**Office for Human and Minority Rights**

Department for the Protection and Promotion of Human Rights

Belgrade

27 May, 2020

**Information on the protection of migrants in particularly vulnerable situations,**

**challenges in practice of finding missing migrants and access to justice for their families based on UNSCR 74/148**

* **Actions taken in order to improve protection of migrants in particularly vulnerable situations.**

The provisions of the Law on Asylum and Temporary Protection prescribe the protection of fundamental rights and freedoms of migrants - asylum seekers and persons granted protection, both through basic principles and through provisions pertaining to the rules of procedure and provisions prescribing the rights and obligations of these categories of persons.

The basic principles prescribed by the said Law shall be as follows:

* Prohibition of expulsion or return stipulating that no person may be expelled or returned against their will to a territory where their lives or liberty would be endangered because of their race, gender, language, religion, nationality, membership of a particular social group or political views;
* The principle of prohibition of discrimination which prescribes that in the procedure of granting asylum in the Republic of Serbia, any discrimination on any grounds shall be prohibited, especially on the grounds of race, colour, gender, nationality, social origin or similar status, birth, religion, political or other beliefs, financial status, culture, language, age or intellectual, sensory or physical disability;
* The principle of impunity for illegal entry or stay, which stipulates that an asylum seeker will not be punished for illegal entry or stay in the Republic of Serbia, provided that they submit an application for asylum without delay and provide a valid explanation for their illegal entry or stay;
* The principle of family unity, which obliges the competent authorities to take all available measures to maintain family unity during the asylum procedure, as well as that persons who have been granted asylum have the right to family reunification;
* The principle of information and legal assistance which stipulates that an alien who has expressed their intention to seek asylum in the Republic of Serbia shall have the right to be informed about their rights and obligations during the entire asylum procedure. An asylum seeker can benefit from free legal aid and representation from the UNHCR and non-governmental organisations the goals and actions of which are aimed at providing legal aid to refugees.
* The UNHCR principle of free access, which stipulates that an asylum seeker shall have the right to contact authorised UNHCR officials at all stages of the asylum procedure, while the UNHCR shall supervise the implementation of the application procedure as well as monitor the exercise of prescribed rights of asylum seekers, in terms of the UNHCR mandate.
* The principle of gender equality and sensitivity, which prescribes that a person seeking asylum should be provided to be heard by a person of the same gender, i.e. a translator or interpreter of the same gender, except when this is not possible or is disproportionately difficult for the authority conducting the asylum procedure. The principle referred to in Paragraph 1 of this Article shall always apply during searches, physical examinations and other actions in the procedure which imply physical contact with the asylum seeker;
* The principle of providing special and acceptance guarantees stipulates that special attention shall be paid to the specific situation of persons in need of special acceptance guarantees, such as minors, unaccompanied minors, persons with disabilities, the elderly, pregnant women, single parents with minor children, victims of human trafficking, seriously ill persons, persons with mental disorders, as well as persons who have been tortured, raped or exposed to severe forms of psychological, physical or sexual violence, such as women victims of genital mutilation.

Asylum seekers and persons who have been protected by the Law on Asylum and Temporary Protection shall be prescribed, among others, the following rights:

* The right to submit an application - An alien who is on the territory of the Republic of Serbia shall have the right to submit an application for asylum in the Republic of Serbia. If the alien referred to in Paragraph 1 of this Article does not meet the conditions for obtaining the right to asylum, the conditions for granting them subsidiary protection shall be considered *ex officio*;
* Asylum seekers shall have the right to appeal against first instance decisions and may submit it within 15 days to the Asylum Commission, which is the second instance administrative body in the asylum procedure;
* The right to file a lawsuit with the Administrative Court against the final decisions of the second instance body - against the decision of the Asylum Commission, by which applicants shall have the right to initiate an administrative dispute, by filing a lawsuit with the Administrative Court, thus obtaining judicial protection;
* The right to reside in the Republic of Serbia, the right to accommodation and basic living conditions;
* The right to health care;
* The right to free primary and secondary education;
* The right to social welfare;
* Refugee rights equal to the rights of citizens of the Republic of Serbia;
* Refugee rights equal to the rights of permanent residents and
* The right to integration of refugees.

As for the freedom of movement of asylum seekers, one of the basic principles prescribed by the Law on Asylum and Temporary Protection is the right to residence and freedom of movement. Asylum centeres, of which there are five in the Republic of Serbia, shall be open, and in addition to staying in the centers, asylum seekers can choose to stay at private addresses, if they have the funds.

In that sense, and regarding the prohibition of arbitrary detention prescribed by the Resolution and other international instruments that protect the basic rights of migrants and asylum seekers, Article 77 of the Law on Asylum and Temporary Protection precisely defines the reasons for restricting the movement of asylum seekers. Article 78 of the same Law prescribes measures that may restrict the movement and duration of movement restrictions, which shall completely exclude the possibility of arbitrary detention of asylum seekers, as well as the fact that Article 77 prescribes the right to appeal against a decision imposing a movement restriction on an asylum seeker.

The right of asylum seekers to work shall be regulated in detail by the Law on Employment of Foreigners, which stipulates that an asylum seeker by the fault of whom the procedure has not been completed for nine months after submitting the request shall have the right to access the labour market.

As for asylum seekers who are suspected of being potential victims of human trafficking during the asylum procedure, close cooperation has been established with the Centre for Protection of Victims of Human Trafficking as well as the mechanism for referral and protection of this category of persons.

Pursuant to the applicable Law on Foreigners, Article 3 entitled "Meaning of the Term", Paragraph 1, Item 24, stipulate that “especially endangered persons" shall be the victims of human trafficking. The recovery and reflection period and related issues of residence of presumed victims of human trafficking shall be regulated by Articles 40 (Temporary Residence), 61 (Temporary Residence for Humanitarian Reasons), 62 (Temporary Residence of an Alien Presumed to be a Victim of HumanTrafficking), 63. (Temporary Residence for Victims of Human Trafficking) and 64. (Termination of Humanitarian Residence and Temporary Residence for Victims of Human Trafficking).

Also, in the previous period, in cooperation with the competent Centeres for Social Work and other competent bodies of the Republic of Serbia, the Ministry of Interior took an active part in resolving the issue of domestic violence among asylum seekers, as well as in divorces between spouses (Iran) in the procedure for obtaining asylum in the Republic of Serbia, where full support was provided to victims of domestic violence, in terms of accommodation, medical and psycho-social assistance.

Regarding other measures and guaranteed rights for the protection of vulnerable categories of asylum seekers, we would like to point out the following - when accommodating a foreigner who is registered as having expressed his intention to seek asylum and the applicant, special attention shall be paid to their gender and age, whether they have the status of a person requiring special procedural or acceptance guarantees, as well as the family unity.

Exceptionally, for an applicant who is in a special psycho-physical condition, who needs special procedural and acceptance guarantees and who cannot be provided with the necessary conditions for their accommodation in the asylum centre or other facility intended for accommodation of applicants, the Commissariat for Refugees and Migration of the Republic of Serbia shall provide accommodation in a social protection institution, with another accommodation service provider or in another family based on the decision of the centre for social work.

The appropriate priority health care shall be provided to the seriously ill applicant, the applicant who is the victim of torture, rape and other serious forms of psychological, physical or sexual violence by enabling them exercise of the rigt to health care.

Since 2015, there have been several new and changed practices in the EU and Balkan countries regarding the rules of entry and closing of borders, which has also affected the number of migrants passing through Serbia. The Republic of Serbia is still a country of transit, now with an extended stay of migrants who are not able to continue their journey to the countries of their desired destination.

In the practice so far, Serbia has shown the capacity to adequately and efficiently react to migration waves, to engage the necessary resources and coordinate the activities of many actors in order to protect its citizens' interests and provide the necessary assistance and protect the basic rights of migrants. Addressing this issue requires significant commitment of state resources, both financial and human and technical, which imposes the need for effective management.

In order to react in a timely manner, movements shall be monitored on all borders of the country, from entry to exit points, outside the centeres for accommodation of migrants and asylum seekers, and especially in Belgrade itself.

The Republic of Serbia is not the last country migrants enter before they enter the European Union, since each of them passes through Greece or Bulgaria before entering our country, i.e. through one of the EU member states. For this reason, the Republic of Serbia is in a very specific position, as a kind of a buffer zone between EU member states.

Longer detention of migrants on the territory of the Republic of Serbia is also a consequence of the policy of the Hungarian authorities to keep the borders open, but at the same time to limit the number of persons who can legally enter Hungary at two transit crossings (Roske and Tompa), gradually reducing the number of persons entering the country from 40 to currently 1 person per day per crossing, on working days. This move has a psychological effect on some people who have been waiting in Serbia for a long time to move to Hungary under this system, but no major oscillations and effects have been noticed. The number of persons who crossed into Hungary according to this principle was around a few persons per week, which is an insignificant number compared to the total number of migrants present in the Republic of Serbia. Due to the current pandemic, Hungary has completely suspended entry.

Measures to deter illegal entry into the territory of Serbia, reception and care of migrants, increased health and social support for vulnerable categories, inclusion of children in the education system, fight against smuggling of migrants required reorganisation of competent services, increased number of employees, additional training, procurement of necessary equipment and funds, enhanced cooperation of countries in the region, etc. Since the beginning of 2015, the European Union has been providing support to Serbia in the abovementioned activities, i.e. in managing migration through various projects and funds.

The Republic of Serbia is closely following the events on the Turkish-Greek border, and in accordance with that, it is making plans and preparing itself for each scenario. In October 2015, after the summit of the leaders of the countries of the Western Balkan route, the Republic of Serbia expressed its readiness to provide accommodation for 6,000 people.

Reception centeres were opened in accordance with the development of the situation and the needs in the field. At the time before the proclamation of the coronavirus pandemic, there were 17 asylum and reception centeres, while two more were temporarily closed, with a total capacity of 6,000 places, with the possibility of increasing them by using facilities intended for shorter stays in case of need. A few days after the declaration of a state of emergency in the Republic of Serbia due to the coronarvirus pandemic, the Commissariat for Refugees and Migration handed over three reception facilities for the accommodation of persons who entered the Republic of Serbia and who had to be quarantined. Considering that, the Commissariat received a new facility for the reception and care of migrants in the “Èardak” Special Nature Reserve “Èardak” in Deliblato Sands.

Before the declaration of the state of emergency, about 5,800 migrants had been staying in asylum and reception centres in the Republic of Serbia, while slightly more than 500 had been detected outside the centres. Currently, about 8,500 migrants and asylum seekers stay in all asylum and reception centres.

In the case of minors, when implementing the provisions of the Law on Asylum and Temporary Protection, the principle of the best interest of the minor shall be followed. When assessing the best interests of a minor, the welfare, social development and origin of the minor, the opinion of the minor depending on his age and maturity, the principle of family unity, as well as the protection and safety of the minor, especially if there is a suspicion of them being victims of human trafficking and victims of domestic violence and other forms of gender-based violence.

Articles 11 and 12 of the Law on Asylum and Temporary Protection stipulate that the intention to seek asylum on behalf of a minor shall be provided by a parent or guardian as well as that a guardian body shall appoint a temporary guardian for an unaccompanied minor under the law as soon it is determined it is the case of an unaccompanied minor, at the latest before submitting an asylum application. Asylum procedures for unaccompanied minors shall take precedence over other procedures.

The concept of the best interests of the child aims to ensure the full and effective exercise of all rights recognised by the UN Convention on the Rights of the Child, as well as the holistic development of the child.

Assessment of the best interests of the child is a procedure in which all important data about children and their lives are collected, analysed, interpreted and evaluated in terms of a specific situation in which children find themselves.

Determining the best interests of the child includes assessing the best interests and making a decision based on the assessment of the best interests of the child. According to Article 12 of the UN Convention on the Rights of the Child, the views and wishes of the child should be taken into account and taken into account in decisions or measures concerning them.

Unaccompanied minors shall be accommodated exclusively in the asylum centers in Bogovaða and Sjenica, while a smaller number of them are still in the centre in Krnjaèa. In accordance with the principle of the best interests of the child, all migrants of primary and pre-school age, regardless of their legal status, shall be provided with access to education. A total of 127 children go to primary school, while 22 children attend pre-school institutions. 15 children of that age have been enrolled in secondary schools. Classes are currently suspended due to the state of emergency in the country.

The Commissariat monitors the movement and presence of migrants on the streets of the city of Belgrade, and since last year, the Mixing Ground (Miksalište) has been managed by the Commissariat. Since then, there have been no migrants on the streets of Belgrade who belong to vulnerable categories (women, children, unaccompanied minors).

In order to prevent the occurrence and spread of coronavirus in reception and asylum centres managed by the Commissariat for Refugees and Migration, a month ago, enhanced measures to prevent the spread of the virus were introduced and applied according to the instructions of the World Health Organisation and the Ministry of Health of Serbia.

This, in addition to enhanced hygiene, primarily meant informing migrants in all the languages ​​they needed (English, Arabic, Farsi, Pasta and Urdu) about the dangers of the virus and ways to protect themselves from it through video material, posters, leaflets, etc.

Please note that even without coronavirus, every migrant who enters any of the centres undergoes a mandatory medical examination. At the same time, the practice of regular cooperation with the Institute of Public Health of the Republic of Serbia, which regularly performs epidemiological surveillance of the centres, is completely standardised.

In the days before the introduction of the state of emergency, and upon its proclamation, additional measures of regular cleaning, ventilation, enhanced hygiene and enhanced internal controls were introduced in all centres in the country. Maintenance of enhanced hygiene, which includes all migrants in the centres, is carried out at the entrance to the centre, in common rooms and rooms for migrants, as well as during the distribution of meals. Hand disinfection and cleaning, ventilation, disinfection and general maintenance of a high level of space hygiene are mandatory. Sufficient quantities of disinfectants, liquid soap, means for dry hand washing, as well as means for cleaning hard surfaces have been procured. Each centre also employs staff who take care of the hygiene of common areas.

Also, all centres have a health clinic and medical workers on duty. Isolation rooms have also been provided in case of need. So far, no cases of illness or infection with this virus have been reported among migrants. Migrants leave the centre only with the written permission and presence of the employee of the centre and for a specific time and only for the purpose of treatment.

* **Challenges and best practices in identifying missing migrants and providing access to information and justice for their family members.**

The Search Service, as the main activity of the Red Cross, with first aid, is one of the oldest activities of this largest humanitarian movement in the world. Today, the Search Service is organised at the national and international levels and forms a compact network that cooperates efficiently with each other and uses a unique work methodology. Constantly expanding the content of its work activities, in addition to the war situations when it is in full operation, the Search Service also operates in peace and provides services to citizens in natural disasters, major accidents and other emergencies.

In the asylum and reception centres, the Red Cross, among other competencies, also distributes leaflets of the Serbian Red Cross Search Service in English, French and Arabic so that those who are looking for a family member can find them via the link as soon as possible. Leaflets are put on display in all asylum and reception centres.

We would also like to point out that the Ministry of the Interior, within its competences, cooperates with non-governmental organisations, in terms of daily correspondence and cooperation, enables more efficient resolution of issues within the migrant structure and those referring to the missing persons, family reunification, with a special focus on the unaccompanied minors and their reunification with parents in cooperation with the Centres for Social Work. Within this area, significant results have been achieved by the Ministry of the Interior for a more efficient solution of the abovementioned issues.

Also, the Ministry of Interior collects requests received through the Ministry of Foreign Affairs of the Republic of Serbia, via notes from the Embassy, ​​as well as requests sent directly - by e-mail, from family members of the requested person, or friends of the wanted person.

As for the stated requests, after collecting data from the competent organisational units on the territory of the Republic of Serbia, the Ministry of Interior delivers the processed data to the applicants through the Ministry of Foreign Affairs.

We would like to point out that the receipt of a request for identification of missing persons is considered a report of disappearance, and the Ministry of Interior, after collecting data on the person, delivers a response to the Ministry of Foreign Affairs for information and further action.

* **Enhancement of the protection of human rights of migrants through the implementation of the Global Agreement for Safe, Orderly and Legal Migration.**

The Republic of Serbia is one of the countries signatories to the Global Agreement for Safe, Orderly and Legal Migration. In accordance with that, the Republic of Serbia reacts in the conditions of mass movement of people, caused either by conflicts and fear of persecution or by poverty and uncertainty in the countries from which migrants come.

In order to act urgently and in a coordinated manner, on 6 June, 2015, the Government of the Republic of Serbia established a Working Group for Solving Mixed Migration Flows, at the ministerial level, with the task of monitoring mixed migration flows and proposing measures to address identified problems and harmonise positions of competent state bodies dealing with the issue of mixed migration flows. On 4 September, 2015, the Government of the Republic of Serbia adopted the Response Plan in case of an increased number of migrants with a needs assessment, which is regularly updated in accordance with the needs. This Plan defines strategies and operational and technical measures and activities in case of increased inflow, as well as human, accommodation, material and financial resources and needs.

According to the Response Plan, and in order to provide adequate support to migrants in the territory of the Republic of Serbia, but also to preserve public order and peace and security of citizens, the main directions of action are as follows:

- Providing emergency assistance to migrants;

- Providing protection of persons applying for asylum, primarily including the protection of children as well as providing protection to persons who meet the requirements in accordance with the Law on Asylum and Temporary Protection;

- Providing conditions for the reception and care of migrants, including education and health care;

- Cooperation with local communities in order to maintain the level of tolerance towards migrants;

- State border control, suppression of human trafficking and irregular migration;

- Ensuring assisted voluntary return to countries of origin;

- Ensuring the forced return of persons accommodated in Shelters for Foreigners in order to return to their countries of origin.

In accordance with the Law on Migration Management, the Commissariat for Refugees and Migration proposes measures to the Government in order to take care of illegal migrants. Since the beginning of the mass influx of migrants from the direction of Macedonia in June 2015, reception and transit centres have been opened to ensure the reception and accommodation of migrants, in accordance with the development of the situation and needs in the field (mass influx, change of on the territory of the Republic of Serbia, a large number of families with children). The number of centres and capacity has already been covered in the answer to the first question.

In accordance with the Law on Asylum and Temporary Protection, the Commissariat for Refugees and Migration provides material conditions for the reception of asylum seekers (accommodation, food, clothing and funds for personal needs). In these facilities, in addition to the material conditions for reception, asylum seekers are provided with recreational and educational activities, psycho-social assistance and free legal aid in cooperation with NGOs. All persons accommodated in the centres are provided with health care, including mandatory examination upon admission. The centres are open. Special provisions concerning vulnerable persons, including unaccompanied minors to whom a guardian must be appointed by the competent Centre for Social Work are complied with. Every person accommodated in the centre has the right to contact authorised UNHCR officials. Full and timely informing of migrants about their rights, opportunities and obligations is provided.

The standards in the centres are in line with UNHCR standards. Accommodation capacities are continuously improved in order to comply with EASO standards.

Preliminary observations by the United Nations Special Rapporteur on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, from November 2017, indicate that there is no violation of human rights regarding living conditions in accommodation facilities for the reception and care of migrants and asylum seekers.

In order to support the integration of persons granted international protection, appropriate bylaws were adopted (Decree regulating assistance in providing housing) (July 2015) and the Decree on the manner of inclusion in the social, cultural and economic life of persons granted the right to asylum. (December 2016)). In July 2018, amendments to these two decrees were adopted. In this way, it is possible to implement the provisions of the law which guarantee assistance in integration to persons who have been granted protection. Given that the Republic of Serbia is a transit country, very few of them are considering staying. For persons who have been granted protection and want to stay in Serbia, the integration advisor prepares an individual integration plan, in accordance with the laws and regulations that regulate this area. In accordance with its competencies, the Commissariat provides financial support from budget funds for housing 14 people (10 decisions), as well as for the provision of Serbian language classes attended by 25 people.

As part of the process of assisted voluntary return, the Commissariat for Refugees and Migration, in cooperation with IOM, conducts counselling in regular info sessions where the programme and return opportunities for migrants interested in return are presented and a consultation on programme details is organised. During 2019, assistance was provided in voluntary return for 193 migrants who returned to their countries of origin from the Republic of Serbia.

The migration profile combines data on all categories of migrants in the country, classified in accordance with Regulation 862/2007 of the European Parliament and of the Council from 11 July, 2007 on Community Statistics on Migration and International Protection, as well as a description and analysis of the overall migration situation in Serbia. For the tenth year in a row, the Republic of Serbia has been independently creating the Migration Profile of the Republic of Serbia. Data on different categories of migrants are collected from the competent institutions and thus regular updates of profiles are established on annual basis, and the complete process is led by the Commissariat for Refugees and Migration.