Chamber of the Kosovo Supreme Court. This can be seen as a serious objection to the work of the Kosovo Trust Agency, i.e. the Kosovo Privatisation Agency. Why has it not, having taken over the administration of the publicly-owned and socially-owned enterprises and related assets, also taken over and used all the records from these enterprises, based on which eligible employees could be identified? This would solve the majority of the problems that internally displaced persons face when submitting evidence to support their complaints.

Filing complaints about provisional and final lists of eligible employees became a big problem after June 2008. Namely, until June 2008, internally displaced persons could communicate with the Kosovo Trust Agency or the Special Chamber of the Kosovo Supreme Court through the Belgrade-based Office for Mail Reception of the Kosovo Trust Agency, within the UNMIK Office. The complaints were filed on a regular basis provided they had been delivered on time to the Mail Reception Office. However, with the adoption of the Law on the Kosovo Privatisation Agency, this Office was closed and the internally displaced persons who at the time had

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88 Regulation No. 2002/12 – „On the Establishment of the Kosovo Trust Agency”
communication with the Office, were informed that as of mid-June 2008 they would need to go through the Kosovo Privatisation Agency in Pristina for all matters regarding the privatisation. A disadvantage of this solution for internally displaced persons is the fact that postal traffic between Serbia and Kosovo is not functional, except in those parts of Kosovo which are organised Serbian enclaves. The only way to lodge the complaints in time with the Kosovo Privatisation Agency or the Kosovo Supreme Court is to deliver them to these institutions in person or send them in time via mail from those parts of Kosovo and Metohija where Kosovo postal services operate. It should be emphasised that the time limits for the lodging of complaints are such that the complaints must be received by the relevant institutions before the deadline expires, which means that a proof that the complaint was sent before the expiry of the deadline is not a legally relevant fact with which the timely submission of the complaint could be proved.

Recommendations

 Through amendments to relevant regulations, it should be prescribed that the Kosovo Privatisation Agency has an obligation to cooperate with the trade unions that gather internally displaced persons in Serbia, in drafting provisional and final lists of eligible employees of enterprises that are subject to privatisation.

 It is crucial to prescribe the Kosovo Privatisation Agency’s obligation to collect and deliver to the Special Chamber of the Kosovo Supreme Court all enterprise employee records, in order to avoid difficulties with proving a potential right in cases when internally displaced persons do not possess their employment booklets which prove their right to a share of proceeds from the privatisation of socially-owned enterprises in Kosovo and Metohija.

 For the purpose of enabling internally displaced persons to submit petitions in time, without having to face unjustified technical problems, it is necessary to establish the mechanisms for delivering complaints and other petitions to the Kosovo Privatisation Agency and to the Special Chamber of the Kosovo Supreme Court, by establishing a Liaison Office within the UNHCR or another UN agency in Belgrade that would be authorised to receive and forward mail to the Kosovo Privatisation Agency and to the Special Chamber of the Kosovo Supreme Court.

2. The status of internally displaced persons in central Serbia

Although internally displaced persons comprise a heterogeneous group, like any other group in Serbian society, they have some typical features indicating their specific vulnerability and exposure to social exclusion. It is important to underline that the purpose of providing a status for internally displaced persons is not to put them in a privileged position as compared to, for instance, local socially vulnerable persons, but to recognise their vulnerability and specific needs, which are similar to the needs of refugees. Among internally displaced persons there are particularly vulnerable groups who require special attention, such as children, the old, the sick – and in particular, the displaced Roma people.
After visiting Serbia in 2005, Walter Kalin, the Special Representative of the UN Secretary General, clearly stated in his report on internally displaced persons that integration and return are not mutually exclusive, and that leading a quality life in places of displacement does not mean that internally displaced persons would not return.\textsuperscript{89}

In his last report from 2009, Walter Kalin recognised the change in the state policy towards internally displaced persons and complimented the Serbian authorities. “It is positive, and a clear step forward since my last visit, that authorities like the Serbian Commissioner for Refugees have started programmes (such as housing programmes) to help IDPs leave dreadful collective centres, move to their own houses or flats and build livelihoods”, adding "If you want to give IDPs a realistic chance to return one day, you have to first allow them to re-establish a normal life". Kalin also noted that few of those still stranded in collective centres had registered for the planned return programme.\textsuperscript{90}

### 2.1. Housing

In the first years after the displacement, the provision of adequate housing is something that, according to a great deal of research and the displaced persons themselves, has been missing most in the policy pursued by the Serbian authorities to help these persons. The IDPs' living standards survey from 2008 indicates that 10.2% of IDP households live in housing that is not intended for habitation, as compared to only 0.5% among the domicile population.\textsuperscript{91} This percentage is much higher among Roma households (and it amounts to even 32%). According to this survey, 21.8% of IDPs rent a house or an apartment, or a part of a house/apartment, as compared to 1.5% of tenants in the general population. Over one half (53%) of all internally displaced persons have their own houses/apartments (as owners or co-owners). Even one quarter of them still have an accommodation free of charge (with relatives, friends, etc.), but frequently it is a temporary and emergency solution.

The majority of households, where IDPs' families live, have an average size of the living space, per head of household for non-Roma families, of 18.43m², while this figure among the Roma households is only 8.14m² (which is far below standard). Whereas the majority of the non-Roma households could be said to be quite well equipped with (at least basic) housing utensils and facilities, the case is quite the opposite for a great number of Roma households.\textsuperscript{92}

For a very long time, the only long-term solution that Serbian authorities had for displaced persons was their return to Kosovo and Metohija. In the places of displacement in central Serbia there were almost no programmes for the integration of internally displaced persons. Unlike for refugees, housing programmes were not available for the internally displaced persons from Kosovo and Metohija. Things have been gradually improving and housing programmes have become increasingly open to IDPs. Since 2005, the Single Material and Financial Support

\textsuperscript{89} Walter Kalin, Representative of the UN Secretary General for Human Rights of Internally Displaced Persons, public statement, Belgrade, 24 June 2005.
\textsuperscript{90} Walter Kalin, Representative of the UN Secretary General for Human Rights of Internally Displaced Persons, public statement, Geneva, 7 July 2009.
\textsuperscript{92} Ibid.
Programme for Refugees who are leaving official collective centres was extended to internally displaced persons, but at the time they did not have the right to apply for the provision of housing. There were then only a few cases when housing programmes, or social housing programmes, were intended for internally displaced persons, besides refugees.  

In recent years, mostly in cooperation with international (and local) organisations, the Commissariat for Refugees has implemented numerous projects which have enabled social housing and other forms of housing for displaced persons. Various options have been offered in equal measure to displaced persons – the purchase of rural households and free construction material, as well as accommodation in social housing facilities in protected conditions.

A great deal of the support within these programmes is still directed exclusively, or to a great extent, to families in the official collective centres - support which is aimed at closing the centres; whereas support programmes for internally displaced persons in private accommodation provide them with much more limited assistance.

2.1.1. Collective centres

According to the data of the Commissariat for Refugees of Serbia, in the beginning of 2011, Serbia, excluding the area of Kosovo and Metohija, had 37 official collective centres, in which 2,687 internally displaced persons lived. As of 2002, 334 collective centres have been closed in Serbia and as of 2006, when 20 collective centres were closed, the number of closed collective centres has ranged from 7 to 12 on an annual basis. The great challenge in the process of closing collective centres in recent years has been the fact that quite a large number of particularly vulnerable families and individuals who depend on the care and assistance from others have been living in them.

Housing conditions in collective centres are, as a rule, bad, primarily as regards hygiene, and owing to the fact that they are overcrowded, so it happens that a multi-member family live in one room of about fifteen (15) square meters. Besides being overcrowded, many collective centres do not have a basic housing infrastructure, such as a kitchen, running water, a bathroom, sewage system, and heating.

We must not forget the fact that in Serbia there is a large number of (both small and big) unofficial collective centres in which housing conditions are even worse than in official ones. The Commissariat for Refugees, in December 2009, identified 42 unofficial collective centres, and technical evaluation of the objects indicated that only five of them do not need any kind of intervention. The roofing and plinths were not functional or needed major interventions in more than a half of the facilities. In the conclusion of the report, it is emphasised that a solution for the problems of the persons accommodated in the unofficial collective centres can be found only in their inclusion into existing programmes for the integration and improvement of housing.

95 IDMC, IDPs still seeking housing solutions and documentation to access their rights, Decembar 2009.
96 http://www.kirs.gov.rs/articles/centri.php?lang=SER
conditions, and given the extremely poor condition of certain objects, it is crucial to also include some of those centres as priorities for the realisation of the projects. The UNHCR data indicate that in these centres, over 1,500 persons have been identified, out of which almost two thirds are internally displaced persons.

2.2. International donor support of self-employment programmes of internally displaced persons - development of self-sustainability in places of displacement

The socialisation of internally displaced persons in the environments of their displacement cannot be realised without making significant investments into the development of their economic independence. In fact, displaced families are frequently unable to achieve this independence without some support. Self-employment support programmes (and support in launching or extending small business initiatives) have, therefore, proved very useful. State support programmes of this type, which have mostly been implemented through the National Employment Service and Development Fund owing to the relatively strict conditions for accessing such competitions, are usually not available for internally displaced persons. The better part of such support, in the form of small grants and education courses, has been provided to internally displaced persons by international donors.

In times when Serbia is once again facing an increase in poverty, providing this type of support for particularly vulnerable categories of society, such as internally displaced persons, is the only way to end their dependence on social aid and temporary allowances.

All such grant programmes are mostly aimed at providing support to entrepreneurs, craftspersons, agricultural producers and various service providers. Grants that have been approved range from EUR600 to EUR1,200 and are mostly in the form of equipment and tools. The general impression is that donors understand the importance this type of support has for its beneficiaries, but also for the strengthening of the economic sector of small and micro-enterprises in Serbia; therefore, the upward trend of the projected number of economic grants in the forthcoming period has been noticed.

According to the assessments of the organisations which implement such projects, 50% to 70% of the total number of grant beneficiaries manage to achieve sustainability of their business, i.e. 30% to 50% need to stop their business operations. However, it is essential to bear in mind the fact that we are talking about the results of monitoring during the course of the projects, which means that short-term sustainability has been taken into consideration and, as regards the assessment of the sustainability of the business initiatives enabled through these grants, there is, unfortunately, no comprehensive research. The available data do not refer to the long-term effects of the grants provided.

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According to the assessments of the organisations which implement such projects, up to a half of the total number of grant beneficiaries need to end their business operations already during the course of a project. This is how much is known about short-term sustainability: the available data are rather assessments than the results of thorough analyses. Unfortunately, there is no other comprehensive research or findings regarding the evaluation of the current (long-term) sustainability of business initiatives enabled by these grants.

The problems faced by those who needed to end their business operations, i.e. who did not manage to stay in the market, are of various kinds: from a wrong market assessment, to unfavourable economic circumstances which could not have been anticipated by a grant beneficiary. Furthermore, those who have used a grant to start a completely new business activity give up more frequently, as compared to those who have used it to extend an already operational business.

Moreover, it is vital to underline that, according to other available data, misuse of these grants rarely occurs (in the form of misappropriated machines and tools). It is, however, difficult to make even an approximate estimate of the number of beneficiaries from the population of internally displaced persons (and refugees) who have gained this type of support aimed at achieving economic independence. The reason for this is that an accurate, updated and complete database still does not exist. Another fact is that, in the past the majority of these programmes were implemented by international organisations without closer cooperation with the Commissariat for Refugees or another public authority. This practice has been changed recently, so that now every assistance provided for internally displaced persons is accurately recorded in the Commissariat for Refugees of the Republic of Serbia (CRRS). According to the report of the CRRS, in the period 2008-2010, within a large number of projects, a total of 2,325 donor/grant provision activities were realised, i.e. activities of economic enhancement (and in 2010, when 1,231 such activities were realised, an upward trend was recorded).

Regardless of the lack of complete data, we can say with certainty that the number of provided grants does not meet actual needs, or, in other words, an interest in these types of programmes among internally displaced persons far exceeds the number of such activities which are implemented. The interest is particularly great in those places where this type of support has already been provided and where it has proved to be efficient i.e. has been useful for the beneficiaries.

Through the monitoring of the families who have already been provided with some grants, the organisations that have implemented the grant provision activities conclude that the socialisation of such families is significantly faster than of the families who have not used this type of support and who do not have and are not able to provide satisfactory sources of financial security.

The organisations working on such projects believe that the most important prerequisite for the successful use of grants is the selection of beneficiaries, and then permanent monitoring in the field. Post-project monitoring also plays an important role. Unfortunately, monitoring the

100 Source: Educational Centre Leskovac
101 Commissariat for Refugees, Summary of projects implemented in the period 2008-2010
implementation of grants after the finalisation of a project is not carried out in the majority of cases. Owing to limited financial resources, this activity is mostly implemented only during project implementation. Upon completion of such a project, monitoring activities cease as well. Even in cases when they are trying to keep in touch with the grant beneficiaries after the completion of a project, organisations perform this extended monitoring only as a subsidiary activity. Moreover, after the finalisation of a project, some of the beneficiaries contact the organisations that have provided them with grants, asking about new programmes or asking for legal assistance with drafting business plans for loans with commercial banks or with the Ministry for the Economy and Regional Development (Start-Up and Follow-Up loans)\textsuperscript{102}.

The problem with the sustainability of business operations is largely caused by the very difficult economic situation in Serbia, and thus by a series of related reasons such as:

- Lack of a stable market;
- Unfavourable loan conditions offered by the commercial banks (high interest rates); and
- Large fiscal outlays (taxes and contributions), due to which many beneficiaries of economic grants operate in the informal economy.

Mortgage loans cause specific problems for internally displaced persons, owing to the fact that it means they need to be the actual owners of real estates – which is a condition that a large number of internally displaced persons cannot fulfil, since they do not own real estate outside the territory of Kosovo and Metohija, and their property in Kosovo and Metohija is not at their disposal or has been completely destroyed or heavily damaged.

Another segment of the assistance to IDPs in becoming economically independent is provided in the form of trainings (trainings for entrepreneurship). In fact, many internally displaced persons who apply for small grants have no previous experience and largely lack the basic skills and knowledge necessary for running a private business. Usually, these are people who had, before the war, worked in socially-owned enterprises and are good at a craft, but have no experience in running a business. Through the trainings provided for them within such programmes, they gain the necessary skills and knowledge of small business management, learn how to fill in loan application forms (e.g. Start Up loans with the Ministry of Economy and Regional Development), and to do basic bookkeeping. These activities are, as a rule, part of the majority of projects aimed at supporting self-employment through the provision of small grants.

**Recommendations**

- It is crucial that housing programmes still include multi-vulnerable families and individuals, and therefore, it is necessary to do more in the field of the inclusion of the particularly vulnerable persons and families, both by increasing the number of adequate housing facilities, and by an additional adjustment of the existing ones and the development of new programmes and services that will more completely and in a more integrated manner meet the specific needs of some vulnerable groups.

\textsuperscript{102} Start Up loans are aimed at launching private businesses and are limited to EUR2,000, and Follow Up loans are intended for the extension of business operations and are limited to EUR100,000.
- It is necessary to widely extend housing support programmes to cover refugees and internally displaced persons living in rented accommodation and unofficial collective centres, and above all to particularly vulnerable or multi-vulnerable families and persons (the extremely poor, the disabled, the heavily ill, etc.).

- When planning economic support through the provision of small grants, certain special risk factors of specific vulnerable (target) groups should be taken into consideration. This must be reflected in defining the conditions for the use of grants and in the contents of the training intended for grant beneficiaries. One of the risk factors related to IDPs stems from the fact that they often do not own real estate in the place of displacement and that the real estate they do own in their places of origin is in many cases destroyed, heavily damaged or usurped.

- It is necessary to enable the beneficiaries of international donor programmes to use the grants under the same conditions as the beneficiaries of the state programmes of the same kind implemented by the National Employment Service (or other state or public institutions). This particularly refers to the possibility of using tax and other relieves.

- It is vital to include local self-governments in all donor programmes with a view to providing economic support for internally displaced persons (and other target groups) and, whenever possible, through their provision of material support to IDPs and their financial participation in the programmes.

- It is essential to introduce the practice of monitoring and evaluation of the business operations of small grants beneficiaries, on a regular basis, within at least 12 months after the provision of a grant, in order to have reliable indicators of the efficiency (including sustainability and economic effects) of the supported business initiatives. This can be achieved only through the allocation of adequate resources in the project budgetary lines. However, to ensure independent and expert evaluation, these activities should be performed by a permanent team of external and specially trained evaluators. This is the only valid manner of formulating guidelines for further improvement and modifications of existing programmes.

- A central system for keeping the records of all projects and all beneficiaries of the support programmes for employment, self-employment and development of small and micro enterprises, should be established. The database should comprise all relevant data on grants (including the grant value and type) and on beneficiaries (including the type of their business activity). It is also necessary to include information on the target group (to which each of the beneficiaries belongs) in such databases, in order to enable the monitoring of the volume of distribution and the effects of the grants by target groups as well, including internally displaced persons. Moreover, the records (i.e. databases) on the small grants projects should include the most relevant data regarding the monitoring of the sustainability of the supported business initiatives.
2.3. Access to documents: dislocated registry books and specific problems of the Roma, Ashkali and Egyptian (RAE) communities

Many of the internally displaced persons are lacking in one or more important document. During the withdrawal of the Serbian security forces, a significant number of the records were transferred to dislocated offices in southern and central Serbia, some were lost or destroyed, and others still remain in the administrative hands of the authorities in Kosovo and Metohija. Besides the problems stemming from this situation, there are also significant deficiencies in the records related to IDP documentation, and procedural shortcomings in administering and providing access to such documents. All of this creates many problems for internally displaced persons, as well as for the inhabitants of Kosovo and Metohija, in the municipalities from which registry books were dislocated. The lack of personal documents is the largest formal obstacle to the realization of basic human rights. Some internally displaced persons in Serbia, members of the RAE communities, do not have a single document.

Based on the initial findings of the European Union and UNHCR projects, in partnership with five local non-governmental organisations aimed at facilitating the civil registration process, i.e. the provision of basic personal documents, it has been estimated that there are about 50,000 persons living in the region who do not have any personal documents.

“Praxis has identified more than a thousand legally invisible persons in over 20 municipalities in Serbia, the majority of them being children, who are particularly exposed to the risk of being abused, exploited and the victims of trafficking.” Although some specific characteristics may vary depending on the country, problems faced by legally invisible persons are the same in the whole region.

The reasons for this situation are as follows:

1) long and unadjusted legal and administrative procedures which slow down and hinder the process of inclusion into registry books;

2) a negative attitude of the competent state institutions and public services towards the members of RAE communities, marked by an intolerance inherited through generations, and prejudice towards members of these minority communities;

3) members of the RAE communities are extremely poorly informed about the rights they have and about the manner of realising them;

4) limited access to free legal aid; and

Note: This text is mostly based on reports and publications of the NGO Praxis, UNHCR and EU.


Information Centre for Civil Society (FRY Macedonia), Civil Rights Programme in Kosovo (CRP/K), Praxis (Serbia), Your Rights of Bosnia and Herzegovina, and Legal Centre (Montenegro).

This refers to the territory of Bosnia and Herzegovina, FYR Macedonia, Montenegro, and Serbia, including Kosovo, under UNSC Resolution 1244. According to estimates, between 700,000 and more than a million Roma, Ashkali and Egyptians live in this area.

5) the severe poverty of the RAE communities, due to which they are not able to pay administrative expenses and taxes.

The insensitivity and lack of flexibility of the competent authorities regarding the specific manner of life of these minority communities frequently result in some absurd situations. Living on the margins, poor and illiterate, RAE communities members are often not familiar with the legal obligation to register a new-born child. Often, they themselves do not possess any personal documents, which may delay the registration of their child in the birth registry books. Having no confidence in state institutions, they frequently use documents of other persons. Thus, it happens that other family members, those who have some documents, claim to be the parents of the child. One of the absurd situations that may occur is when a person with a borrowed health insurance card dies in a hospital. The real owner of the ID document will have difficulties in proving to be legally alive.

Frequently, the length of the procedure and the manner of interpreting the legal procedure for a delayed registration of the birth of a child (and the decision-making) clearly reflect the attitude of local institutions towards the presence of the members of the RAE communities in their areas.

On the other hand, in the areas where there is a will to implement the procedure in accordance with the rules, local civil servants are, owing to the lack of information, forced to turn to line ministries for technical assistance. The responses they receive are most frequently not applicable in practice. This situation has also been caused by the inconsistency and inaccuracy of the laws regulating this field.

Relevant international organisations, (the UNHCR and the OSCE) and two national NGOs (the Centre for Advanced Legal Studies and Praxis) launched in 2008 an initiative to adopt and submit to the National Assembly a Bill on the Procedure for the Recognition of Persons before the Law. The initiative was not successful. However, regardless of the disagreements regarding the measures that need to be taken, the relevant actors in the civil sector and independent institutions agree in concluding that administrative obstacles in the realisation of the right to be recognised before the law in Serbia are still present to a great extent.

**Recommendations**

- The authorities in Serbia, the UNMIK, and the authorities in Kosovo and Metohija should exchange registry books and other relevant archives.

- The competent authorities in Serbia should revise the procedures for the provision of personal documents and introduce simple, clearly prescribed procedures by removing all the

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The Law on Registers does not regulate the procedure of delayed registration of birth data, and Article 25 stipulates that if the fact of birth is reported after the expiration of 30 days from the date of the fact of birth, the registrar may enter the facts into the Register only on the basis of the decision of the competent authority. However, the procedure of delayed registration, or the procedure in which the competent authority makes a decision, is not regulated by the Law, and the evidences that are necessary to initiate the procedure, deadlines, ID papers and others, are not stipulated by the Law either. Owing to this legal gap, the authority competent for making decisions acts differently and, therefore, it happens that a delayed registration is practically impossible.
unnecessary administrative obstacles. As regards internally displaced persons, it is necessary
to acknowledge all relevant particularities of their status and remove all additional and
unjustified obstacles stemming from the status such persons have and thus enable an efficient
protection of this vulnerable population, in line with international standards and principles.

- Amending a large number of laws and by-laws would facilitate the procedure of delayed
  registration in registry books and simplify and facilitate the procedure for the registration of
  residence. To achieve this goal, it is necessary to amend and/or modify the Law on Registers,
  Family Law, Law on Civil Procedure, Law on Extrajudicial Procedure, Law on General
  Administrative Procedure, Law on Administrative Disputes, Law on Citizenship, Law on
  Residence and Domicile of Citizens, Law on Unique Master Citizen Number, Law on Identity
  Card, Guideline for Keeping Registers and Registers’ Forms, Rulebook on the Manner of
  Entering Citizenship Facts into the Birth Registry, forms for keeping records on the decisions
  on acquiring and termination of citizenship, the form of the birth certificate, and numerous
  others.

- The Republic of Serbia and international donors need to provide stronger financial support for
  the projects of free legal assistance for the minority communities in solving problems
  regarding the provision of personal documents.
III Returnees from Western Europe

Serbian citizens whose asylum applications have been rejected or temporary protection withdrawn

Introduction

Many citizens of Serbia have had their asylum applications rejected or temporary protection, which had been assigned to them as humanitarian aid during the conflicts on the territory of the former Yugoslavia, withdrawn. One year after the abolition of visas for travel to the EU states, many citizens of Serbia understand the visa-free regime as an opportunity to solve their social problems by requesting asylum. These asylum seekers are mostly Roma and Albanians from Southern Serbia. All of these requests for asylum are rejected as unfounded. If such a trend continues, there is a danger that the decision to abolish the visas will be suspended.

The return of these people is based on, among other things, the readmission agreements Serbia concluded with Western countries, as part of its obligations in the process of the European integrations. The readmission agreements are primarily relevant for the people who should be forcibly deported, and formally these agreements do not include people who have returned "voluntarily" or those who have complied with the orders of the Western authorities to leave the country, in order to avoid being returned as a result of police intervention. 109

Neither the Western countries nor Serbia have reliable, up-to-date and comprehensive statistics and analyses of the real and perceived number of the returnees to Serbia, their needs, socio-economic status, demographic characteristics and place of origin in Serbia or in Kosovo and Metohija.

The problem of the returnees overlaps with the issues of vulnerable minorities, particularly the Roma, as the majority of the asylum seekers and returnees are Roma. These people lack the social network which would improve their reintegration into the society where they were returned. Moreover, due to their long stay abroad, they do not know how the country functions as a whole and have no property, which makes the returnees a particularly vulnerable group within the Roma population.

According to the information provided by the Ministry for Human and Minority Rights, during

109 If, however, people who no longer have legal grounds to stay refuse the "voluntary return", they are forcefully deported, with the assistance of police, on the basis of the readmission agreements. Even Western countries do not refer to this type of return as "voluntary". When someone returns to avoid forced deportation, this is usually called the "mandatory" or "ordered return".
2010, approximately 1,600 citizens of Serbia were returned to the Nikola Tesla Airport, including the returnees who had left Serbia many years before, as well as those who left after the introduction of the visa-free regime for the EU. A 70% majority are, however, citizens who sought asylum in the countries of Western Europe and the Scandinavian countries after the introduction of the visa-free regime for the EU. After the abolition of the visa regime, the largest number of the rejected asylum seekers returned by bus and there are no precise records of their number. Mr Ivica Dacic, Serbian Minister of Interior, said that since the abolition of the visa regime more than 4,000 citizens of Serbia had been returned.110

One purpose of this paper is to draw a distinction between people who, after the abolition of the visa regime, due to their lack of knowledge, use or abuse the asylum system to improve their economic situation, and vulnerable returnees who have spent many years in Western countries and need institutional intervention and support. These people are faced with specific difficulties in the process of reintegrating into the society which they left, in some cases, ten or fifteen years ago.

1. Asylum seekers from Serbia after the abolition of the visa regime with the EU

After almost 20 years, Serbia has been placed on the White Schengen List and its citizens can now travel freely to Western countries. Visa-free travel to Western Europe only applies to temporary tourist and private visits111, and the authorities of the Western countries expect that the freedom of travel will not be abused for filing unfounded applications for asylum. Unlike during the war times in the nineties, there are no reasons for the countries in Western Europe to provide refuge on a large scale for the citizens of Serbia. Economic problems and poverty are not grounds for asylum in Western Europe, and the citizens of Serbia are usually rejected in the expedited procedure.

On 30 November, 2009, the EU Council of Ministers abolished visas for the citizens of Serbia, Montenegro and Macedonia for travel to the EU member states. A year later, on 8 November, the visa-free regime started for Bosnia and Herzegovina and Albania. In the Western Balkans, only Kosovo is not included in the visa-free regime. The European Commission has indicated in a separate statement that in cases when the visa liberalization regime is breached, it can impose a measure of temporary suspension of the visa-free travel regime to the EU. This statement was made because some EU member states requested stricter control of the implementation of the visa liberalization for Bosnia and Herzegovina and Albania, and also because of the "false asylum seekers" from Macedonia, Serbia and Montenegro, who took advantage of the abolition of visas in order to request asylum in EU member states.112

110 Beta, Visa-free regime not threatened, 23 February 2011
111 Upon entering the EU, a stay of 90 days (in the period of 6 months) is allowed. Such entry in the EU does not include the right to work.
112 Euroactive, 20 December 2011, The anniversary of the introduction of the visa-free regime for the citizens of Serbia.
In 2010, with 28,900 applications for asylum, Serbia (including Kosovo) was in the first place in the world. The UNHCR Statistical Yearbook of UNHCR Asylum Levels and Trends in Industrialized Countries gives an overview of the total number of asylum seekers from Serbia, and from Kosovo. Based on the statistical report by Eurostat for the 27 countries of the European Union, Serbia (excluding Kosovo) was in the third place based on the number of filed applications for asylum (17.71), behind the citizens of Afghanistan and Russia.

Based on the data submitted by Zorica Djokic Milosavljevic, Deputy Head of Administrative Affairs in the Ministry of Interior of the Republic of Serbia, following the abolition of the visa regime, and grouping the data by area, most asylum seekers in 2009 were from the cities of Belgrade, Pancevo, Vranje, Zrenjanin, Leskovac and Nis. In the following year, most asylum seekers were from the South of Serbia - the territory of the municipality of Vranje and the neighbouring municipalities – as well as from Belgrade, Pancevo, Zrenjanin and Leskovac.

In 2010, 6,795 citizens of Serbia requested political asylum in Germany. According to the Ministry of Interior in Berlin, this number is significantly higher compared to 2009, when 581 citizens of Serbia applied for asylum in Germany. "Back in October, the German authorities estimated that a large number of Serbian nationals applied for asylum primarily with the intention to use the financial aid the state gives to the rejected asylum seekers if they choose to return voluntarily to their country of origin. This assistance amounts to 600 Euros for the adults and 300 Euros for the children, with paid travel expenses. For this reason, the federation and provinces that jointly fund this support, which is not their legal obligation, but the donation of the German government, have suspended these payments for the citizens of Serbia and Macedonia." The decision on the abolition of assistance for the returnees mostly affects people who have spent many years in Western Europe, and are now treated in the same manner as the new asylum seekers, and are deprived of any assistance.

The European Union does not have clear criteria for various categories of returnees. The national legislations of the EU countries often do not make distinctions between these groups when it comes to their return. There are no legal solutions which would consider different types of return, but instead they often apply general legal provisions on the movement and stay of foreigners, which affects more the people who have had some form of protection than those who have not been granted asylum.

According to Eurostat, in 2010, 6,255 citizens of Serbia applied for asylum in Sweden. Based on the data published on the website of the Swedish Migration Board (SMB), in the first nine months of 2010, the citizens of Serbia submitted a total of 4425 asylum applications, which is 10 times more than in the same period of the previous year, when, according to the information of SMB, 419 citizens of Serbia applied for asylum. In total, 22,577 persons sought asylum in Sweden in the first nine months of 2010, nearly 5,600 more than in the same period in the previous year.

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113 UNHCR, Asylum Levels and Trends in Industrialized Countries 2010, March 2011, (information related to asylum applicants in 44 countries)
114 Eurostat, The number of asylum applicants registered in the EU27, March 2011 (Statistical Office of the European Commission)
115 Press conference of Group 484, presentation of the Project for the Assistance of Returnees, 2 February 2011
116 Beta, 18 January 2011, Number of asylum seekers from Serbia in Germany has increased.
117 Euractiv, 25 December 2011, Report on the abuse of the visa-free regime in June
2009. Many asylum seekers are from the Balkan countries, mainly from Serbia. The number of citizens of the Balkan countries applying for asylum fell between April and July but increased in August, according to the SMB website, and the conclusion was that "many citizens of Serbia might have arrived due to the abolition of visas." In their applications for visas, the Roma state ethnic discrimination as a reason for asylum, but according to the Swedish law, as stated on SMB website, "discrimination cannot be sufficient grounds for the asylum."

According to the data from the Belgian General Commissariat for Refugees, Serbia is in the sixth place based on the number of citizens who sought asylum in the first 11 months of 2010, with the total of 1,093 requests (the total of 2,220 for the entire 2010). In January, that number was as low as 58, but in February it rose to 330, then during the spring and summer it decreased, with several dozen people applying each month. In the fall, this number began to rise again, amounting to 116 applications in November.\(^\text{118}\)

"Several German politicians warned the authorities in Serbia that the decision on the abolition of visas could be suspended for the citizens of Serbia and Macedonia, if the number of people applying for asylum is not reduced. Those who are familiar with this issue believe that the situation could become very unfavourable if, after the abolition of visas for the citizens of Bosnia and Herzegovina and Albania, the number of asylum seekers from these countries increased. Due to bad experiences with Serbia and Macedonia, along with the decision on abolishing visas for the citizens of Bosnia and Herzegovina and Albania, which entered into force on 15 December, the EU Council of Ministers also introduced a monitoring mechanism."\(^\text{119}\) Another aggravating circumstance would occur if the number of the EU states where asylum seekers arrive increased, as this would create additional pressure within the Union to reconsider the decision on the visa-free regime for the countries of the Western Balkans. In June, the European Commission will publish the report on the implementation of the visa-free regime for the citizens of the Western Balkan countries who travel to the EU, and at that time, the legal possibility to introduce a mechanism for the temporary suspension of the visa-free regime for individual countries might be considered. The Government of Serbia did not react in a timely fashion to a large number of asylum seekers. In the Action Plan of the Government of the RS for the status of the candidate, it is stated that the Ministry of Interior has begun distributing leaflets at the border crossings to prevent our citizens from applying for asylum. However, this leaflet does not provide information about the abuse of the asylum system, but only that the visa-free stay in the Schengen countries should not be used for work in the grey economy.\(^\text{120}\) In March 2011, a Commission was established, an inter-ministerial body, for the monitoring of the visa-free travel regime with the EU, in order to propose measures to the Government of the Republic of Serbia which would help reduce the number of asylum seekers.\(^\text{121}\)

Because of the abuse of the asylum system, the Netherlands and France have submitted a proposal to the Council of the EU Ministers and the European Commission to introduce an emergency suspension of the visa-free regime.\(^\text{122}\) It should be kept in mind that the processing of

\(^{118}\) Ibid.

\(^{119}\) Ibid.


\(^{121}\) Beta, 7 March 2011, The Commission established because of asylum seekers

\(^{122}\) Euractiv, 25 December 2011, Report on the abuse of the visa-free regime in June
one application for asylum costs EU taxpayers over 10,000 Euros, and the rule is to impose the visa regime for the country where greatest numbers of asylum seekers come from. Also, migration to the EU is a very sensitive political issue that is always put forward during election campaigns, and preventing unwanted migrations is a priority of right-wing governments. On the other hand, when it comes to Serbia, the consequences of the re-introduction of the visa regime could lead to the isolation of the country, the strengthening of nationalism and the animosity of the majority of the population towards the Roma and Albanian national minorities, who are usually the asylum seekers.

2. Sustainability of return

The term sustainable return should be interpreted according to the context and the position of one who uses that phrase. The governments of the Western countries would characterize a return as sustainable if the people would decide not to migrate again towards Western Europe. For the returnees, sustainable return could mean reaching a satisfactory standard of living which is better than the one which forced them to migrate in the first place. Sustainability of return is largely dependent on the subjective circumstances of an individual who returns. Many returnees are not motivated to integrate into the society of their origin, but above all, the countries of origin are under obligation to provide all the necessary institutional preconditions for the sustainable return.

In the meanwhile, many returnees have "disappeared" from Serbia and possibly re-settled in Western countries. Return does not necessarily mean travel in one direction, since the returnees face a completely different world that offers more problems than opportunities, which can lead to repeated, secondary migration.

In Serbia and in the Western countries, the assistance for the returnees who have been refused asylum or have had their temporary protection abolished, is usually given on an individual basis, i.e. this assistance is not part of the overall development process and cooperation of the country of admission and origin. In Serbia, the pre-accession funds of the European Union do not apply to the returnees, and the return takes place on an ad hoc basis without the support of countries of origin. While residing in the Western countries, most of the returnees said they were not included in the type of assistance for the preparation for the return, either because they were not offered this or because they felt that participation in such programs would reduce their chances to extend their stay abroad. The link between the assistance for individual returnees and the development programs for the transitional changes has not yet been established, which makes permanent return significantly more complicated. At the EU level, following the adoption of the Return Directive, the Return Fund was established, and only the organizations within the EU can apply for its funds. As a rule, the financing of the return is related only to the act of departure from the Western countries, not to the reintegration into the country of origin.

When evaluating the possibility of sustainable return, the following issues should be considered: housing, employment, education of children and the desire to stay, if security and freedom of movement and access to public services are provided. As a rule, the returnees to Serbia decide to migrate for the second time, if any of these conditions are not provided.
Many returnees do not see the return as the final option. They imagine the future in the Western countries, since there have learned to organize their existence there, despite the fact that often they have no legal grounds for that. Due to the lack of motivation for return and an unrealistic perception of the new situation, the returnees usually do not make any plans about living in the country of origin. During their life abroad, the returnees did not have confidence in the advisers or attorneys provided by the foreign countries, believing that they were not working in their best interest. And in cases when the return was inevitable, there was no trust between the civil servants and returnees in order to make this process as painless as possible. There are many returnees who were paying private attorneys for many years in order to ensure an extension of their stay. According to the returnees, the fee of these attorneys is about 50 Euros per month, plus additional charges for court hearings. Some returnees have said they spent much higher amounts paying the attorneys. None of the returnees have stated that they were using free legal aid provided by the international or non-governmental organizations in the Western countries. After the return, in cases when a returnee has some unresolved status issues or claims in a Western country, such as the family pension or securing compensation for the damages caused in a traffic accident, it is almost impossible to have these proceedings started from Serbia.

Upon return to Serbia, the returnees are in great need of consultations and advice in Serbia, but according to their statements, work and decent housing is what they lack the most.

All the returnees have said they used to live much better in the Western countries than now in Serbia, despite the fact that they often lived in collective centres, centres for the reception of asylum seekers, with shared bathrooms and kitchens. Life in such accommodation, where there is no privacy, according to the returnees, still provides security in terms of low expenses, education for the children and health care. On the other hand, the uncertainty about their own position and the possibility of return has cause great anxiety, and, according to medical experts, this can lead to serious health conditions. Many returnees show signs of depression and other physical and mental symptoms because of the hopelessness of their own position. It is notable that those returnees who have opted for the so-called "voluntary" return, are in a much better mental state than those who have been deported by the police and with the use of force. Since they were not prepared for the return, these people often do not bring their most personal belongings, and upon their return to Serbia are in a state of shock, unable to cope with all the problems of everyday life.

In most cases, those who were forcibly deported are prohibited from re-entering the EU for five years, although some returnees have said that their ban is not time-limited. They said they had been told in the embassies that they must first compensate the costs of their deportation to the Western countries in order to have the ban on re-entry cancelled.

After the abolition of the visa regime, the Serbian authorities have failed to explain the meaning

123 Ulrike von Lersner, Ulrike Wiens, Thomas Elbert, Frank Neuner Psychotrauma Research - and Outpatient Clinic for Refugees,University of Konstanz, Germany, Mental health of returnees: refugees in Germany prior to their state-sponsored repatriation, BioMed Central journal, June 2008; Asylsökande barn meduppgivenhetsymtom, Ett svenskt phenomenon aren 2001-2006, Statens Offentlig Utredningar, Stockholm, 2006. (The parts of the report referenced here were translated in English)
of these measures - that the visa-free regime could only be used for tourist trips and visits to friends and relatives. Freedom of travel, according to the opinion of the Western governments, is abused because the asylum system is used as a backdoor for illegal immigration. It is expected from the Government of Serbia to prepare a carefully thought-out information campaign in order to explain that economic reasons are not the grounds for granting asylum. Due to the lack of information, many people have unrealistic expectations of their stay in the Western countries. Citizens who attempt to seek asylum in other countries of Western Europe through a third person are exposed to the risk of becoming victims of trafficking and financial fraud. Some people have spent significant amounts of money just to file an application for asylum. There are indications that certain tourist and transportation companies are involved in fraudulent activities.\textsuperscript{124}

3. Overview of the EU policies in relation with the conclusion of readmission agreements

Starting from the nineteen-eighties, the signing of the readmission agreements for the return of persons without a legal basis to stay on the territory of the contracting states began. In the first phase, the contracting states agreed to accept their own citizens. Since the nineteen-nineties, the migration policy and asylum policy in the European Union has become more restrictive. Starting from this period, in addition to citizenship, the last place of residence before legal or illegal migration is also taken into consideration. Bilateral agreements on readmission have been made by many European countries, and after the Treaty of Amsterdam in 1999, the EU has the authority to conclude uniform contracts for all EU member states. The criteria for identifying countries to conclude readmission agreements with are migratory pressure on the EU, regional connectivity and geographic proximity.\textsuperscript{125}

In the European context, it is important to emphasize the \textit{Global approach to migration}, which is similar to the conclusions adopted by the European Council in 2005. The objectives of Accession are to define different areas that cover topics related to migration (development, social policy, employment, external relations, legal and internal issues), as well as the short- and long-term actions and plans associated with migration and forced migration. These measures represent the external dimension of the migration policy of the European Union in an attempt to manage migration through political dialogue and practical cooperation with third countries.

On 15 October, 2008, the heads of state and governments of the European Union member states supported The European Pact on Immigration and Asylum. This document advocates stricter control of migration flows, taking into account the developing countries and human rights of asylum seekers. The Pact is divided into five areas: (1) legal migrations, (2) illegal immigration (3) border control, (4) asylum seekers policy, and (5) cooperation with third world countries.

The Treaty of Lisbon entered into force on 1 December, 2009. The agreement states that the Union can conclude agreements with third countries as well as agreements for the readmission of third country nationals who do not meet or no longer meet the conditions for entry, presence or residence in the territory of the member states. (Article 63a / 3)\textsuperscript{126}

\textsuperscript{124} DW, 31 December 2010, High number of Serbian asylum seekers linked to travel scam
\textsuperscript{125} ECRE / Group 484, \textit{Training Handbook - Migrations Challenges in Serbia}, 2010
\textsuperscript{126} Official Gazette of the European Union, 2007 / C 306/01
The Stockholm Programme, adopted by the European Council in December 2009, succeeded the Hague Programme (2004-2009), and it defines the priorities for the actions of the EU in the fields of citizenship, rights, security, immigration and asylum policy for the next five years (2010-2014). The Programme relies on the comprehensive approach to migration: the organization of legal migrations, establishing links between migration and development, as well as prevention and fight against illegal migrations.

In April 2010, the European Commission adopted the Action Plan for the Implementation of the Stockholm Programme, which lists specific measures and the time-frame for the activities from 2010 to 2014.

In the process of European integrations, the issue of human rights of people who need to be returned on the basis of readmission agreements has not been sufficiently considered. Pursuant to the Strategy for the Reintegration of the Returnees under the Readmission Agreement, there are several conventions ratified by Serbia, which should be used as a framework for the above mentioned process:

- Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, signed on 4 November 1950, entered into force on 3 September, 1953)
- International Covenant on Civil and Political Rights (General Assembly of the United Nations, signed on 16 December 1966, entered into force on 23 March 1976.)

The readmission agreements are based on Article 1 of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) modified in accordance with the Protocol no. 11, which deals with protection in the process of the expulsion of foreigners. According to this provision, states are completely free - in accordance with their regulations – to deport a foreign national, while respecting the standards provided for in this Article, which primarily refer to the right of foreign nationals “to submit reasons against deportation, to have each individual case examined and for that purpose, be represented before the competent authority or person(s) designated by that authority.“ Only in cases when the procedure prescribed by the relevant internal regulations is not followed, can the European Court of Human Rights establish its jurisdiction.

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127 Official Gazette of the Republic of Serbia, No. 15/2009
128 Group 484, Return from Western Europe, 2005
4. European Integrations and Readmission

The countries in the region of the Balkans aspiring to become members of the European Union, must meet appropriate standards in the field of migrations and sign bilateral and multilateral agreements on readmission, both with the EU countries and with the countries in the region. According to the Integrated Border Management Strategy in the Republic of Serbia, the term "readmission" is related to the readmission of persons who do not fulfil or no longer fulfil the conditions to stay on the territory of another country. By signing bilateral and multilateral agreements on readmission, the state is showing its willingness to control migration flows on its territory. Migration policy and integrated border management are important elements in the process of European integrations.

The main objective of the EU policy on readmission is to ensure that third-country nationals, illegally residing on the territory of the member states, are effectively and promptly returned to their countries of origin or (in some cases) to countries where they resided, or to transit countries. The aims of these policies are implemented by the signing of readmission agreements by and between the EU and third countries.

The issue of visa liberalization with the EU countries is often a priority in the foreign policy of third countries, and the need for the prevention of illegal migration is always an important topic in the EU. The signing of readmission agreements is usually a prerequisite for any cooperation with the EU. This was the reason for the ratification of 15 bilateral agreements with 17 countries in the period from 1996 to 2007. The agreements were signed with Germany, Sweden, Denmark, Italy, Belgium, the Netherlands, Luxembourg, Austria, Slovakia, Bulgaria, France, Hungary, Slovenia, Croatia, Bosnia and Herzegovina, Switzerland and Canada.

On 18 September 2007, Serbia signed a uniform agreement on readmission with the EU. This agreement came into force on 1 January 2008, and it regulates the issues of the readmission of citizens of the Republic of Serbia with all EU member states, except with Denmark.

The Agreement states that Serbia will accept again:

- Any person who is not eligible to enter, stay or reside on the territory of a member state, provided that the person is a citizen of Serbia,
- Underage unmarried children of the above mentioned persons, regardless of their place of birth or nationality, provided they have no independent right of residence in a member state,
- Spouses of the above mentioned persons, who are nationals of third countries, provided that they have the right to enter and remain, or obtain the right to enter and remain on the territory of the Republic of Serbia, provided that they have no independent right of residence in a member state.
- All third country nationals or stateless persons who do not fulfil the legal requirements for entry, residence or stay on the territory of a member state, on condition that the person: (a) has, or had at the time of crossing the border a valid visa or residence permit issued by Serbia, or (b)

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129 Integrated Border Management Strategy
illegally and directly entered the territory of a member state, after visiting or travelling through the territory of Serbia.\textsuperscript{130}

The preamble of the uniform Readmission Agreement between Serbia and the EU is a joint statement of the Contracting Parties that they will work on the reintegration of returnees. However, that statement, according to the opinion of the representatives of Serbia, has remained only declaratory.

After the agreement with the European Union, Serbia has continued to sign bilateral agreements. Thus, for example, during 2010, the following were signed: the Agreement between the Republic of Serbia and the Swiss Confederation on the readmission of persons illegally residing, with the Protocol on the application of the Agreement and the Law on Ratification (Official Gazette of RS 19/10), the Agreement between the Republic of Serbia and the Kingdom of Norway on the readmission of persons illegally residing with the Law on Ratification (Official Gazette of RS 19/10), the Protocol between the Government of the Republic of Serbia and the Republic of Italy on the implementation of the Agreement between the Republic of Serbia and the European Community on the readmission of persons illegally residing with the Law on Ratification (Official Gazette of RS 19/10) and the Readmission Agreement with Macedonia, which was concluded primarily owing to the return of third country nationals who arrive in Serbia through the territory of Macedonia.\textsuperscript{131}

5. The legal and institutional framework for readmission and reintegration

The Government of the Republic of Serbia has considered as significant the implementation of the Readmission Agreement between Serbia and the European Union, and on 23 October 2008, the Council for the Integration of Returnees under the readmission agreements was established. The decision on the establishing of the Council was published in the Official Gazette of RS, No. 99/08, and Mr Jovan Krkobabic, Deputy Prime Minister in charge of social issues, was appointed president. The Council for the Integration of Returnees is defined as a professional and advisory body of the Government of the Republic of Serbia. Several senior officials from the ministries who deal with integrations as part of their responsibilities have been appointed members of the Council. They are representatives from the Ministries of Human and Minority Rights, Education, Health, Labour and Social Affairs, Interior, Public Administration and Local Self-Government.

On 13 February 2009, the Government of the Republic of Serbia adopted the Strategy for the reintegration of returnees under the Readmission Agreement (Official Gazette RS No. 15/09). The Action Plan for the implementation of the Strategy for the reintegration of returnees under the Readmission Agreement for 2009 and 2010 was adopted on 19 April 2009. Subsequently, the Team for the Implementation of the Strategy was established as a professional and co-ordination body which provides for the application of strategic goals and

\textsuperscript{130} Official Gazette of the Republic of Serbia, no. 103/2007

\textsuperscript{131} See the section on the asylum system in Serbia.
informs the Council for the Integration of Returnees.

The idea and goals of the Strategy are:

- the inclusion of the returnees into the labour and education systems
- involvement in social and health care
- the development of housing programs
- strengthening councils for migrations in the municipalities
- the establishment of a relevant database

According to the Strategy and the Action Plan, the Commissariat for Refugees of Serbia has a key role in the operational implementation of these documents. The duties of the Commissariat are:

- primary admission of the returnees
- emergency admission of the returnees
- identifying returnees
- providing information to the returnees about the services and organizations that they can turn to help for

For these purposes, the Commissariat has established the following services:

- Office for readmission at the "Nikola Tesla" Airport
- Centre for emergency shelter in Belgrade, Bela Palanka, Zajecar and Sabac
- Commissioner for Refugees in all the municipalities in Serbia.

5.1. Overview of system deficiencies

Throughout the previous ten years, there was almost no serious system care for the returnees. In the last two years, the fact that the problem of readmission has become an important factor in the process of the European integrations of Serbia has led to the institutionalization of the problem of the reintegration of returnees.

In 2003, there existed the Department for Readmission in the Ministry for Human and Minority Rights of Serbia and Montenegro, and this Department consisted of only one person. The Office for Human and Minority Rights of the Government of Serbia was the state institution (for a period of time it was downgraded from the level of ministry to the level of agency of the Government of the Republic of Serbia) which dealt with the issues of readmission into Serbia, but it did not have sufficient resources nor an institutional framework to meet the minimum needs - but it made some progress in making the public more aware of the problems of readmission and the drafting of the Strategy for the integration of returnees. The work of the Office was later taken over by the Ministry of Human and Minority Rights, with similar results.
In February 2006, the Office for Readmission was opened at the Belgrade Airport in cooperation with the Embassy of Sweden. There were no other forms of assistance for the returnees at that time except for the primary admission and providing basic information. Leaflet and information bulletins were printed for the returnees, with basic information which often was not adequate for their needs. In 2009, the Council for the Reintegration of Returnees printed the updated versions of the information bulletin and manual.

The state made the first serious steps in solving this problem by the adoption of the Strategy for the Reintegration of Returnees and establishing the Council for the Integration of Returnees, the Team for the Implementation of the Strategy, as well as by the adoption of the Action Plan for the Implementation of the Strategy. In June 2009, the Commissariat for Refugees committed itself to the implementation of the Strategy and the operational care of the returnees, and the filling of the institutional gaps in this area has continued. Four reception centres for returnees have been founded, and the Commissariat has taken over the Office for Readmission opened at “Nikola Tesla” Airport. The Commissioners for Refugees in the municipalities and cities in Serbia are involved in the implementation of the strategy, which represents a major structural improvement in the implementation of the strategy.

Despite significant improvements, the Republic of Serbia still cannot provide adequate care for the returnees. The problem of returnees and asylum seekers cannot be seen as separate from the general position of the Roma in Serbia, since the majority of the returnees are Roma.

It can be concluded that the following is necessary:

- Significant improvements in the distribution of information to local self governments about the arrival of the returnees to their territory,
- Providing and strengthening the counselling for migrations in local self-governments and assisting them to realistically conceive of and plan the needs of the returnees,
- Inclusion of the representatives of the associations of beneficiaries in the work of the councils,
- Improvement of the flow of information between relevant institutions and co-ordination between these institutions,
- Providing mandatory additional lessons of the Serbian language for the children of the returnees, and avoiding leaving this to the discretion of school administrations,
- Providing sufficient funds for one-time financial assistance for the returnees within the budgets of local self-governments,
- Providing assets for the integration of the returnees on the national level in accordance with the estimated needs and
- Significant improvement in providing information to the returnees about their rights, obligations and possibilities related to their reintegration on the local level.

The above mentioned shortcomings could be easily overcome through co-operation between institutions and civil society organizations, with the assistance of the European funds.
5.2. Reintegration and access to rights

There is no precise information about the number of returnees under readmission, nor about the number of potential returnees - those who have lost the legal grounds to reside in the EU states. The biggest issue is the registration of the so-called voluntary returnees. In most situations, the statistics consist of the information about the returnees who are deported.

Forced returnees are returned by charter, group and commercial flights (individually, in families, with or without police escort) and they are registered at Belgrade Airport. According to the information of the Ministry of Interior, in the period from 2003 to 2009, 28,000 requests for the return of persons under readmission were filed. On the other hand, in the period from 2000 to 2009, 13,000 beneficiaries from the Western countries used the assistance of the International Organization for Migration - IOM (these are one-time financial aids for voluntary returnees).

Certain returnees were detained for from several hours to up to several days before the forced deportation by airplane. On rare occasions, some returnees spent longer periods of time in detention waiting for deportation. One returnee said he had waited in detention in Germany for four months, but it was determined that a prison sentence had been imposed on him because he had hit a police officer during deportation. He was deported only after he had served the prison sentence for the assault of a police officer in Germany. It should be mentioned that assaults or resistance are the last resort of the returnees, and that they are more an expression of rage, frustration and despair, than an intention of the returnees to prevent their deportation.

In the period from January 1 to August 31, 2010, 670 persons were registered at the Airport of Belgrade: 231 from Germany, 206 from Sweden, 82 from Austria, 74 from Switzerland, 24 from France, 13 from Belgium, 19 from Denmark, 10 from the Netherlands, 2 from Slovenia, 2 from the Czech Republic, 4 from Italy and 3 from Russia. Out of this number, 264 are Roma, 187 are Serbs, 33 are Muslims, 26 are Albanians, and 9 are Bosniaks and one is Turkish and one Macedonian. The others used their right not to declare their nationality.\(^{132}\)

According to the evaluation of the Commissariat for Refugees of the Republic of Serbia, and based on the information of the Ministry of Interior, so far approximately 40,000 citizens of Serbia have returned after losing the right to reside in the EU member states. Most of the returnees are ethnic Roma, although there are Serbs, Bosniaks and members of other ethnic groups. At the same time, the estimate is that several thousands of Serbian citizens will be returned based on the Readmission Agreement. Furthermore, it is difficult to estimate how many citizens of Serbia left from Kosovo to the EU member states, and are residing illegally in those states, and how many of them would request to come to Serbia in case of readmission. They are mostly Roma or Serbs.

There are no special regulations for the returnees, but the same regulations that apply for the other citizens of the Republic of Serbia are used to protect the returnees. The returnees and their families encounter a great number of problems. Some of them have spent a number of years in

\(^{132}\) The information was received during the conversation of a member of the working group with Zoran Panjković, Advisor for Migrations in the Ministry for Human and Minority Rights of the Government of the Republic of Serbia, Belgrade, 25 October, 2010
the EU member states. There are families with children who were born there and were included in that school system, and in most cases they do not speak the Serbian language at all. The countries they went to have better living conditions in general, so that fact alone makes them feel bad once they are forced to return. At the same time, there are those who return in order to "reduce the damage" by returning voluntarily once they are notified that they do not have the permit to stay, rather than waiting to be deported. The so-called voluntary returnees receive a certain incentive to return, in different amounts depending on the country, and their movable assets are not affected. Voluntary returnees usually have minimum living conditions to return to, a house or some other type of accommodation. The returnees who are deported are more often without the basic conditions for life in their country of origin. There are instances when the returnees are persons with severe physical and psychological illnesses, dependent on medical care.

In the process of the reintegration of returnees, the Ministry for Human and Minority Rights has monitored the issues related to this group of migrants directly through the Office at the "Nikola Tesla" Airport since 2006. Reintegration starts already at the airport (in the case of deported returnees). The Office for Admission is always open and provides primary admission for the returnees. Starting from 2009, the Ministry for Human and Minority Rights provides office space for the Commissariat for Refugees, as the provider of emergency readmission. Upon the arrival of the returnees (individually or in groups) they first have a conversation with authorized officials of the Ministry of Interior of the Republic of Serbia, then with the employees in the Ministry or the Commissariat. During the interview, the returnees fill out the questionnaire with the information about their status abroad, the potential breach of human rights and problems they can expect upon return to the local environment. This questionnaire is the foundation for the uniform database of the returnees. They are given advice about what they can do in order to reintegrate and specific instructions regarding the support system in the local environment. Simultaneously, the returnees receive the Information Bulletin for all municipalities and cities in Serbia with the addresses and contact telephones of all services and organizations that provide assistance for the returnees.

As was previously stated, the function of the Ministry for Human and Minority Rights was reduced to monitoring and reporting about the process of return, which might have had certain effects. When it comes to breaches of the human rights of the returnees, the representatives of the Ministry for Human and Minority Rights inform the embassies and other European institutions of all such instances. Starting from 2006, according to the employees in the Ministry for Human and Minority Rights, there has been an improvement of the behaviour of the police in the Western countries (abandoning the practice of going into the apartments of people who no longer have the permit to reside in some of the Western countries during the night, confiscation of money from the returnees etc.)

In cases when a returnee or returnee’s family is facing increased social need, or has no accommodation, i.e. there are no possibilities to provide them with accommodation, the Commissariat takes over. The mechanism for urgent assistance has been set up in four emergency centres for readmission. The centres are located in Obrenovac, Šabac, Bela Palanka and Zaječar. The returnees who need emergency reception receive a referral for accommodation in some of these centres, depending on the region to which they return. They are provided with
basic living conditions for the period of 14 days, and after that period, a new evaluation of their status is made.

The most common problems encountered by the returnees are connected with:

- Access to documentation: returnees are often without the documents, which fact generates all the other problems. The key administrative presumptions for the initiation of reintegration are the documents, i.e. personal ID card and registered place of permanent residence. The possession of these documents is a precondition for the exercising of their rights. There are several reoccurring problems related to the access to documents:
  - Problems related to the registration of the place of permanent residence
  - Documents for children born outside of Serbia
  - Documents for persons who used to have permanent residence in Kosovo, and are returned to Serbia

- Access to health care: Problems related to access to health care last until a returnee is issued with a health booklet. There is an instruction in the Ministry of Health that the returnees with a travel document, and without the health booklet, are provided with health care services while the travel document is valid, but in reality there are problems, depending on the institutions which provide health care.

- Access to social welfare: Forms of social welfare assistance necessary for the persons in readmission are usually the one-term financial assistance and financial security for the family. These rights are exercised through the relevant municipal centres for social work. Requests for financial security for the family may be filed upon receipt of a personal ID, and one-time financial assistance can be received before that. One-time financial assistance is an efficient way for the returnees to solve many urgent issues. The problem is that, usually, the funds for one-time financial assistance are insufficient (they are provided by local communities); therefore, the returnees cannot use them in accordance with their real needs.

- Access to education: Educational authorities and schools have had a very flexible approach to problems of the children of the returnees. In cases when the documents are not available, the children are enrolled in schools conditionally, and the method for the validation and acceptance of previous education is established for the children of the returnees. The most common problems are the fact that the children of the returnees do not speak the Serbian language or can barely speak it, and the lack of initiative in the schools to organize additional classes.

- Access to Employment service: The educational preparation of the returnees is in most cases very low. Access to the Employment service is conditioned by receipt of the personal ID card and working booklet (if they did not have it previously). In accordance with the general rules, they have an option to obtain a different qualification and attend the courses that would increase their chances of finding employment. Some examples in Vojvodina show that there have been some courses in agricultural skills. In Zrenjanin, there was an instance when nine returnees from Germany were employed in the foundry due to the fact that they could speak the German
language. However, it is necessary to develop special programs for the returnees which would provide re-schooling, obtaining new qualifications and additional qualifications.

- Accommodation: Since most of the returnees are of the Roma nationality, upon their return to Serbia, many of them go to their relatives or friends who live in the Roma settlements which are illegal, and without the basic infrastructure. Those who have certain financial assets often illegally buy plots of land or houses.

At the time of the (voluntary) return, the assistance provided for the returnees is not equal and depends on the country from which they are returning. Thus, for example, Sweden offers financial assistance to voluntary returnees to Kosovo, who belong to minority groups on the territory to which they return, while there is no such assistance for the returnees to Serbia. In order for Sweden to provide this type of assistance, the country to which the returnees return must fulfill the following two conditions: (1) the existence of difficulties in the social integration of the returnees and (2) the existence of recent conflicts. As was previously said, the approach towards asylum seekers whose request was rejected after the visa liberalization has been changed. Therefore, Germany has terminated the assistance for the return of citizens of Serbia and Macedonia whose request for asylum is rejected, and who entered Germany and requested asylum after December 19, 2009.

5.3. Vulnerable groups in the process of return

According to the opinion of the UNHCR, there are people who are especially vulnerable during the process of return and their specific needs should be taken into account, considering the inadequate health care services and institutions for social protection. Especially vulnerable groups in the process of return to Serbia are the Roma, people with medical issues and children.

The Roma are a socially vulnerable and marginalized group. They have serious problems caused by poverty: poor living conditions, lack of adequate documents needed for the access to health care, social assistance and education. The majority of the Roma in Serbia are uneducated or have only basic education. They are forced to work in low-paid jobs, often in the field of the gray economy. Uneducated Roma parents often do not send their children to school, owing to lack of documents, lack of money for textbooks and school supplies, shoes, clothes, or even bus tickets.

When it comes to children, especially unaccompanied children, their needs should be carefully considered relative to voluntary repatriation and reintegration. The best interests of the child, pursuant to Article 3 of the UN Convention of the Rights of the Child, should govern the policy and decision-making process in each individual case. In the case of unaccompanied children, the legal guardian in the host country should ensure that the return is voluntary and that the decisions have been made in the best interests of the child. In the process of return, the UN

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133 From a conversation between the representatives of the Ecumenical Humanitarian Organization and representatives of the Swedish Red Cross, Novi Sad, 12 October, 2010
134 B92, 22 October, 2010, Germany terminates assistance for the asylum seekers.
136 ECRE, Position on Return, October 2003
Convention of the Rights of the Child and other relevant provisions should be taken into consideration to ensure the return to a legal guardian who is a family member of a foster family in the country of origin. Measures should be put into place to provide educational integration, psychological, social and medical development of the child who is temporarily or permanently separated from the parents or the persons who take care of him.

One of the typical problems encountered by the returnees is the discontinuity in medical treatment. If a medical treatment was initiated abroad, there is a possibility that it will not be adequately continued in Serbia (due to the lack of medicines or their substitutes, the problems in the transfer of the medical documentation and other materials related to the status of the patient, change of doctors, but also due to the situation the patient is in). The lack of coordination and exchange of information between the countries that return these persons to Serbia as the accepting country are the basic obstacles for their registration and determining what their needs are in order to provide adequate services. The issue related to personal documents is very important for social integration and exercising basic social and economic rights, and it has strong connotations in the field of health care as well.

Therefore, it is also very important to state that the returnees to Serbia are in a specific position: they have left the environment they lived in for years against their will; they arrive without a clear idea of their situation and without clear expectations and plans. In most cases, their economic and financial status is unresolved, and they do not have a developed social network which would help them integrate. This is an extremely stressful situation, especially in combination with the previous traumatic experiences (uncertainty related to the deportation, time spent in deportation prisons, separation from family etc.), which leads to acute stress syndrome, post-traumatic stress syndrome, etc., and other physical imbalances (high blood pressure, diabetes, heart problems etc.). It should be noted that the returnees are in a special condition due to their psychological state – they are angry, confused (blaming their home country for their return), scared and in need of assistance in finding ways to integrate. The programmes for the psychological and social assistance to adult returnees are important, as well as education in health care institutions about the needs of the returnees.

There are many examples in the practice of the non-governmental organizations working with the returnees that belong to vulnerable categories. The Ecumenical Humanitarian Organization (EHO) encountered the problem of a man who first went to Belgium, and then to Sweden in the second half of 1999, and in March 2009 was returned to Serbia and now lives in one of the Roma settlements in Novi Sad. During his stay in Sweden, the man became ill (he had a stroke, and he had a pacemaker fitted). In Sweden, he had health care and, as he had a serious medical condition, the visiting medical team would come once a week to perform blood tests and settle on the therapy for that week. The beneficiary was deported, escorted by the doctor and nurses, as well as by his own sister, who is a legal resident in Sweden and who went back after ten days. The travel document the man had at that time was sufficient to submit the request for one-time financial assistance to the Centre for Social Work, but none of the medical institutions wanted to provide its services only on the basis of the travel document. They all required a medical booklet. It was only later, after the fictitious registration of residence which enabled him to get a personal

137 Rules of Procedure in the process of the integration of the returnees; Department for Human and Minority Rights of the Republic of Serbia; 12 February 2007
ID, that the issue of medical care was solved. Poverty, as a general problem of the returnees, has a negative influence when the returnees become especially vulnerable after their return to Serbia. For example, one family with whom the EHO still works was returned from Germany in 2008, and started building a home using their savings. However, their daughter soon became ill (breast cancer) and the family spent all their savings for her treatment and subsequent medical controls. This situation forced them to rent an apartment, which led to additional problems related to the registration of residence which is the prerequisite for the issuing of a personal ID.

6. The return of the minorities to Kosovo or to Central Serbia

In the document "UNHCR’s Position on the Continued International Protection Needs of Individuals from Kosovo" (June 2006), the United Nations High Commission for Refugees recommends that countries should refrain from the forced return of ethnic minorities who are exposed to risk in Kosovo, as well as in other parts of Serbia the basis of the alternative of internal flight or displacement, stating that this could lead to a situation of secondary displacement, which is contrary to the spirit of the United Nations Security Council Resolution 1244. This particularly applies to the Roma from Kosovo in light of their particularly vulnerable position in Serbia. The forced return of minorities to Kosovo would, therefore, not be a reasonable alternative or permanent solution for those who are displaced. The main reason is that there are still hostile feelings of the Albanian population against the Roma who speak Serbian or have been accused of collaboration with the Serbian forces during the conflicts. The Ashkalis and the Egyptians are not under great risk, since they speak the Albanian, and not the Serbian language.

On 17 February, 2008 the Assembly of Kosovo declared the independence of Kosovo. Until 15 September, 2009, 62 out of 192 member states of the United Nations recognized the self-proclaimed independence of Kosovo, but the general situation of the minorities, including the Roma, has not changed.

The worrying fact is that certain countries have started returning people who are originally from Kosovo to central Serbia with the explanation that, as citizens of Serbia, they cannot have international protection, because for the Western States, Kosovo is now a different country. In Article 1A(2), paragraph 2 of the Convention on the status of the refugees, it is stated that a person who is under the protection of another state cannot receive international protection, but there is a reasonable fear that this is a negative interpretation of the Convention i.e. avoiding international obligations towards refugees. In the above-mentioned situation, the people are originally from Kosovo, and by recognizing the independence of Kosovo, the Western Countries now treat them as persons with dual citizenship.

139 Source: Norwegian Organisation for Asylum Seekers (NOAS); Letter of Group 484 from the Marković family from Kosovo who are to be returned by the Norwegian authorities on these grounds.
In November 2009, the UNHCR issued the Eligibility Guidelines for assessing the international protection needs of individuals from Kosovo\textsuperscript{140}. In this document, it is stated that although there have been no serious violent incidents against minorities, compared to those which occurred in March 2004, the general position of the minorities, including the Roma, has not changed since 2006, when the UNHCR’s Position on the Continued International Protection Needs of Individuals from Kosovo was issued. The respect for minority rights remains the most significant issue related to human rights in Kosovo. Internal flight within Kosovo, according to the evaluation of the UNHCR, is not a relevant option for the Roma, since being a Serbian minority, they are forced to live in the enclaves. Some data shows that 70-75\% of the Roma returnees have left Kosovo again.\textsuperscript{141}

The UNHCR states that, although physical and legal access to Serbia is possible, and persons from Kosovo (Serbs, the Roma, the Ashkalis and the Egyptians) do not face the risk of being persecuted in Serbia, the question remains if their moving to Serbia would be reasonable (in the case of the Roma, Ashkalis and Egyptians, due to the economic situation in Serbia and the great number of internally displaced persons from Kosovo and refugees from Croatia and Bosnia-Herzegovina). According to the UNHCR, if someone is registered as an internally displaced person, which could provide them with alternative access to certain social and economic rights, although such a registration is possible only for those who have come to Serbia directly from Kosovo. The status of displaced persons is not recognized for those who seek refuge in Serbia after spending some time in another country.

The return to Kosovo still poses a problem, particularly when it comes to the return of the minorities, especially Roma. In its latest report, Amnesty International concludes the following: “Amnesty International invites the EU member states and Switzerland, to refrain from forceful return until basic and permanent changes are made in order to provide conditions for the return of Roma and other minorities. Amnesty International invites the Government of Kosovo to guarantee the rights to minority communities, and to completely implement the measures for the sustainable return and reintegration of the returnees that belong to minority groups, so they could return to Kosovo voluntarily, in a safe manner and with dignity.”\textsuperscript{142}

**Recommendations**

- A public campaign should be planned and implemented in order to prevent the abuse of the visa-free regime for travelling to the countries of the Western Europe, and to prevent the submission of applications for asylum, or work in the gray economy.
- A declaratory statement about the possible financing of the project for the reintegration of returnees, based on the uniform Readmission Agreement between the EU and Serbia, should be requested in co-operation with the EU.
- A migrations fund should be established. The fund should help support local self-governments (which need financial and personnel strengthening) and non-governmental

\textsuperscript{140} UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Individuals from Kosovo, November 2009
\textsuperscript{141} COE Parliamentary Assembly, Roma Asylum Seekers in Europe, September 2009
\textsuperscript{142} Amnesty International, Not welcome anywhere - Stop the forced return of Roma to Kosovo, September 2010.
organizations working on the readmission of returnees. The local self-governments are the places of the reintegration of returnees, and the presence of non-governmental sector is inevitable in this process.

- To coordinate the practice of the European countries related to the assistance for the returnees who wish to return to Serbia, and who need assistance in the period of time immediately following their return from the countries of the European Union.
- To conduct research that would clearly demonstrate the real number of persons who have been returned to Serbia, and how many more can be expected in the upcoming period, as well as what the current motives are for people to leave Serbia. This information would make possible a better planning of the activities, which should be undertaken by both the state and the civil sector. This research should include social mapping, which would clearly show the social needs of the returnees and enable adequate reactions to those needs.
- To improve the monitoring in the EU member states and in Serbia, in order to provide a better overview of the status of the human rights of the persons who are in the process of readmission and to react better to all instances when the human rights of the persons in this vulnerable group, and of the especially vulnerable groups within it (children, single parents, and people with medical problems) are breached.
IV ASYLUM SEEKERS IN SERBIA

Introduction

Serbia has been marked as a transit station for a large number of irregular migrants on their way towards the Western European countries. The increasing number of irregular migrants that Serbia is facing has resulted in the increasing number of applications for asylum, which is the consequence of the unfamiliarity with the asylum system on the part of the persons who find themselves on the territory of Serbia.

The increasing number of asylum applications has ‘surprised’ the authorities competent in this field. Ever since the Law on Asylum started being implemented, up until the end of 2010, a constant increase of the number of registered asylum-seekers in Serbia was recorded. Thus, in 2008, a total of 77 asylum-seekers were entered into the records, 275 in 2009, whereas during 2010, a total of 522 asylum-seekers were registered.

The current institutional and infrastructural capacities in Serbia have been successful in responding to the number of asylum applications submitted in the period before 2009. In the forthcoming period, institutions which will be able to respond to the challenges in the field and which will be organised in line with the EU standards in this area, need to be established.

EU experts have reiterated several times that the advancement of the asylum system is necessary and that it is one of the important segments in the European Integration process of the country. According to the Opinion provided in the "Serbia 2010 Progress Report" of the European Commission, Serbia’s asylum system continues to be moderately advanced.

The views of the Government of the Republic of Serbia (hereinafter: the Government of RS) on the situation in the field of asylum are included in the answers to the European Commission (hereinafter: EC) Questionnaire on Serbia’s candidacy for EU membership, which were submitted on 31 January in Brussels. A segment of Chapter 24: “Justice, Freedom and Security” requested answers to the questions referring to the asylum system in the Republic of Serbia.

Source: the UNHCR Office in Serbia
The text before you follows the structure of the Questionnaire, and in particular, its segment dedicated to the asylum system. Certain questions in the Questionnaire have been omitted mainly for practical reasons, in order to concentrate on the collected information and the level of the asylum system development in Serbia. The focus is on those questions referring to the practical aspects of the functioning of the asylum system in Serbia, i.e. on those questions the answers to which make it possible to observe, besides the description of the prescribed policies of RS and the legislative framework, their implementation as well.

1. Legislation in the Republic of Serbia governing the asylum policy

The Republic of Serbia is party to the UN 1951 Convention Relating to the Status of Refugees and to its 1967 Additional Protocol, which fact obligates it to abide by and apply the provisions of these treaties. The State Union of Serbia and Montenegro, whose legal successor is Serbia, pledged itself as long ago as April 2003, on the occasion of its accession to the Council of Europe (CE), to adopt, within a year after its accession to this international organisation, the legislation enabling the implementation of the 1951 Geneva Convention and the 1967 New York Protocol.

The signing of the Stabilisation and Association Agreement (SAA) with the European Communities and their Member States has introduced some obligations for Serbia. Under the SAA, Serbia is obliged to align its legislation in relevant sectors with the Acquis, and to efficiently implement it thus aligned. The Government of the Republic of Serbia has, in all its key documents within the European integration framework, set the establishment of the asylum system as one of the important tasks.

The Law on Asylum was adopted in November 2007 as one of the regulations adopted to meet the criteria of the Road Map for placing Serbia on the White Schengen List. Article 57 of the Constitution of the Republic of Serbia is the legal basis of the Law on Asylum, along with the

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145 The titles and subtitles have been formulated on the basis of questions from the Questionnaire. Each title and subtitle is marked with a question number from the Questionnaire that matches the title/subtitle.

146 Question 18. Please provide information on legislation or other rules governing your asylum policy

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

148 The Republic of Serbia is also party to a number of international treaties directly or indirectly related to the issue of asylum, e.g. International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Convention on the Rights of the Child.


150 Official Gazette of RS, No. 83/08.

151 Article 82 of SAA states that in the area of asylum, the cooperation between parties shall focus in particular on the implementation of national legislation to meet the standards of the Convention relating to the Status of Refugees drawn up at Geneva on 28 July 1951 and the Protocol relating to the Status of Refugees done at New York on 31 January 1967, thereby to ensure that the principle of "non-refoulement" is respected as well as other rights of asylum seekers and refugees.

152 Official Gazette of RS, No. 109/07

153 The Constitution of Serbia from 2006 prescribes that “any foreign national with a well-grounded fear of persecution based on his/her race, gender, language, creed, ethnic affiliation or affiliation with another group, or
generally accepted rules of international law and the ratified international treaties, which are a composite part of the legal order and are directly implemented.\footnote{154}

The Law came into force on 1 April 2008. Although Serbia is still not formally obliged to comply with the standards established in the EU Directives and Regulation\footnote{155} in the field of asylum, while drafting the existing Law, its compliance with the standards was taken into account. Thus, the Law prescribes the procedure for granting and cessation of asylum, the authorities responsible in this procedure, as well as the status, rights and obligations of asylum-seekers, i.e. persons who are in the procedure for the determination of the refugee status, and persons granted the right to asylum in the Republic of Serbia.

Article 67 of the Law on Asylum prescribes the adoption of the by-law elaborating on the provisions of the Law, thus enabling its more efficient implementation. The majority of regulations\footnote{156} have already been adopted and are applied, but the by-law regulating the method of keeping records and registration of asylum-seekers, which is under the competence of the Ministry of Interior (hereinafter: MI), is still pending. Civil society has proposed that the obligation of the competent Minister of Interior to adopt a special Rulebook on Legal Assistance be added to this Article, but this suggestion has not been accepted.

The by-laws adopted and applied are the following:

- “Rulebook on Contents and Form of the Asylum Applications and Documents Issued to Asylum Seekers and to Persons Granted Asylum or Temporary Protection”\footnote{157},
- “Rulebook on Medical Examinations of Persons Seeking Asylum upon Arrival to the Asylum Centre”\footnote{158},

his/her political opinions, shall have the right to asylum in the Republic of Serbia” (Article 57, paragraph. 1). It stipulates that the procedure for granting asylum shall be regulated by the law (paragraph 2).


\footnote{156} Pursuant to Article 67, the Minister of the Interior shall issue regulations on the content and format of the asylum application and personal documents forms, on the method of recording and registration of asylum-seekers; civil servants in appointed positions in charge of the Commissariat for Refugees shall issue an act on the internal organisation and job classification at the Asylum Centre, as well as regulations governing the conditions of accommodation, the House Rules, the provision of basic living conditions and the keeping of records of persons accommodated at the Asylum Centre; the Minister in charge of social policy shall issue regulations on welfare benefits for asylum seekers and/or persons granted asylum; the Minister in charge of health care shall issue a regulation on medical examinations referred to in Article 39 paragraph 2 of this Law, performed on the admission to the Asylum Centre.

\footnote{157} Official Gazette of RS, No. 53/2008.
\footnote{158} Official Gazette of RS, No. 93/2008
“Rulebook on Housing Conditions and the Provision of Basic Living Conditions in the Asylum Centre”\(^1\),
“Rulebook on Social Assistance for Persons Seeking or Granted Asylum”\(^2\),
“Rulebook on the Method of Keeping Records and Contents on Persons Accommodated at the Asylum Centre”\(^3\),
“Rulebook on the House Rules of the Asylum Centre”\(^4\),
“Decision on Determining the List of Safe Countries of Origin and Safe Third Countries”\(^5\).

The asylum procedure issues not regulated by the Law on Asylum are subject to regulations governing general administrative procedure\(^6\), whereas the regulations governing the movement and residence of aliens\(^7\) apply to the issues related to the scope, content and type of the rights and obligations of asylum-seekers, persons granted refuge, subsidiary protection or temporary protection not regulated by this Law.

**Recommendation:**

1. Adoption of the by-law regulating the method of keeping records and registration of asylum-seekers.

**2. Asylum procedures**\(^8\)

In determining the grounds for asylum applications, a two-stage administrative procedure is implemented. The regulations of RS do not envisage the abbreviated (accelerated) procedure, so that the procedure is identical for all asylum-seekers.

The first instance procedure consists of four stages: entering into records, registration, hearing and decision making. The decision on granting asylum and other decisions at first instance are made by the Asylum Office. The Asylum Office has not been formally established yet. The tasks within the scope of the Office are performed by the Asylum Section, a special unit within the Department for Foreigners of the Border Police Directorate in the Ministry of Interior of RS.\(^9\)

\(^1\) Official Gazette of RS, No. 31/2008
\(^2\) Official Gazette of RS, No. 44/2008
\(^3\) Official Gazette of RS, No 31/2008
\(^4\) Official Gazette of RS, No 31/2008
\(^5\) Official Gazette of RS, No 67/2009
\(^6\) The Law on General Administrative Procedure ("Official Journal of FRY", No. 33/97 and 31/01), the Law Amending the Law on Administrative Procedure (Official Gazette of RS, No 30/10)
\(^7\) The Law on Aliens, Official Gazette of RS, No 97/08.
\(^8\) Question 19. Describe your asylum procedure at first and second instances, a) regular, exceptional (for instance border) and accelerated procedures.
\(^9\) The general public is not familiar with the fact that the Asylum Office has not been formally established yet, so consequently, when mentioning the state institution responsible for the procedure of first instance for an asylum application, the Asylum Office is the term most frequently used. To facilitate the explanation of the procedure prescribed by the Law on Asylum, and having in mind the fact that within the next several months the formal establishment of the Office is expected, the Asylum Office is the term to be used herein.
Expression of the intention to seek asylum (procedure at border crossings)

The Law on Asylum of the Republic of Serbia envisages possibilities of expressing the intention to seek asylum, verbally or in writing, and prescribes that the person who has expressed this intention should be entered into the records and referred to the Asylum Office, or the Asylum Centre. The Law does not prescribe any other procedure during border checks aimed at estimating whether the intention was honest, which is very positive. (Article 22 of the Law).

The procedure at a border crossing could be one of the problematic stages of the asylum procedure, because at this stage, if border authorities are not adequately trained and prepared, the violation of the non-refoulement principle may occur. In order to prevent a breach of international standards by border officers, they need to be adequately trained. It is their task to recognise the intention to seek asylum and to immediately refer the person to the competent authorities that will process his/her asylum application. The advantageous thing is that during 2010 the representatives of the UNHCR Office in Serbia provided a series of trainings and education for border police representatives, aimed at enhancing their capacities. The trainings were attended by four groups comprising 35 officers each, from the Border Police Directorate (hereinafter: BPD).

Therefore, the decision on the approval of an asylum application is not made at the border, but instead, the asylum-seeker is provided with access to the regular procedure. The implementation of this Article should be of particular importance, i.e. border authorities should respect the dignity and privacy of an asylum-seeker. Thus, the procedure should be implemented in such a manner that an asylum-seeker is not treated inhumanely or humiliatingly in any respect whatsoever, considering the circumstances in which the asylum-seeker is.

We would like to reiterate that during 2010, 522 persons expressed their intention to seek asylum in the Republic of Serbia (RS).

Recommendations:

1. In the forthcoming period, the practice of educating and training the representatives of the BPD should be continued, as well as the education and training of representatives of other state institutions, and in particular of magistrates, judges of regular courts, and

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168 This is the principle of non-refoulement. The Law on Asylum prescribes that no person must be expelled or returned against his/her will to a territory where his/her life or freedom would be threatened on account of his/her race, sex, language, religion, nationality, membership of a particular social group or political opinions. (Article 6, paragraph 1 of the Law). This rule is always applied, both inside and outside, i.e. at the border and on the state territory, and it applies both to refugees whose status has been recognised and to asylum seekers, so that asylum seekers should be allowed to enter and have access to the asylum procedure in order to avoid the possibility of violating the non-refoulement principle.

169 Source: UNHCR Office in Serbia, meeting: 12 October 2010.
employees of the centres for social work. Furthermore, funds should be allocated in the Budget of RS for these purposes.

2. Effective control mechanisms over the manner in which border authorities meet their obligation to provide asylum-seekers with access to regular asylum procedures (primarily in order to ensure the respect of dignity and privacy of an asylum-seeker) should be devised.

Keeping records

When a person seeks asylum at a border, the authorised police officer enters him/her into the records. The procedure encompasses the issuance of a prescribed certificate containing personal data the alien has provided or that could be established on the basis of identification papers and other documents available on the asylum-seeker. The certificate is the proof that the alien has expressed his/her intention to seek asylum and that he/she has the right to residence for the period of 72 hours. The certificate for the person who has expressed an intention to seek asylum is issued in the Serbian language, in Cyrillic script. What should be borne in mind is the fact that the person who has expressed an intention to seek asylum not only may not speak the Serbian Language, but also finds him/herself in a special condition. Civil society representatives have emphasised that this certificate, which is the first document an asylum seeker receives from a state institution, should contain detailed explanations regarding the asylum seekers rights and obligations pursuant to legislative provisions. Unfortunately, according to the “Rulebook on the contents and form of the asylum application and documents that may be issued to asylum seekers and to persons who have been granted asylum or temporary protection”, the form of this certificate does not encompass the information.

An authorised officer is entitled to search the alien and his/her belongings in order to find personal identification papers and other documents necessary for the issuance of the certificate. If the need occurs to implement this authorisation, the search should be done in a manner which does not threaten the asylum seeker's dignity.

Registration

The Law on Asylum of the Republic of Serbia prescribes that each asylum-seeker should arrive at the Asylum Centre or be escorted there within 72 hours. Upon arrival at the Centre, an authorised officer of the Asylum Office should register the alien and members of his/her family, if any of them are with him/her. The registration and the registration interview should be completed as soon as possible. However, no precisely prescribed time limit within which the registration must be completed is specified.

Upon completion of his/her registration, an asylum-seeker is issued an identity card which is the proof that the alien enjoys the status of an asylum seeker. During 2010, the Asylum Office issued a total of 346 identity cards to asylum seekers. The Law on Asylum prescribes that an alien who deliberately obstructs, avoids or does not agree to the registration is not allowed to submit an

170 Article 24 of the Law on Asylum.
asylum application. Nevertheless, this solution is better than some previous proposals to remove such a person from the territory of Serbia, which would be an extremely harsh measure that could cause a flagrant violation of the non-refoulement principle, i.e. Article 3 of the European Convention on Human Rights.

**Recommendations:**

1. It is necessary to prescribe a precise time limit within which an authorised officer of the Asylum Office must register a person after the person has applied to the Asylum Centre. Both the persons who are accommodated in the Asylum Centre and those who, although they have applied, are waiting to be admitted owing to the lack of vacancies in the Centre, should be registered.

**Lodging an asylum application**

The procedure for granting asylum is initiated by lodging an asylum application to an authorized officer of the Asylum Office on a prescribed form, within 15 days of the day of registration. Upon the request of an alien, and in justified cases, the Asylum Office may extend this 15-day time limit. An alien loses the right to reside in the Republic of Serbia if he/she unjustifiably fails to abide by the time limit. No person may submit an application for asylum before an authorised officer of the Asylum Office issues him/her with a prescribed form. During 2010, a total of 215 asylum applications were submitted to the Asylum Office.  

(We should bear in mind the fact that 522 persons expressed an intention to seek asylum in 2010, and 215 persons submitted a formal application for the right to asylum).

Before lodging an asylum application, an alien is informed of his/her rights and obligations, especially of the right to residence, a free interpreter/translator, and legal aid, and the right to access to the UNHCR. Asylum-seekers who reach the territory of the Republic of Serbia are usually informed in advance of the possibility to receive free legal aid, which is provided by the non-governmental organisation, ‘Asylum Protection Centre’ (hereinafter: APC). If this is not the case, they are provided with this information upon admission to the Asylum Centre or

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171 Article 25 of the Law on Asylum
172 Information gained from the UNHCR Office in Serbia
173 As has been mentioned above, pursuant to the procedure prescribed in the Law on Asylum of RS, there are both the procedure for expressing an intention to seek asylum and the procedure for submitting an application for granting the right to asylum. This provision is also causing bewilderment for the European Commission officials. The question of the purpose of the provision currently prescribed by the Law on Asylum raises owing to the fact that, pursuant to the Law, the expression of an intention to seek asylum is not deemed to be a formal application for granting the right to asylum, although the person who has expressed an intention to seek asylum gains the status of an asylum seeker.
174 The ability of the very few NGOs in Serbia capable of providing adequate legal aid to asylum seekers in the future is very uncertain, and depends exclusively on international donors. Thus, currently, the funds for the provision of free legal aid are exclusively provided by the UNHCR, within its projects. It seems that the best solution would be for the state to allocate funds which NGOs could apply for. Generally, legal aid in Serbia is poorly regulated or not regulated at all, and new legislation is expected to be enacted soon.
175 Source: Rados Djurovic, Asylum Protection Centre, interview on 8 November 2010.
during interviews with representatives of other state institutions and the Ministry of the Interior in particular.\textsuperscript{176}

Nevertheless, the procedure for granting asylum and asylum status should start from the moment when a person expresses an intention to seek asylum, i.e. does so verbally, and not when the form he/she fills in is completed. It is a fact that the competent authority performs several activities (keeping records, registration) before an application for asylum is submitted. The procedure for granting the right to asylum is, by its nature, an administrative procedure, and pursuant to the Law on Administrative Procedure, a procedure is instituted as soon as the competent authority performs any activity to that end.\textsuperscript{177} Thus, it might be questionable whether this solution is an adequate one.

**Recommendations:**

1. The provisions of the Law on Asylum regarding the initiation of the procedure for granting asylum should be amended. It should prescribe that the first-instance procedure for granting the right to asylum shall start when the competent authority registers an asylum seeker who has previously expressed his/her intention to seek asylum, i.e. upon the first contact between the asylum-seeker and authorised officers of the Asylum Office.

**Hearing\textsuperscript{178}**

An authorized officer of the Asylum Office ‘hears’ an asylum seeker in person in order to establish his/her identity, the grounds on which his/her asylum application is based, the asylum seeker’s movements after leaving his/her country of origin, and whether the asylum seeker has previously sought asylum in another country. During 2010, 58 persons were ‘heard’ in this way.

**Recommendations:**

1. Article 26 of the Law on Asylum should be amended, since the term ‘hearing’ is somewhat inappropriate and might be associated with criminal procedures. The term ‘interview’ should be used in the Law provisions, and it should be emphasized that this first-instance procedure activity is performed in line with the provisions of the Law on the General Administrative Procedure which regulates the issue of the hearing of the parties.

**Decision-making**

After the competent authority collects all relevant facts and statements from an asylum seeker, i.e. all the information necessary, it passes a first-instance decision. The Asylum Office may make a decision on granting an asylum application and recognizing the right to refuge to an

\textsuperscript{176} Source: Miljan Vuckovic, Head of the Asylum Department, interview on 10 November 2010.

\textsuperscript{177} Article 115 paragraph 1 of the Law on General Administrative Procedure.

\textsuperscript{178} Article 26 of the Law on Asylum.
alien\textsuperscript{179} or extending subsidiary protection to an alien, or a decision on refusing an asylum application and ordering an alien to leave the territory of the Republic of Serbia within a set time limit, unless he/she has some other grounds for residence. The Asylum Office may decide to suspend the asylum procedure in accordance with the law.

\textit{Decision on granting an asylum application (Article 28 of the Law)}

If the competent authority considers that a person meets the criteria for being granted the asylum, it makes a positive decision, in the form of a Decision. However, if the person does not meet the criteria for being granted the refugee status laid down in the 1951 UN Convention Relating to the Status of Refugees, he/she may meet the criteria for being granted subsidiary protection and the right to refuge owing to the fact that a member of his family has refugee status. The competent authority must inform the interested person, as soon as possible, on its decision on recognising or not recognising the refugee status, or on granting temporary or humanitarian protection, and explain to him/her the rights and obligations of a person with the refugee status.

While drafting the Bill on Asylum, the UNHCR, international and national NGOs made their suggestions and recommendations for improvement of the provisions of the Bill. Some of the suggestions were adopted, but a great majority of them were not, especially the provisions relating to the reasons for refusing and rejecting an application for asylum.

\textit{Decision on refusing an application for asylum}

An asylum application is refused if it has been established that the claim is unfounded or that there are statutory reasons for denying the right to asylum. The Asylum Office is obliged to justify this decision. An alien whose asylum application has been refused may lodge a new application if he/she provides evidence that the circumstances relevant to the recognition of the right to refuge or for granting subsidiary protection have substantially changed in the meantime.

An asylum application is considered unfounded if the following is established:

- A person who has filed the application does not meet the requirements for being granted the right to refuge or subsidiary protection, especially when an asylum application is based on untruthful reasons, fraudulent data, forged identification papers or documents, unless the applicant can provide valid reasons for that;
- The statements given in the asylum application regarding facts of relevance to the decision on asylum contradict the statements made during the hearing or other evidence gathered in the course of the procedure\textsuperscript{180};

\textsuperscript{179} \textit{Refuge} is the right to residence and protection granted to a refugee who is on the territory of the Republic of Serbia, with respect to whom the competent authority has established that his/her fear of persecution is well-founded.

\textsuperscript{180} Or if during the procedure it has been established that the asylum application has been lodged with the aim of postponing deportation, that the asylum seeker has arrived for purely economic or similar reasons, or that the application is in opposition to statements made in the application.
• The asylum seeker refuses to make a statement regarding the reasons for seeking asylum or his/her statement is unclear or does not contain information indicating persecution.

During the application of this provision, the fact that inappropriate cooperation might sometimes be caused by the difficult circumstances in which an asylum seeker is should be borne in mind, and not any malicious intention. Therefore this provision should not be applied automatically as the basis for refusing to provide protection.

The right to asylum is denied to:

• The person with respect to whom there are serious reasons to believe that he/she has committed a crime against peace, a war crime, or a crime against humanity, pursuant to the provisions of international conventions adopted with a view to preventing such crimes,
• The person with respect to whom there is a reasonable suspicion that he/she has committed a serious non-political crime outside the Republic of Serbia prior to entering its territory, or that he/she is responsible for acts contrary to the purposes and principles of the United Nations,
• Finally, the right to asylum is not recognised for a person who enjoys protection or assistance from some of the institutions or agencies of the United Nations, other than the UNHCR, nor for a person for whom the competent authorities of the Republic of Serbia recognise the same rights and obligations as for its citizens.

**Decision on rejecting an asylum application**

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

• that the asylum seeker could have received an efficient protection in another part of the country of origin, unless he/she cannot be reasonably expected to do so, in view of all the circumstances,

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181 Paragraph 2 of Article 31 of the Law on Asylum raises the question regarding the extent to which non-state entities can provide protection. According to the UNHCR, refugee status should not be denied on the basis of the assumption that a vulnerable person could be protected by parties and organisations, including international organisations, if such an assumption could be denied. It would be inappropriate to equalize the national protection provided by a state to the application of certain administrative powers and control of the territory by international organisations on a provisional or temporary basis. According to international law, international organisations do not have the powers of states. In practice, it generally means that their ability to implement the rule of law is limited. This has been taken from the Comments on the Draft Law on Asylum of the Republic of Serbia made by the UNHCR.

182 If internal displacement should be considered as an alternative in the context of establishing refugee status, a special area must be identified and the applicant must be provided with an adequate possibility to respond. An assessment of whether there is the possibility of displacement requires two main groups of analysis. Namely, whether to consider the alternative of internal displacement is relevant and whether, having in mind all the circumstances, it would be reasonable to expect an applicant to move. The assessment of the internal displacement alternative is usually not relevant in cases when fear of persecution stems from the state and its institutions. The use of the displacement concept should not impose an additional burden for an asylum seeker. The usual rule must still be applied, and it prescribes that the one who makes statements should bear the burden of proof. Based on this, the
• that the asylum seeker enjoys the protection of, or receives assistance from an agency or a body of the UN, other than the UNHCR, or has been granted asylum in another country.

The provision prescribing the rejection of an asylum application in the case when the asylum has been granted in the first asylum country is the contentious provision. The fact is that the asylum granted in the first country does not necessarily mean that the person who has been granted the right to refuge actually has the effective and available protection of that country.

• Furthermore, an asylum application is rejected without being examined, if it has been established that an asylum seeker has the citizenship of a third country. International protection should not be denied in the case when an asylum seeker has the citizenship of a third country which is not effective or in the case when an asylum-seeker would not be able to enjoy an effective protection from his/her other country.

• Also, an asylum application is rejected if an asylum-seeker can obtain protection from the safe country of origin, unless he/she can prove that it is not safe for him/her;

The decision on the rejection is made at the stage when the application has not been thoroughly examined. However, whether an asylum-seeker enjoys the protection of his/her country of origin, and whether there is a threat for him/her in this country, is vital for determining the status.

Moreover, an asylum application is rejected if:

• an asylum-seeker has submitted an asylum application in another country that complies with the Convention Relating to the Status of Refugees and it was rejected, and the circumstances upon which the application was based have not changed in the meantime, or if he/she has already filed an asylum application in another country observing the Geneva Convention,
• it has been established that an asylum seeker has come from a safe third country\textsuperscript{183}, unless he/she can prove that it is not safe for him/her,
• the asylum seeker has deliberately destroyed a travel document, an identification paper or another written official communication that could be of relevance to the decision on asylum, unless he/she can quote valid reasons for that.

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\textsuperscript{183} The by-law designates safe third countries and safe countries of origin in: “Decision on establishing the list of safe countries of origin and safe third countries” Official Gazette of RS, No. 67/2009.
The Asylum Office may not reject an asylum application before questioning the asylum seeker with respect to all the circumstances which exclude the reasons for rejecting the asylum application. The state should examine the statements of each asylum seeker and establish whether the application is founded or not, instead of easily rejecting the applications.\(^\text{184}\)

**Decision on the suspension of the procedure**

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

- abandons his/her asylum application,
- despite having received a duly served summons, fails to appear for a hearing or declines to make a statement, without providing a valid reason for doing so,
- without a valid reason, fails to notify the Asylum Office of a change of residential address 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, or leaves the Republic of Serbia without the approval of the Asylum Office.

In the case when an asylum seeker withdraws the asylum application or simply leaves residence in the country in which he/she has applied for asylum and is no longer available to the competent authorities, and therefore it is no longer possible to conduct the asylum procedure, there are two options: some countries cease the procedure by rejecting the application, and others suspend (delay) the procedure until further notice. The latter is legally more appropriate, due to the fact that this is a situation in which the essence of the application has not been examined, and it has not been decided whether an individual is really eligible for the asylum or not; this is rather a delay in the process, and the Law on Asylum of the Republic of Serbia should prescribe the suspension of the procedure in such situations. The EU law prescribes that in such situations, countries should envisage, in their national legislation, a time period after which it will be deemed that a person has left his/her place of residence or has relinquished the claim, or they should provide instructions on the time period and envisage the possibility of resuming the procedure in case it is requested. The UNHCR recommends that in such situations the possibility to resume the asylum procedure, which has been suspended without time limits, should be provided.

The position of persons who refuse to make a statement is not clear, i.e. this Article does not make it clear whether these persons also have the right to seek the restoration to their original condition (*restitutio in integrum*). It is well known that asylum seekers are in a stressful situation and that it happens that they do not reply to questions immediately, perhaps for fear of the authorities of another country, and not only owing to traumatic experiences from the country of origin.

The suspension of the procedure would also apply to a person who leaves Serbia without the permission of the Asylum Office, but not a single provision of the Law envisages the procedure for such an application, nor the potential time limits and criteria for granting the permission.

The Decision stipulates the time limit within which the alien who has no other foundations for staying in the Republic of Serbia must leave its territory, and if he/she does not do so, he/she shall be forcibly expelled, in line with the Law regulating the stay of aliens. The Law prescribes that an asylum seeker may, within only three days of the date when the reasons for his/her failure to respond to the summons for the hearing or to report a change of address in a timely manner have ceased to apply, submit a proposal for restoration to the original condition (restitutio in integrum) to the Asylum Office.

A more rigorous treatment is applied to asylum seekers owing to the fact that, unlike other citizens, they are obliged to inform the competent authorities, within three days, of the change of the address of their residence, and it is assumed that they do not report the address in order to prevent the service of a summons or another written official communication, which, from a practical point of view, would not be to their advantage.

The short time limit after the date when the reasons for an asylum seeker's failure to respond to the summons for the hearing or to report a change of address in a timely manner has ceased to apply, which has been prescribed for submitting a proposal for restitutio in integrum, should by no means be absolutely preclusive, having in mind difficult circumstances during the movement or possible reasons for not responding to the summons for the hearing.

**Recommendations:**

1. The provision of the Law on Asylum prescribing that the basis for rejecting an asylum application is that the asylum has been granted in another country, should be amended and it should envisage the necessity of an “effective protection” by the country which has already granted the refuge to the person who has expressed an intention to seek asylum in Serbia.

2. The recommendation of the UNHCR should be adopted and the provision which stipulates that an asylum application shall be rejected if the asylum seeker already has the citizenship of another country, should be amended; the UNHCR has suggested rephrasing this provision so that it reads as follows: “if the applicant also has the citizenship of a third country, and has not requested the protection from this country, unless he/she proves that he/she could not be protected.”

3. The paragraph of the Law prescribing that an asylum-seeker may be granted protection by a safe country of origin, unless he/she proves it is not safe for him/her, should be included in the reasons for rejecting the application, in the future amendments to the Law.

4. The time limit envisaged for asylum-seekers in which they have to inform the competent authorities of the change of their address of residence, should be the same as for other citizens of the country.
2.1. Appeals against first-instance decisions

An appeal against first-instance decisions may be lodged within fifteen days. The time limit of 15 days is a short deadline in view of the particularity of the procedure, the manner in which the legal protection system currently functions in Serbia and the negative impact on the life and rights of an asylum seeker that might be caused by an inappropriately established condition. In the procedure before a competent authority within the UNHCR, this time limit is 30 days.

Although this is not mentioned in the Law on Asylum, the appeal has a suspensive effect, which is prescribed by the Law on General Administrative Procedure. The time limit for making second-instance decisions is 60 days as of the day when the competent authority receives the appeal.

Judicial protection of an asylum-seeker is envisaged during the procedure through the possibility of instituting an administrative dispute against a second-instance decision.

2.2. Bodies competent for the asylum procedure

The Asylum Office, i.e. the Asylum Section is competent for taking all the actions in all phases of the first-instance procedure. The problem identified by several different actors who are interested in a successful functioning of the asylum system, is the lack of human resources. According to the existing job classification (hereinafter: ‘systematisation’), there are 11 job positions in the Asylum Section, which is part of the Department for Foreigners, out of which 4 are vacant. The new systematisation envisages that the Asylum Office is separated from the Department for Foreigners and that it should operate within the Border Police Directorate as an independent organisational unit that would encompass 16 civil service staff.

The Border Police Directorate is a strictly hierarchically organised part of the Ministry of the Interior, and if the currently offered new model of systematisation is accepted (the Asylum Office as an integral part of the Border Police Directorate) the question that might be raised is to what extent the Office will really be able to adequately implement the generally accepted standards that are required from the competent authorities (institutions) in charge of making decisions on asylum applications. Since its employees are part of the staff of the Ministry of the Interior and have police authorities, there is the possibility of job rotations, i.e. frequent changes of jobs, which is not recommendable considering the highly complex nature of work within the Office. The provision of the Law which reads “With respect to asylum applications and the cessation of the right to asylum, the competent organisational unit of the Ministry of the Interior shall conduct the procedure and take all decisions in the first instance”, provides the possibility

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185 d) Provide number and types of appeals;
186 c) explain which bodies are competent in each instance and how they are composed; e) identification of services involved and number of staff dedicated to asylum procedures;
188 Source Miljan Vuckovic, Head of the Asylum Section, meeting: 14 December 2010.
that, without amending the existing text of the Law, the Asylum Office is “moved” within the Ministry of the Interior out of the Border Police Directorate, and thus the current situation in which the whole asylum system is under the competences of one Directorate of the Ministry of the Interior, could be avoided.\textsuperscript{189}

The second-instance authority in the procedure is the Asylum Commission, which is an independent Governmental body comprising 9 members with a four-year term of office. All its members are experienced experts in various fields of administration. The Asylum Commission members have been appointed by the Decision of the Government of the Republic of Serbia.\textsuperscript{190} At the Commission meeting of 11 August 2008, the members unanimously adopted the Rules of Procedures of the Commission and thus the Commission started operating.

The establishment of this type of body is an important phase in the asylum system establishment process in Serbia. However, it is necessary to create all technical conditions if the Commission’s work is to have full effect. The Asylum Commission still does not have its own facilities, and for their meetings they use the facilities of the Border Police Directorate, whose staff also performs administrative work for the Commission. The Commission makes decisions by majority vote.

An administrative dispute may be initiated against an Asylum Commission’s decision before the Administrative Court, which makes its decision within a judicial council consisting of three judges.

Recommendations:

1. Pursuant to article 19 of the Law on Asylum, the Minister of the Interior should adopt an act on the establishment of the Asylum Office. The act should prescribe that the Asylum office shall be established as an independent working unit which shall employ civil servants of the Ministry of the Interior, and not holders of police authorities. Furthermore, it is necessary to stipulate that the civil servants employed in the Asylum Office shall have the same salary grade, i.e. belong to the same pay scale, as the persons who are holders of police authorities.
2. The capacities, material and future human resources of the Asylum Office should be consistently improved; job rotations of the employees who have had specialised trainings should be avoided.
3. All technical conditions necessary for the Asylum Commission’s work should be provided.

2.3. Duration of the asylum procedure\textsuperscript{191}

\textsuperscript{189} At the time of entry into the territory of RS, asylum-seekers most frequently express their intention to seek asylum before the officers of the Border Police Directorate employed at border crossings; subsequent to this, all the phases of the first-instance procedure are under the competence of the Asylum Office and finally, there is the procedure before the second-instance authority, the Asylum Commission, whose members are, among others, members of the Border Police Directorate.


\textsuperscript{191} d) provide assessment of the average duration of the procedures;
The first-instance procedure lasts until the first-instance decision is passed, but since the Law on Asylum does not prescribe any particular time limits, the time limit of 60 days prescribed by the Law on General Administrative Procedure is applied. The same time limit applies to the second-instance authority from the moment of receiving the complaint. However, in practice, the first-instance procedure sometimes lasts for up to 90 days.\(^{192}\) The reason for such a long time being necessary for making the first-instance decision is the long time period before the persons who express their intention to seek asylum are registered. Formally, the procedure starts from the moment of submitting the asylum application, but it is obvious that time periods necessary to perform activities that precede the procedure itself influence the moment at which the first-instance procedure will be completed.

The time period is also prolonged when a minor asylum seeker needs to be provided with a legal representative. The prolongation of the time limits is the consequence of ‘slow administration’. Provision of the legal representative is under the competence of the Social Work Centres, which are social protection institutions exercising public powers in the field of social and family-legal protection.\(^{193}\)

2.4. Methodology for collecting information on the country of origin\(^{194}\)

Even before they formally took over the competence to decide on asylum applications, the employees of the Asylum Office had received the training on research aimed at gathering information on the safe countries of origin. The training was provided by the UNHCR Office in Serbia. The training manual “Researching Country of Origin Information”, which was drafted by the Austrian Red Cross, was translated for this purpose.

As an additional support, the UNHCR provided funds and engaged one person (an employee of the APC), within its Project “Gathering Information on the Country of Origin”, to make reports on ten countries of origin, which are available on the website of the above-mentioned NGO. Data on the website are regularly updated.

The competent authorities stated in the replies to the EC Questionnaire that the information on the countries of origin of asylum seekers are mostly collected from two sources, the first one being the Ministry of Foreign Affairs, i.e. the Diplomatic and Consular Missions of the Republic of Serbia where they exist, and the second one, the specialised websites, such as [www.ecoi.net](http://www.ecoi.net) or [http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain](http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain) (so called. *Refworld*), where one can find various reports regarding the security situation, human rights, etc. in the countries of origin of asylum seekers.

\(^{192}\) Source: The UNHCR Office in Serbia, meeting: December 2010
\(^{193}\) For the area of Banja Koviljaca in which an Asylum Centre is located, the ‘Social Work Centre Loznica’ is the competent authority.
\(^{194}\) f) present methodology for collecting information on the country of origin
\(^{195}\) Employees of the APC have also had the above-mentioned training.
3. Application of the concepts of a safe third country, safe country of origin and manifestly unfounded claims

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

Also, the same Article stipulates that "a safe third country shall be understood to mean a country from a list established by the Government, which observes the international principles pertaining to the protection of refugees contained in the 1951 Convention on the Status of Refugees and the 1967 Protocol on the Status of Refugees, where an asylum seeker had resided, or through which he/she had passed, immediately before he/she arrived on the territory of the Republic of Serbia and where he/she had an opportunity to submit an asylum application, where he/she would not be subjected to persecution, torture, inhumane or degrading treatment, or sent back to a country where his/her life, safety or freedom would be threatened". The Serbian Government passed the Decision on establishing the list of safe countries of origin and safe third countries.

Protection of refugees is an international issue and no satisfactory solutions may be found without international cooperation. The primary responsibility to provide protection remains with the state where the claim is lodged. The transfer of responsibility for an asylum application might be envisaged in some circumstances, but only between states with comparable protection systems, on the basis of an agreement which clearly outlines their respective responsibilities. By contrast, the concept of a safe third country as defined in the Law on Asylum of RS rests on a unilateral decision by a state to invoke the responsibility of another state to examine an asylum claim. The application of this concept is, therefore, less preferable to such multilateral agreements, which ensure access to effective protection for asylum-seekers.

One should bear in mind the fact that, pursuant to the Decision of the Government of RS, all the neighbouring countries have been designated as safe third countries. In the cases when the Asylum Office officials establish that the person who has lodged an asylum application in Serbia has arrived from a safe third country, they respect the legal basis of the safe third country concept, and make a decision to reject his/her application for asylum. In practice, this means that the person should file the asylum application in the country from which he/she has arrived and which has also, pursuant to the Decision of the Government of RS, been designated a safe third

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196 Question No. 20 Do you apply the following concepts (if yes, how?): a) safe third country; b) a safe country of origin; c) manifestly unfounded claims
Whether the state institutions of RS really get assurances from these countries that the application of this person will be considered in a fair procedure remains unclear.

Furthermore, it is questionable in what manner a person who wishes to be granted a refugee status in RS can reach its territory without passing through some of the neighbouring safe third countries and thus, by applying the safe third country concept, creating the grounds for rejecting his/her asylum application.

The Law on Asylum does not recognise the concept of manifestly unfounded application for asylum.

Recommendations:

1. If state institutions ‘insist’ on the application of the safe third country concept, the following requirements should be met:
   - The applicant should be protected against refoulement and be treated in accordance with the accepted international standards, among others, defined in the 1951 Convention, so that the third country is ‘safe’ for the asylum applicant. “Safety” must also be ensured in the practice of the third country, and not only as one of the formal obligations that it may have assumed.
   - The applicant should have a genuine connection or close links with the third country. The connection should be closer than the connection with the country in which he/she seeks asylum, so that it would be fair and reasonable to ask such a person to lodge the asylum application in that country. In the UNHCR’s view, the mere fact of having had the opportunity to seek protection or having transited through a country does not represent a meaningful link.
   - Wishes of asylum applicants related to the countries where they would like to seek asylum should be taken into account to the highest possible extent. This kind of approach would definitely have a positive impact on the integration of persons for whom it is established that they need international protection.
   - The third country must explicitly state that it accepts the asylum applicant on its territory and that the asylum application will be considered in a fair procedure.

2. To consider the list of safe countries of origin and third countries which have been designated as ‘safe’ in the Decision of the Government of RS, having in mind that currently, some of the countries on the list do not meet the formal conditions necessary in order for them to be designated as 'safe' (e.g. the Republic of Turkey).
4. Procedural guarantees for asylum applicants\textsuperscript{197}

The Law on Asylum includes a few principles which explicitly stipulate some of the procedural guarantees – the principle of directness, the principle of providing information and free legal aid, as well as the principle of free translation services.

The Law lays down the principle of directness\textsuperscript{198} and states that an authorised person of the Asylum Office shall personally interview an asylum-seeker once or a few times, within the shortest period possible, in order to establish his/her identity, the reasons upon which the asylum application is grounded, their movements after leaving the country of origin, as well as whether the asylum seeker has already applied for asylum in some other country. Legal representatives of the asylum seeker and UNHCR representatives should be present at interviews, as well as, if necessary, an interpreter, and the guardian of an unaccompanied minor or person deprived of legal capacity.

The translation service is a basic and minimum standard which needs to be satisfied in order to provide for a just and effective procedure of approving asylum, taking into account the necessity and importance of the correct understanding of an asylum seeker. The provision stating that the obligation of providing free translation services also includes the use of sign language and availability of materials in the Braille alphabet and other accessible formats is also of utmost importance.

Thanks to the funds provided solely by the UNHCR, interpreters are present at interviews if such a need arises. In addition, the UNHCR funds enable interpreting at consultations between a non-governmental organisation offering free legal aid and asylum seekers.\textsuperscript{199} Taking into account the countries of origin of asylum seekers and their preferences as regards the languages they understand and are able to communicate in, significant means are required for translation services, as very few if any people can speak those languages in Serbia.\textsuperscript{200} In addition, the expenses for this kind of service are augmented by the fact that the interviews mostly take place in the Asylum Centre.\textsuperscript{201} In order to reduce these expenses, interviews are organised in such a way that a group of asylum seekers who require interpretation from/to the same language are gathered at the same previously agreed time.\textsuperscript{202}

\textsuperscript{197} Question No. 21. Describe the procedural guarantees for asylum applicants:

a) information, interview, right to counsel and representation, interpretation/translation

\textsuperscript{198} Article 17 of the Law on Asylum of the Republic of Serbia states that any alien who has filed an asylum application shall have the right to a verbal and direct interview, carried out by an authorized officer of the organisational unit of the Ministry of the Interior responsible, regarding all the facts relevant to the recognition of the right to refuge or to the granting of subsidiary protection.

\textsuperscript{199} The only non-governmental organisation in Serbia which offers free legal aid services to asylum seekers is the Asylum Protection Centre. For more information please visit \url{http://www.apc-cza.org}.

\textsuperscript{200} There are no interpreters in Serbia for the Pashto language.

\textsuperscript{201} The Asylum Centre is located in Banja Koviljaca, immediately next to the border between Serbia and Bosnia-Herzegovina. The majority of the engaged interpreters, as well as Asylum Office employees, are coming from Belgrade, which is a three hours’ drive. Accordingly, apart from transport expenses, the expenses for the wages of the people who go to Banja Koviljaca must be added.

\textsuperscript{202} The process of scheduling the time for an interview of asylum seekers located in the Asylum Centre requires them to confirm that they are informed about the date and time of the interview by putting their personal signature beside their name at the appointments schedule placed on the notice board.
The state authorities are obliged to inform an asylum seeker about the procedure of granting asylum, as well as about his/her rights and obligations during this procedure. The UNHCR Office in Serbia has prepared informative materials with basic information on the asylum system, translated into seven languages (these include information on conditions for obtaining the status, the procedure of gaining asylum, the rights and obligations of asylum seekers, the entities they may refer to for assistance during the procedure and similar information). Their distribution is about to commence and they will be available to asylum seekers at the centre for the accommodation of asylum seekers and the border crossing points of the Republic of Serbia.

A very important right guaranteed by different documents of the EU, the Council of Europe and the UNHCR is the right to legal aid. The specification of this right differs from country to country, in such a manner that in some states an asylum seeker is entitled to legal aid solely at his/her own expense, while many other states organise legal aid, i.e. provide financial means. At this moment, only one non-governmental organisation offers free legal aid to asylum seekers, and it has enough capacities at present to assist all persons wishing to apply for asylum in the Republic of Serbia (APC). Free legal aid is provided to such persons at all stages of the procedure. The funding for free legal aid is secured exclusively within its UNHCR projects.

It is unclear how asylum seekers will realise their right to free legal aid or obtain information about their rights if it occurs that no non-governmental organisation has the capacity to offer free legal aid, i.e. no donors are interested in supporting this project. Such a situation arising is not improbable having in mind that earlier donors stopped supporting the projects of free legal aid in Serbia.

Article 10 of the Law on Asylum of the Republic of Serbia defines the principle of providing information and free legal aid. However, it is interesting to note that the legislator envisaged that a person may also opt for representation by the UNHCR. It is rather unusual that the legislator assigns an obligation to a UN agency, especially because the UNHCR does not play such a role within the established system for asylum seekers’ protection.

**Recommendations:**

1. To allocate the means for translation services within the budget of the Republic of Serbia.
2. To invest additional efforts in improving the knowledge of asylum seekers about the general conditions under which they could be given refugee status in Serbia, as well as of their rights and obligations during such a procedure. At the same time, it is necessary that

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203 Conclusion of the UNHCR Executive Committee No. 8 (XXVIII) from 1971 on determination of refugee status; Art. 5. of the EU Directive on minimum standards on the reception of applicants for asylum in Member States, Council of Europe Recommendation 1236 on the Right to Asylum, etc.

204 There have been proposals to restrict the provision of legal aid only to the organisations approved for this activity by the Ministry of the Interior. We feel that this problem should be dealt with in a less restrictive manner. At present, the Law does not specify the conditions which non-governmental organisations should fulfil so that they could be given approval for offering legal aid. It should be kept in mind that Serbia has not yet adopted the Law on Free Legal Aid and that this has been an issue of serious debates.
the state bodies regularly inform asylum seekers about any changes regarding their case at any stage of the procedure.

3. To adopt the Law on Free Legal Aid, which would elaborate on this issue and secure the financial support for the realisation of this right of asylum-seekers.

4. Independence of review and appeal procedures

The key guarantee stemming from the Law on General Administrative Procedure, which is essential for the concept of efficient legal remedy in accordance with Article 13 of the European Convention on Human Rights, is that the application for asylum must be examined by a body which is different and independent from the body which brings the decision.

Although the Commission is active and effective in performing the activities within its competence, a different composition of the Commission should be considered in the following period, above all with the aim to ensure the procedural guarantee of independence in reviewing the first-instance decisions. At the present moment, one member of the Asylum Commission is Deputy-Director of the BPD, while the Asylum Sector operates within the Commission and implements the first instance activities.

The percentage of first-instance decisions which did not pass the review of the Asylum Commission in the 1 January – 31 December 2010 period amounts to 81%. The reasons for initiating a new decision-making process include the shortcomings in both the procedures and the determination of the essential facts for bringing decisions, and those related to the explanation of the statement expressed in the court decisions.

Table 1 Decisions of the Asylum Commission (second-instance decisions) in 2010

| Appeals submitted to the Commission | 32 |
| Decisions brought | 27 |
| Refused appeals | 5 |
| Accepted appeals (first-instance decisions annulled) | 21 |
| Accepted appeals and subsidiary protection granted | 1 |

As previously stated, the procedure provides for court protection of the asylum-seekers, in such a way that it is possible to initiate an administrative dispute against the second-instance decision. The problem with the possibility of initiating an administrative dispute against the second-instance decision is the lack of the suspensive aspect of the appeal and the threat that asylum seekers may be returned to countries in which their human rights may be endangered, while the competent court in Serbia has not reviewed the legality of the decisions of the administrative bodies. The other problem arises in cases when, although an appeal has been filed to the court in a timely fashion, the court may only review the legality of the second-instance administrative

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205 Source: the UNHCR Office in Serbia
decision. Therefore, this is not a case of so-called ‘material jurisdiction’, when the court enters into the essence of the issues.

Recommendations:

1. After the service of the current Asylum Commission members expires, the government of the Republic of Serbia should appoint as Commission Members independent experts, who are not in any way engaged in state bodies responsible for the functioning of the asylum system in Serbia.

4.2 Measures for unaccompanied minors

In accordance with the international standards, Article 15 of the Law on Asylum of the Republic of Serbia defines the principle of providing special care for asylum-seekers with special needs including minors, persons completely or partly deprived of the capacity to work, children separated from parents or guardians, persons with disabilities, elderly people, pregnant women, single parents with minors, and persons previously exposed to torture, rape or other severe forms of psychological, physical or sexual abuse.

Minors represent a group which is especially exposed to risk. Children suffer after their normal lives have been ruined, and experience severe traumas due to the persecution of their families and escape from the country of origin. In these situations families separate, which brings unaccompanied children into an especially difficult position and to a potential risk of becoming victims of human trafficking or sexual abuse.

Apart from the Asylum Centre, underage asylum seekers are accommodated also at the Children and Youth Institute "Beograd", better known under the name of the "Vasa Stajić" Centre, in Belgrade. Since April 2009, there has been a special unit for the accommodation of unaccompanied minor aliens at this Institution, which can accommodate 12 people. At this moment, works are underway to adapt the Institution in Nis, which will also have a special unit for accommodation of 5 underage aliens.

The Institution is financed partly by sources from the Ministry of Labour and Social Policy and partly from the budget of the Vozdovac Municipality of the City of Belgrade. Within the funds available to the Institution, there are none intended originally for financing the accommodation unit for underage aliens. This is compensated for by the funds assigned to other units and by donations. Due to the lack of means, the present capacities can accommodate only 8 persons.

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207 c) measures for unaccompanied minors

208 Within the period of approximately two years in a special unit of the Institution accommodation was provided for 159 minors unaccompanied by parents or guardians.

209 Donations are collected ad hoc and they most commonly include food, and a variety of items.
In 2010, 90 minor aliens passed through the Institution (of those, 65% were citizens of Afghanistan). The accommodation is formally provided only for male minor aliens aged 7 - 18 due to the inexistence of a separate department for female minors. As an exception, one female minor was accommodated, and due to the lack of premises for women, she spent nights in the reception area. The admitted persons who wish to ask for asylum remain in the Institution for around 3 weeks on average. The time they spend in the Institution depends on the availability of accommodation in the Asylum Centre in Banja Koviljaca. During reception, no medical check-up is planned for minors, and observations take place instead. In addition, a temporary guardian is assigned to a minor during the admission. The competent social assistance centre in Vozdovac appoints Institute employees as temporary guardians. In most cases these are social workers, but also special pedagogues. According to the job classification of the Institute, four employees are assigned to this unit, supported in their work by volunteers and probationers. It is necessary to emphasize that there has been no employment of new staff after the departure of employees from other units.

Immediately after reception, minors are informed about their rights and obligations during their stay in the Institute. In cases when they express an intention to seek asylum, which the majority of them do immediately after admission, they are provided with an interpreter and given the possibility to consult APC representatives within the shortest possible terms. In 2010, 59 foreign minors said they wished to apply for asylum. Following the procedural rules, immediately after the intention is expressed, authorised representatives of the Asylum Office implement all activities prescribed by the first-instance procedure (registration, issuing of identity cards, hearing, provision of the possibility to submit an application for asylum). The employees of the Asylum Office perform all the activities on the premises of the Department for Foreigners in Belgrade.

The conditions at the Institution are satisfactory. In one unit there are two rooms in which minors are accommodated (one adapted for eight persons and one for four persons), as well as premises intended for joint activities. Diverse creative programs, a TV with satellite signal, gym, sports grounds and other facilities are available. The minors are provided with 3 meals and a brunch every day, all prepared taking into account the restrictions and patterns of food consumption for certain nations.

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210 The majority of the admitted persons claim that they are 15-16 years old. In cases when such persons do not possess personal documents to confirm this, there are no mechanisms to check their actual age. It often happens that persons who are obviously not minors claim to be underage.

211 The last group of underage aliens, citizens of Afghanistan, waited for more than two months for admission to the Asylum Centre in Banja Koviljaca.

212 Source: Dragan Rolovic, Director of the Children and Youth Institute ‘Beograd’.

213 At the moment, in other working units (specialised for children without parental care and underage persons subject to disciplinary measures) 6 employees take care of approximately 60 minors.

214 Source: Dragan Rolovic, Director of the Children and Youth Institute ‘Beograd’.

215 Out of this number, 49 persons passed through the procedure of registration and obtaining ID cards, after which they were admitted to the Asylum Centre. Seven persons left the Institute of their own will, while the procedure for three applications was completed in the beginning of 2011. Source: Roloivc Dragan, Director of the Children and Youth Institute ‘Beograd’.
Underage aliens are given the possibility to move freely only within a yard which is an integral part of the Institution. If they need to leave the enclosed area, this can be done only in the company of a guardian, or some of the Institution employees. A private agency is hired for the external security of the Institution.

It is necessary to mention that the Institution is also in charge of the transport of minors who express the intention to seek asylum to the centre in Banja Koviljaca. In addition, they also transport minor aliens who do not express the intention to seek asylum, and who are accommodated at border crossing-points. The Institution pays for the transport costs.

**Recommendations:**

1. To increase the capacities of the unit for the accommodation of minor aliens unaccompanied by parents or guardians. The space available for adaptation exists within the Institution, but it is necessary to provide resources for this purpose. The adaptation plan should also include room for the accommodation of female minor aliens. At the same time, it is necessary to create conditions for employing additional staff for the unit in charge of the accommodation of minor aliens.

2. To provide stable financing of the unit, and means for its uninterrupted operation at full capacity. Above all, funds are necessary for providing the basic living conditions of minor aliens staying at the Institute.

3. To lay down that the minors staying at the Institution are given advantage over the other asylum seekers for admission to the Centre for the Accommodation of Asylum seekers in Banja Koviljaca.

4. To implement the decision of authorised bodies as regards the treatment of children, especially minor aliens, in order to ensure that the situation and the needs of the underaged are well understood, i.e. that during all the activities the principle of "the best interest of the child" is respected.

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216 The group of authors for this report have been preparing a special document which will elaborate on the accommodation conditions and measures as regards minor asylum-seekers in the Republic of Serbia, i.e. minor aliens unaccompanied by parents or guardians.

217 The UNHCR recommends a revised definition of an unaccompanied minor referring to a person under 18 years of age and "separated from his parents and who is not taken care of by any adult guardian responsible for doing so by law or custom ".

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5. The concept of protection applied in the Republic of Serbia according to the Law on Asylum

Asylum is defined by the Law as the right to residence and protection accorded to an alien to whom, on the basis of a decision of the competent authority deciding on his/her application for asylum in the Republic of Serbia, refuge or another form of protection provided for by the Law is granted (Article 2, paragraph 2 of the Law). The person who fulfils the criteria stated in the 1951 Convention will be given refugee status in Serbia, i.e. he/she will be given the right to asylum. Apart from this, the Law envisages two additional forms of protection: subsidiary and temporary.

The Law adopts the internationally recognized term of subsidiary protection, implying that it may be granted to an alien who would be exposed to torture, inhuman or humiliating treatment after returning to the country of origin, or whose life, safety or freedom would be endangered by violence of a wider scope caused by external aggression or internal military conflicts or massive violation of human rights (Article 2, paragraph 8). It can be concluded from this definition that Serbia has opted for a special form of protection in cases of wider scope conflicts, but not for the enlargement of the definition of a refugee.

We find positive the solution adopted by the legislator that, in cases when the conditions for granting refugee status are not met, the possibility for providing subsidiary protection is considered ex officio. This solution is in accordance with international standards and good practice in this field.

The Law `recognizes` the concept of temporary protection and anticipates temporary protection in accordance with the social, economic and other possibilities of the Republic of Serbia, in cases of a massive inflow of persons from a state in which their lives, security or freedom are

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218 Question No. 22. What concept of protection do you apply?
c) Do you have in place subsidiary protection(s) or other forms of humanitarian protection?  
d) Do you have in place a temporary protection system to deal with a mass influx of displaced persons?  

219 According to this Convention, the term `refugee` refers to a person who „owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such a fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such a fear, is unwilling to return to it.“ The Law on Asylum of the Republic of Serbia specifies this term in accordance with this provision. Some persons become refugees from the moment they fulfil the conditions from the quoted Article. In the procedure of granting asylum, the status of refugee is acknowledged to a person who is a refugee. This means that the goal of acknowledging the refugee status is only of a declarative nature, as by this act a person does not become a refugee; rather, his/her status is acknowledged as he/she is a refugee.

220 After 1951, numerous states have introduced by means of their internal regulations the right for aliens to be granted asylum in cases when all the necessary conditions are met, in such a way that they have adopted the definition of a refugee from the UN Convention as the criteria for granting asylum or prohibiting prosecution. However, the definition from the Convention does not refer to the persons who had to leave the country of origin due to the fact that they were endangered by general violence, external aggression, massive violation of human rights and other circumstances which seriously violate public order. This issue is solved in two ways. Some countries have adopted more complete definitions of a refugee, while others have opted for providing a special kind of protection. The majority of European countries have chosen different approaches. They distinguish between providing subsidiary (complimentary) and temporary protection.
endangered by violence of a wider scope, external aggression, internal military conflicts, massive violation of human rights, or other circumstances which seriously endanger public order, i.e. in cases when due to a massive influx there is no possibility to apply individual procedures for obtaining the right to asylum. The Government decides on the provision of temporary protection (Article 36, paragraph 1 of the Law). This formulation, however, gives reasons for concern, as the Government may directly, by means of its decisions, control and limit the number of refugees, which can lead to the violation of the Article 33 of the Refugee Convention. At the same time, it is stipulated for temporary protection to last a maximum of one year, and that it may be prolonged in cases when the reasons for temporary protection still exist (Article 36, paragraph 5).

Temporary protection is given on a *prima facie* basis, without the individual procedure of determining the status. Therefore, this provision of the Law is not in accordance with international standards and should be deleted from the Law.

6. The registration and identification system for asylum applicants

An authorised officer of the Asylum Office should perform the registration of an alien and potentially of his/her family members in cases when they accompany him/her. The registration includes: establishing identity, taking a photograph, taking fingerprints, and the temporary withdrawal of all identification papers and documents which can be of relevance in the asylum procedure, of which a certificate shall be issued to the foreigner.

The by-law which regulates the way of registering asylum seekers has not yet been adopted. It is recommended that state authorities should create a registration form in an easy-to-understand, simple way, and organise interviews with every family member separately, in a confidential manner, except in cases of minors accompanied by parents when this procedure is required, or when circumstances indicate that this would be appropriate. Registration is an excellent opportunity to record persons with special needs and to undertake adequate measures in order to provide a fair procedure. In cases when an asylum seeker during registration wishes to be interviewed by a person of the same gender, this should be noted in the form. Registration of children should be done by specially trained officers, using methods adequate for the age and gender of the children being registered.

Establishing identity is grounded on the data available to the authorized officers and quoted by asylum-seekers themselves. The database in which the registration data of asylum-seekers are stored only enables the keeping of the collected information, without the search option, so identity checks are done manually from the existing database.

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221 EU Temporary Protection Directive envisions that it may last a maximum of 3 years.
222 Question No. 24. Describe your registration and identification (including IT) systems for asylum applicants.
223 Conclusion of the UNHCR Executive Committee No. 91(LII) from 2001 on Registration of Refugees and Asylum-Seekers.
Recommendations:

1. To create registration forms in a simple and easy-to-understand way and design them in such a way that state bodies could obtain the information on the basis of which they would be able to identify asylum seekers whom the Law on Asylum recognizes as a category of asylum-seekers with special needs.

2. To create and establish a database which will enable searching of the stored data important for establishing identities of asylum seekers. At the same time, to ensure access to this database to all authorized state bodies responsible for the operation of the asylum system, but abiding by the provision of the Law which guarantees personal data protection.

7. The system of reception conditions for asylum applicants

Until the final decision on an asylum application is brought, asylum seekers are provided with accommodation and basic living conditions within the Asylum Center, which is integrated into the Commissariat for Refugees, as a special organisation in accordance with the Law of the Republic of Serbia. The accommodation centre for asylum seekers is located in Banja Koviljaca and represents a centre for accommodation of asylum seekers of the open type. The operations of the Centre are financed from the budget of the Republic of Serbia. By-laws regulate in more detail all the issues concerning accommodation in the Centre.

It is possible to accommodate a maximum of 84 persons in the Centre. There is a defined obligation for asylum-seekers who possess their own funds to bear part of the accommodation expenses, or accommodation outside the Asylum Centre may also be approved. A person may be accommodated in the Centre provided he/she has been registered and directed there by the responsible officials of the Ministry of Interior. Although the transport of the majority of persons is organised and performed by the responsible bodies, it also happens that asylum seekers arrive at the centre on their own. The Rules about the accommodation conditions and the provision of basic living conditions in the Asylum Centre stipulate that persons are admitted from 8.30 am to 4.30 pm on working days. The implementation of this provision could cause problems for the persons who opt for independent transport to the Centre.

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225 Question No. 25. Describe your system of reception conditions for asylum applicants, including reception centres

226 In accordance with the Law on Asylum and obligations arising from this act, certain activities have been undertaken for establishing the Asylum Centre. The conditions for its operations were created by the signing and application of the Memorandum of Understanding between the government of the Republic of Serbia and the UNHCR. Based on this Memorandum, the building in Banja Koviljaca was renovated in 2006, and it has been serving the needs of the Asylum Centre since then (accommodation and basic living conditions for asylum seekers). The Decision on the official establishment of the Asylum Centre operating within the Commissariat for Refugees was brought on 6 December 2008. Until 15 December 2008 the Asylum Centre was financed by the UNHCR; the Commissariat for Refugees was subsequently given the responsibility for the Centre.

227 Rulebook on Medical Examinations of Persons Seeking Asylum upon Arrival to the Asylum Centre, Official Gazette of RS, No. 93/2008; Rulebook on Housing Conditions and the Provision of Basic Living Conditions in the Asylum Centre, Official Gazette of RS, No 31/2008; Rulebook on Social Assistance for Persons Seeking or Having Been Granted Asylum, Official Gazette of RS, No. 44/2008; Rulebook on the Method of Keeping Records and Contents on Persons Accommodated at the Asylum Centre, Official Gazette of RS, No. 31/2008; Rulebook on House Rules within the Asylum Centre, Official Gazette of RS, No. 31/2008.

228 Please refer to http://www.kirs.gov.rs/articles/azrea.php?lang=SER.
Accommodation for asylum seekers within the Centre includes: a bed with linen, access to sanitary rooms, heating, use of electricity and water, the necessities for personal hygiene and the hygiene of the facilities. As stipulated in the Law on Asylum, basic living conditions are provided along with the accommodation and these include: food (three meals a day, additional meals for persons with a special health regimes), clothes, the necessities for personal hygiene, financial aid and similar. Further to this, additional facilities are available for asylum seekers within the Centre (TV room and a play room for children).

Medical examination is obligatory for asylum seekers during their reception in the Asylum Centre, in accordance with the regulations of the Minister responsible for health issues. \(^{229}\) It is commendable that during the creation of the Rules on Medical Examination of asylum-seekers the suggestion of the UNHCR was accepted, and that HIV/AIDS testing is not mandatory. During medical examinations, asylum seekers are informed that there is a possibility for voluntary and confidential counselling and taking HIV/AIDS tests, as well as testing on syphilis. \(^{230}\)

As regards the conditions and ways of accommodation of asylum seekers, the principles of non-discrimination, family unity, gender equality and care for persons with special needs are respected. Although the Law does not explicitly state that this is mandatory, separate accommodation is provided for women unaccompanied by men. \(^{231}\)

Asylum seekers are obliged to act according to the house rules and cooperate with the relevant state officials. The Asylum Centre employs six persons from the Commissariat for Refugees and one from the Asylum Office. Apart from this, a private agency is engaged for providing security services 24 hours a day. \(^{232}\)

Leaflets in different languages have been produced which contain information about the rights and obligations of the persons accommodated in the Centre. The Centre is of the open type, so there are no restrictions concerning freedom of movement, i.e. asylum seekers may freely leave the area of the Centre without special limitations. If a person accommodated in the Centre wishes to leave it for 24 hours, he/she is requested to inform the manager, who will make an official note about it. In cases when an asylum seeker does not return within 24 hours, he/she loses the possibility to be accommodated in the Asylum Centre. If a person wishes to leave the Centre for a longer period and plans to return at some future time, he/she informs the centre official (the manager), who forwards this information to the Asylum Office.

According to the available records, \(^{233}\) from the moment when the Law on Asylum became effective till December 2010, 702 persons in total have passed through the Centre. If we compare

\(^{229}\) Rulebook on Medical Examinations of Persons Seeking Asylum upon Arrival to the Asylum Centre, Official Gazette of RS, No. 93/2008
\(^{230}\) Rulebook on Medical Examinations of Persons Seeking Asylum upon Arrival to the Asylum Centre, Official Gazette of RS, No. 93/2008; Article 5.
\(^{231}\) Source: Robert Lesmajster, Manager of the Asylum Centre, conversation, 7 December 2010.
\(^{232}\) In order to enhance the order, peace and security in the Centre, cameras for video monitoring have been installed and the number of security guards engaged in night shifts has been increased from one to two.
\(^{233}\) Ibid.
the annual data, it is evident that the number of these persons is growing. For example, in 2009 the number was 246, while in 2010 till the beginning of December the number was 412. As concerns the period of time spent in the Centre, experience has shown that there are no regularities and that it may range from 24 hours to 5-6 months.\textsuperscript{234}

The number of asylum seekers has been growing on a daily basis, and it often happens that the capacities of the centre are full and that the Centre cannot accept new asylum seekers. In cases of full capacity, the Centre does not have any obligations to accept or accommodate an asylum seeker sent to the Centre. It is unclear what happens with an asylum seeker in this case. In any case, they must not be left alone. In accordance with the provisions of the Law on Asylum, above all Article 39, paragraph 1, the authorities are under an obligation to provide accommodation for any person seeking asylum.

Renovation of the Asylum Centre facilities is underway, and during the works the capacities will be significantly reduced. The construction of an additional facility is planned in the Centre area. The new building will provide additional management offices and premises intended for the accommodation of persons with health problems the nature of which requires isolation, above all for reasons of medical prevention and the safety of other persons accommodated at the Centre.\textsuperscript{235}

It is obvious that there is a need for opening an additional accommodation centre. The UNHCR has expressed readiness to finance the construction, but agreement on the new location has not been reached yet. Ministry of Interior officials have offered two locations with buildings formerly owned by the Military (Bajmok and Srpska Crnja) which have become the property of the Border Police Directorate after the demilitarisation of borders\textsuperscript{236}. The Commissariat for Refugees has also made suggestions concerning new locations. Taking into account the practical reasons\textsuperscript{237}, it would be better to have new facilities for accommodation of asylum seekers in the immediate vicinity of Belgrade.

**Recommendations:**

1. To change the Provision of the Rules on Housing Conditions and the Provision of Basic Living Conditions at the Asylum Centre which defines the period of time, i.e. hours and days of the week during which asylum seekers can be admitted to the Asylum Centre.

2. To open at least one additional centre for accommodation of asylum seekers, preferably at a location in the immediate vicinity of Belgrade, taking into account the previously mentioned practical reasons.

\textsuperscript{234} Ibid.

\textsuperscript{235} Source: Robert Lesmajster, Manager of the Asylum Centre, conversation, 7 December 2010.

\textsuperscript{236} Source: Milos Zatezalo, Head of the Department for Foreigners within the Border Police Directorate of the Ministry of Interior, conversation, 14 December 2010.

\textsuperscript{237} Please check reference number 49.
8. Legal framework for the cooperation of relevant institutions of the Republic of Serbia with the UNHCR and nongovernmental organisations

By ratifying the Refugee Convention, the obligation of cooperation with the High Commissioner for Refugees is undertaken. Apart from this, the grounds for cooperation with the UNHCR also include: Article 5 of the Law on Asylum, which prescribes cooperation between the relevant bodies and the UNHCR, and Article 12 of the Law on Asylum which guarantees contact with the authorised officials of the UNHCR at all stages of the procedure.

Until the adoption of the Law and by-laws, and the introduction of relevant institutions, the UNHCR Office in Serbia was in charge of the procedures initiated to obtain asylum, to take care of asylum seekers, and to find adequate international protection, i.e. the country which would accept them. Since the authorised state bodies took over the implementation of the procedures for granting refugee status, the UNHCR has continued offering assistance to the asylum system in Serbia. Emphasis is placed on increasing the capacities for performing the activities vital for the asylum issue.

As regards cooperation with the civil sector, the role of civil society is highly important in establishing the asylum system in Serbia, above all for correcting, expediting and monitoring the work of public administration. Civil society has been very active recently in following and evaluating the work of all state bodies in this area through public events, conferences, round tables and various debates. Without the civil sector, to which all public data must be available without unnecessary restrictions and in accordance with the relevant laws, there can be neither properly implemented reforms nor necessary essential changes. Thus, one of the modes of cooperation which has been in development in the world for the last few years is the concept of border monitoring. Border monitoring is one of the systematic activities whose goal is to monitor and document the procedures with foreigners and potential asylum seekers at borders and all other facilities related to borders. The reasons for its usefulness for every state include the provision of access to justice, which in the case of asylum means access to the procedure of asylum protection (the possibility to realise the right of asylum, i.e. refuge), the provision of the respect for basic human rights for migrants and potential asylum-seekers, and at the same time, the procedure of cooperation and trust between the state and non-governmental organisations (which usually implement this procedure).

Serbia has not yet established the mechanism of border monitoring, although some non-governmental organisations (for example, the Belgrade Centre for Human Rights, through a regional project promoting the introduction of border monitoring) have offered proposals for its establishment.

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238 Question No. 26. Describe the framework for cooperation with the UNHCR and NGOs.


241 This was done based on a ‘gentleman’s’ agreement dating back to 1969.

242 For more information, please check the Methodology of Border Monitoring – Handbook for Establishing the Mechanism of Border Monitoring.
Additionally, the civil sector plays an indirect role in the operation of the asylum system in Serbia. More specifically, the fact that free legal aid, one of the most important rights granted by the Law to asylum-seekers, is provided by one non-governmental organisation (APC) supports this assertion.

Recommendations:

1. To consider the joint action of the state and NGOs aimed at the donor community in terms of finding the resources for border monitoring programs.
2. To continue the cooperation with civil society in respect of granting free access to the information about the procedure, treatment of asylum seekers and similar.

9. Integration of refugees and persons who have received another form of protection

The rights of asylum-seekers, refugees and persons to whom subsidiary protection is granted are stipulated in Chapter VI of the Law on Asylum, including the rights to residence, accommodation, basic living conditions, health care and education. However, certain shortcomings can be found in these provisions, among which the most important one is that certain rights are granted to persons with the recognized right to refuge, but not to persons for whom subsidiary protection was approved.

Although the Law on Asylum (Article 46) obliges Serbia to enable inclusion (integration) and even naturalization into social life for persons who have been granted asylum, this provision of the Law has not been elaborated in more detail in other acts. At present, no ‘integration house’ exists in Serbia, nor does the budget allocate any means for the integration of persons who have been granted asylum. The experience of the EU states, with a more developed practice concerning asylum, indicates that integration is a process which requires an elaborate institutional framework in which the competences of all state bodies are precisely defined.

Persons seeking asylum and persons to whom asylum has been granted in the Republic of Serbia are given the same rights to health care, in conformity with the regulations on the health care of

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243 Question No. 27. Describe your integration policy for refugees and persons who have received another form of protection.

244 The Immigration and Naturalisation Service of the Kingdom of the Netherlands (IND – Immigratie en Naturalisatiedienst) in its annual report stated that 14,299 persons applied for asylum in the Netherlands during 2008, while asylum was granted to 1,429 persons (10% of all applicants).

245 The UK National Strategy for Refugee Integration (2005) defines integration as: ‘the process that takes place when refugees are empowered to achieve their full potential as members of British society, to contribute to the community, and to become fully able to exercise the rights and responsibilities that they share with other residents’.
foreigners, as well as the right to free elementary and secondary education and the right to social assistance, in accordance with a special regulation.246

The legislator specifies that the persons with a recognized right to refuge in the Republic of Serbia have the same rights as the citizens of the Republic of Serbia in terms of intellectual property rights, free access to courts, legal aid, exemption from paying court and other expenses of state bodies and freedom of religion.

According to Article 43, only the persons whose right to refuge in the Republic of Serbia has been recognized shall have rights equal to those of permanently residing aliens with respect to the right to work and rights arising from employment, entrepreneurship, the right to permanent residence and freedom of movement, the right to movable and immovable property, and the right of association. In our opinion, the same rights should be guaranteed to all persons with granted asylum, not only refugees.

As regards persons to whom temporary protection is granted, they are given the following rights: to residence during the period of the validity of temporary protection, to a personal document confirming his/her status and residence right, to health care in accordance with the regulations governing health care for aliens, to free primary and secondary education in public schools in accordance with a special regulation, to legal aid under the conditions prescribed for asylum seekers, to freedom of religion under the same conditions that apply to the citizens of the Republic of Serbia, to accommodation in accordance with a special regulation, and to affordable accommodation, in the case of handicapped persons.

It remains unclear why the legislator has not granted the following rights to the persons for whom temporary protection is approved: free access to courts and administrative bodies, as well as basic freedom of movement.

In addition, the provision on non-discrimination of asylum-seekers and persons who have been granted asylum on one hand, and Serbian citizens on the other, is lacking. However, non-discriminatory behaviour is guaranteed only to the persons to whom the right to refuge is recognised, while there are no provisions on non-discrimination for asylum seekers and persons to whom subsidiary protection is approved, as compared to Serbian citizens.247

All these rights are realised with the competent institutions of the Republic of Serbia, courts, health institutions and social work centres. Health care for the persons with a recognised status is paid from the budget of the Republic of Serbia only in the case of financially insecure persons.

In order for a person who has been granted asylum to start employment, it is necessary to obtain the approval for permanent residence or temporary residence in the Republic of Serbia, and to obtain the work permit.

246 In practice, the right to education is not provided by the responsible bodies of the Republic of Serbia. Instead, it is realised within a project financed by the UNHCR and implemented by the Danish Refugee Council. It implies three hours a day of teaching by a tutor coming especially for this purpose to the Asylum Centre, three times in a week.

The experience so far is that persons who have been granted asylum/subsidiary protection have never started employment, and there are no reliable data on whether they have ever been hired informally (unregistered work).

The solution adopted in our legislation is more rigorous in terms of the availability of the right to employment than the practice of other countries, which enables employment, retraining and training also for refugees, persons with subsidiary protection, and persons in the procedure after filing an application, with the aim of their easier integration.\textsuperscript{248}

The provision of accommodation, learning the (Serbian) language and the possibility of finding adequate employment form the grounds of the integration process. Having in mind that nothing has been done so far towards creating the conditions for integration, it is necessary to draw the attention of authorities to this issue in the upcoming period. One precondition is undoubtedly securing funds for this purpose, above all from the budget, but also the funds available to the state bodies from the European funds, especially the IPA. Furthermore, it is necessary to define which state body will be responsible for the integration of persons who have been granted the status. Taking into account that integration implies numerous aspects, a kind of coordination body which would coordinate the activities of all state bodies involved in this process could serve as a practical solution.

Successful integration also requires the conditions in which a local community accepts asylum seekers, and in which, as time passes, a person who has been granted asylum becomes part of the social life and establishes social relations with other community members. In a situation in which there are a large number of unemployed, or people with low income, it is necessary to carefully design the ways to integrate asylum seekers such that negative reactions of the local community, which would make integration much more difficult, are prevented. Additionally, it is recommended to choose an urban area as the location at which the integration house will be placed.

So far, five persons have been granted subsidiary protection in Serbia, one Iraqi, three Ethiopians and one Somali. Out of these five persons, only the citizen of Somalia is on the territory of Serbia at present. As an illustration of the current possibilities for accommodation and integration, we can have a look at the life circumstances of this person, who is at the moment the only person to whom subsidiary protection has been granted in accordance with the regulations. Due to the inexistence of conditions for providing accommodation, this citizen of Somalia has been staying in the Asylum Centre for over a year. There have been no positive decisions on granting refugee status, which certainly does not mean that activities should not be undertaken in order to create the conditions necessary for integration.

\textbf{Recommendations:}

\textsuperscript{248} Please refer to \url{www.integrationsfonds.at/sr/}, or \url{http://www.appogg.gov.mt/pdf/information/articles_equal7.pdf}. In the United Kingdom, in cases when no decision has been brought about the asylum application after 12 months, applicants are given the right to work - please visit \url{http://www.refugeecouncil.org.uk/OneStopCMS/Core/CrawlerResourceServer.aspx?resource=CEB597B9-9EB6-4340-861C-CAB7183CF294&mode=link&guid=f3bec19e3a214ba7809ae90f298240be}.
1. To amend Article 43 of the Law on Asylum in such a way that equal rights are given to all persons who have been granted asylum, and not just refugees. Additionally, the right to free access to courts and administrative bodies should be granted to persons who have been approved temporary protection, as well as basic freedom of movement.

2. To define the state body or bodies responsible for integration of the persons who have been granted asylum.

3. To provide the means necessary for integration, above all those intended for building the integration house for accommodation of persons to whom status has been granted.

4. To consider the adoption of such a solution (Law amendments) in which an asylum seeker is guaranteed access to the labour market also by means of additional retraining or training.

10. Asylum statistics in Serbia

The Law on Asylum includes provisions which regulate the expression of intention to apply for asylum, i.e. making records of asylum seekers. Namely, each foreigner who expresses the intention to seek asylum does so before the authorised police officer of the Ministry of the Interior and this person needs to be entered into the records. This is done by the officer before whom the intention was expressed. The information on the completed registration form is forwarded to the Asylum Office, which keeps detailed records of asylum seekers. It has been previously stated that the data entered in the records are collected from Asylum seekers' personal documents if available or, if not, are based on their personal statements.

In the last three years, since the Ministry of the Interior of the Republic of Serbia took over complete responsibility for implementing the procedure of assessing the grounds for an asylum application, a constant increase in the number of asylum seekers has been noted.

In 2008, there were 77 registered asylum seekers in total. As the Law on Asylum came into effect on 1 April 2008, the applications before that date had been submitted to the UNHCR Office in Serbia. The UNHCR registered 25 asylum-seekers in total. As regards the data of the Asylum Office starting from 1 April until 31 December 2008, 52 persons in total filed an application for asylum. Most of the applications were submitted by citizens of the Ivory Coast – 19. They were followed by citizens of Georgia – 17, Iraq - 12, Armenia - 5, Syria -5, Nigeria - 4, Ethiopia – three, and there were two citizens from each of the following countries - Chad, Sri Lanka and Palestine. There was also one citizen each from the countries of France, Somalia, Guinea, Angola and Albania, as well as one stateless person who sought asylum in this period. In 2008, 2 complaints following the decisions of the first-instance body were submitted (a citizen of Croatia – rejected, the stateless person – accepted).

Question No.28. Describe the system put in place to collect data and statistics on asylum and refugee movements in your country and provide the following data (reference period 2005-2010): number of asylum seekers, number of positive decisions granting refugee and other protection status recognized, negative decisions rejecting the applications and other non-substantive decisions (all of them for both first instance and appeal), disaggregated by citzenships of the applicants, for each year.

Article 22 and Article 23 of the Law on Asylum of the Republic of Serbia
The data from 2009 indicate that the total number of applications was 275. Most of the applications were submitted by citizens of Afghanistan – 218; then Sri Lanka – 17; Iran - 13; Guinea 4; Iraq, Cameroon - 3; Palestine, Russia, Pakistan, Georgia – 2, and one application each from the following countries: Lebanon, Costa Rica, Croatia, Somalia, Belarus, Morocco and Albania. As in the previous year, there was one application by a stateless person. In 2009, 28 complaints in total were submitted (19 complaints by citizens of the Ivory Coast – 1 accepted, 18 rejected; 2 complaints by citizens of Congo – 1 accepted, 1 rejected; 1 complaint by a citizen of Somalia – accepted; 1 complaint by a citizen of Croatia – accepted; 1 complaint by a citizen of Afghanistan – rejected; 1 complaint by a citizen of Armenia – rejected; 1 complaint of an Albanian citizen – rejected; 1 complaint by a citizen of Palestine – rejected, and a complaint by a stateless person – rejected) and 15 complaints for the initiation of an administrative dispute (13 complaints by citizens of the Ivory Coast – all rejected; 1 complaint by a citizen of Armenia – accepted, and 1 complaint by a stateless person – accepted). In 2009, 4 subsidiary protections were granted (1 to a citizen of Iraq and 3 to citizens of Ethiopia), but all of them were related to cases dating back to 2008, while in 2010 one application for asylum, submitted in 2009, ended in a positive outcome (a citizen of Somalia was granted subsidiary protection).251

251 Statistical data are taken from the Answers to the Questionnaire of the Government of the Republic of Serbia, please refer to http://www.seio.gov.rs/code/navigate.asp?Id=2
Table 2 The number of persons who expressed their intention to seek asylum in the Republic of Serbia in 2010:

<table>
<thead>
<tr>
<th>COUNTRY OF ORIGIN</th>
<th>NUMBER OF REGISTERED APPLICATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>318</td>
</tr>
<tr>
<td>Palestine</td>
<td>77</td>
</tr>
<tr>
<td>Iraq</td>
<td>29</td>
</tr>
<tr>
<td>Pakistan</td>
<td>22</td>
</tr>
<tr>
<td>Somalia</td>
<td>22</td>
</tr>
<tr>
<td>Iran</td>
<td>9</td>
</tr>
<tr>
<td>Congo</td>
<td>8</td>
</tr>
<tr>
<td>Morocco</td>
<td>7</td>
</tr>
<tr>
<td>Holland</td>
<td>5</td>
</tr>
<tr>
<td>Georgia</td>
<td>4</td>
</tr>
<tr>
<td>Algeria</td>
<td>3</td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td>3</td>
</tr>
<tr>
<td>Albania</td>
<td>2</td>
</tr>
<tr>
<td>Mongolia</td>
<td>2</td>
</tr>
<tr>
<td>Yemen</td>
<td>2</td>
</tr>
<tr>
<td>Germany</td>
<td>1</td>
</tr>
<tr>
<td>Croatia</td>
<td>1</td>
</tr>
<tr>
<td>Russia</td>
<td>1</td>
</tr>
<tr>
<td>Turkey</td>
<td>1</td>
</tr>
<tr>
<td>Cuba</td>
<td>1</td>
</tr>
<tr>
<td>Ecuador</td>
<td>1</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>1</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>1</td>
</tr>
<tr>
<td>Togo</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>522</strong></td>
</tr>
</tbody>
</table>

Table 3: Overview of the number of asylum seekers from the moment when they expressed their intention till the time when the first-instance decision was brought:

| Number of registered asylum seekers | 522 |
| Number of identity cards issued in the procedure of registration | 346 |
| Number of submitted applications for asylum | 215 |
| Number of interviews | 58 |
| Number of first instance decisions of the Asylum Office | 28 |

Please refer to Table 1 for the number of submitted complaints to the first instance decisions.

252 Data obtained from the UNHCR Office in Serbia
Conclusion

The political elite in Serbia has not been paying attention to the issue of migration policy, including asylum, although it is one of the key priorities of the EU Member States, and even the EU itself. If the government of Serbia maintains the attitude that the migration policy of the country is reduced to a short-term priority – visa liberalisation – it is almost certain that the political elite in Serbia will be surprised by the events which may be anticipated even from this vantage point.

By accession to the EU, raising the level of conformity with ratified international standards, and taking into account its geographical position, Serbia will become much more interesting for migrants of all kinds, including many of those who would prefer to seek asylum in Serbia. In the January – March 2011 period, a total of 417 persons expressed their intention to seek asylum in Serbia, which is five times more than in the same period last year (January – March 2010 - 81 persons).

Further to this, the country's accelerated economic development is a definite signal that at a certain moment a state with high levels of emigration may become an immigration destination. Ireland, Portugal and Spain serve as examples for this statement. These countries defined their migration policies in a timely fashion and readily integrated them into their economic development.

As regards the asylum system and migration policy of the Republic of Serbia, it may be stated that a certain progress has been made in the process of the adoption of Laws and by-laws, and of relevant strategies and measures in this area. The adoption of legislation is just the first step.

If we take into account the present phase of Serbia's accession to the EU and the obligations imposed in line with this position, it may be stated that the regulations are aligned with the EU standards to a satisfactory level. This primarily refers to the Law on Asylum, which is the most important act of the Republic of Serbia which is effective in this area.

At this moment, emphasis should be placed on improving the established practice and must show that the standards imposed by the EU are respected not only in a declarative way, through the adopted regulations, but also that they form an integral part of the procedure for the implementation of regulations. In order to reach such standards in practice, it is necessary to undertake measures by which the existing infrastructure will be upgraded.

It is necessary to pay special attention to a few most acute problems within the asylum system. There can be no doubt at all that the Centre for the Accommodation of Asylum seekers in Banja Koviljaca does not have enough capacities for all asylum seekers in Serbia. The fact that a number of people wait in front of the Centre for admission serves to support this statement. During the last couple of months, this number has ranged from 40 to 60 people. With this in mind, the capacities for the admission of these persons should be increased.
Further to this, a state body performing all the activities in the first instance procedure of granting the right to asylum does not formally exist. It is necessary to create as soon as possible the conditions for establishing the Asylum Office, using the possibility envisaged by the provisions of the Law on Asylum, such that it is a separate unit of the Border Police Directorate, but within the Ministry of the Interior.

Additionally, there is a significant need for the further professional education and training of state officials about the application of the Law and the importance of respecting the human rights of asylum seekers.

All these activities require certain financial resources which should be allocated from the budget, and this is where the political elite plays a crucial role. As this is one of the Laws for the implementation of which it is necessary to secure the finances, it is essential that the political elite have this in mind and be properly informed, so that sufficient amounts may be allocated from the budget. In this regard, civil society in Serbia may play a significant role in informing the public about the importance of the asylum system and the necessity of its development in the Republic of Serbia.

By creating this document we intend to present what has been done so far for the establishment of the asylum system in Serbia, and to pay special attention to some of the segments which need to be further upgraded. We also mean to give constructive recommendations, and in this way support the establishment of the asylum system in the Republic of Serbia and all the players immediately involved in its operation.
Group 484 is a non-profit, nongovernmental organisation dedicated to the protection and assistance provision to refugees and internally displaced persons and the promotion of human rights and civil society values: equality, diversity, and tolerance. With its first activities in 1995, the organisation was engaged in the assistance to 484 refugee families from Croatia and that is how it got its name. Ever since it was founded Group 484 has been empowering newcomers to actively participate in the life of the local community and encouraging local population, especially young people to accept and respect diversities.

Group 484 conducts research on the situation of forced migrants, reports cases of human rights violations, gives recommendations for enhancing their rights, publishes announcements, reports, analyses and studies, including a number of books. Group 484 is a member of European and national networks such as European Council on Refugees and Exiles (ECRE) and Serbian Network against Poverty.

The founder of Group 484 was Jelena Santic, a renowned ballet dancer and peace activist, awarded the Pax Christi International Peace Award in 1996.
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