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**United Nations Human Rights
Office of the High Commissioner
Special Rapporteur on the human rights of migrants**

Purpose:	To inform the Special Repporteur's forthcoming report to the 47th session of the Human Rights Council
Reported country:	Republic of Serbia
Report submitted by:	Non-governmental organisation „Klikaktiv – Center for Development of Social Policies“, Resavska 48, Belgrade, Republic of Serbia <u>Contact:</u> Phone: +38166412638 E-mail: info@klikaktiv.org Website: www.klikaktiv.org Facebook page: https://www.facebook.com/klikaktiv

KlikAktiv is a NGO based in Belgrade which provides free legal and psychosocial support to people on the move, asylum seekers and refugees in Serbia. KlikAktiv is registered as a free legal aid provider within the official register of the Ministry of Justice. We conduct our work in Belgrade but also in the border area where we collect testimonies on the push-backs from the EU external borders.

Serbia has adopted the new Law on Asylum and Temporary Protection as well as the new Law on Foreigners in 2018, which are for the most part in compliance with the EU directives and standards. However, in practise these Laws are not being respected and majority of people on the move in Serbia are not getting any kind of legal protection. Since KlikAktiv conducts its work on the field where we have direct communication with people and with public authorities we wanted to present the first-hand experience within this report.

Questions and answers:

Please provide information on any relevant legislation or policy in relation to the right to asylum to seek and enjoy in your country, which guarantees that migrants including asylum seekers' protection needs are examined individually, and they are not pushed back at the international border without access to this assessment and other relevant procedures. Grateful if you could kindly submit the original text of the legislation or policy, accompanied by an English translation if it is in a language other than English, French or Spanish.

Article 57. of the Constitution guarantees the right to asylum. It states that "Any foreign national with reasonable fear of prosecution based on his race, gender, language, religion, national origin or association with some other group, political opinions, shall have the right to asylum in the Republic of Serbia."

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Within Article 39. of the Constitution, which guarantees the freedom of movement, it is proclaimed: “Entry and stay of foreign nationals in the Republic of Serbia shall be regulated by the law. A foreign national may be expelled only under decision of the competent body, in a procedure stipulated by the law and if time to appeal has been provided for him and only when there is no threat of persecution based on his race, sex, religion, national origin, citizenship, association with a social group, political opinions, or when there is no threat of serious violation of rights guaranteed by this Constitution.”

The original text of the Constitution can be found in English on the official website of the Constitutional Court: <http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution>

Article 6 of the Law on Asylum and Temporary Protection guarantees the non-refoulement by proclaiming the following: “No person shall be refouled to a territory where his/her life or freedom would be threatened for reasons of race, sex, language, religion, nationality, membership of a particular social group, or political opinions.” The stated provision doesn’t apply to a person for whom there are reasonable grounds to believe that he/she constitutes a security threat to the Republic of Serbia, or who has been convicted by a final judgment of a serious crime punishable in accordance with the legislation of the Republic of Serbia by imprisonment of five years or longer in duration, which is why he/she poses a threat to public order. Regardless, no person shall be refouled to a territory where there is a risk that he/she would be subjected to torture, inhumane or degrading treatment, or punishment.

When it comes to border procedure it is regulated only by one article – Article 41 – which states that “at a border crossing, or in a transit zone of an airport or an inland port, the entire asylum procedure shall be conducted, complying with the main principles prescribed by this Law, provided that: 1) the Applicant is provided adequate accommodation and subsistence; 2) the asylum application, or the subsequent asylum application, may be refused as inadmissible in accordance with Article 38, paragraph 1, sub-paragraph 5) of this Law; 3) the asylum application, or the subsequent asylum application, may be rejected in accordance with Article 42 of this Law.”

The original text of the Law on Asylum and Temporary Protection is available on the official website of UNHCR Serbia:

<http://www.unhcr.rs/media/docs/2018/LawOnAsylumAndTemporaryProtectionRS.pdf>

Please provide information on any existing good practices or measures taken (such as screening and referral mechanisms at borders) in your country to ensure that persons crossing international borders in mixed movements are protected according to international human rights law. Please indicate any specific measures aimed at reducing vulnerabilities of migrants, including by applying a human rights-based, gender- and disability-responsive, as well as age- and child-sensitive approach.

There is no good practice or measures in place that would ensure that people who cross international border and enter Serbia (or at the borders) would be protected in accordance with the international law. Such measures are not proclaimed in the Law and therefore are not being respected in practice neither.

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Article 17 of the Law on Asylum and Temporary Protection proclaims the Principle of providing special procedural and reception guarantees which states: “In the course of the asylum procedure, one should take into account the specific circumstances of the persons requiring special procedural or reception guarantees, such as minors, unaccompanied minors, persons with disabilities, elderly persons, pregnant women, single parents with minor children, victims of trafficking, severely ill persons, persons with mental disorders, and persons who were subjected to torture, rape, or other serious forms of psychological, physical or sexual violence, such as women who were victims of female genital mutilation. Special procedural and reception guarantees shall serve to provide the appropriate assistance to the Applicant who, due to his/her personal circumstances, is not able to benefit from the rights and obligations under this Law without appropriate assistance. The procedure for identifying the personal circumstances of a person referred to in paragraph 1 of this Article shall be carried out by the competent authorities on a continuous basis and at the earliest reasonable time after the initiation of the asylum procedure, or the expression of the intention to submit an asylum application at the border or in the transit zone.” However, the Law on Asylum and Temporary protection doesn’t proclaim what the “appropriate assistance” is nor how it can be accessed. The only exception are unaccompanied minors where the Law stipulates that “an unaccompanied minor shall have a temporary guardian appointed by the guardianship authority, in accordance with law, immediately after it has been established that he/she is an unaccompanied minor and, in any case, before the submission of his/her asylum application.” However, this provision is also not being respected in practice. Since there are no legal provision on the age determination procedures, the age of the asylum seekers is often being determined “based on the appearance”. We encountered numerous cases of asylum seekers who are claiming to be minors but the police officers have “determined” based on their appearance that they are adults and have registered them as such, without even notifying the guardianship authority. This is done by the police officers of the Administration for Foreigners whose job is to register people as asylum seekers and to refer them to asylum camps after when the officers of Asylum Office are in charge of the asylum procedure. Police Officers of the Administration for Foreigners are not trained nor professionalized to determine the age of asylum seekers. They do it without the conversation with the person (since police officers don’t have interpreters), without the medical examination or any other valid method of determining someone’s age. Based just on the glimpse of someone’s physical appearance they determine their age.

Also, it is important to point out that the guarantees proclaimed in the Law on Asylum and Temporary Protection apply only to the people who officially have the status of asylum seekers, ie, those who have applied for asylum in Serbia. However, majority of people who are residing in Serbia don’t have access to asylum procedure and are seen as “migrants with illegal residency”, and the above-mentioned procedural guarantees don’t apply to them. In practice, most of the people in Serbia are completely invisible to any kind of protection system and mechanisms. They live in informal squats at the border area where they have to provide for basic necessities on their own. Also, these squats are being invaded by the special police forces and far-right groups every once and a while, which often results with physical violence towards the people on the move.

Please provide information on existing restrictions or limitations in law and in practice in relation to the right to claim and seek asylum at international borders in your country (e.g., border controls,

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restricted access to territory) and elaborate the impact of these restrictions on the protection of the rights of migrants crossing international borders.

Law doesn't impose any restrictions when it comes to the right of people to seek asylum at the Serbian borders. However, practice is quite different – number of push-backs from the Serbian border has drastically increased since autumn last year. Together with the push-backs, people on the move are reporting police violence at the Serbian borders also. These two factors – push-backs and violence – are main obstacles for people on the move to seek asylum at the Serbian borders. This is why most people opt to enter deeper into Serbian territory before they seek asylum before the relevant state authorities.

Please provide information on any concrete instances of pushbacks, including an analysis on the circumstances of the event.

We have collected several testimonies of collective expulsions from Serbia back to Macedonia or Bulgaria. What is specific for Serbia is that Serbian police collects people who are staying in the official accommodation camps or informal squats and takes them to the border, away from the official border crossing point, and forces them to go back to Macedonia/Bulgaria. Unlike other countries who mostly push people back while they are trying to enter their territory, Serbian police pushes back people who have stayed in Serbia for several weeks/months.

Border Violence Monitoring Network reported on one such case in their report dedicated to Covid-19 pandemic (report can be downloaded here: <https://www.borderviolence.eu/special-report-covid-19-and-border-violence-along-the-balkan-route/>) On April 3rd, during the complete lock down due to the Covid-19 pandemic, Serbian police came to the asylum camp in Tutin where they randomly collected around 15 people, placed them in a police van and took them to Macedonian border. Some of them were later pushed back all the way to Greece by Macedonian police. Full report on this case can be found here: <https://www.borderviolence.eu/violence-reports/april-3-2020-2300-border-of-srb-mnk-close-to-lojane/>. In October 2020 KlikAktiv met one man from Algeria who was pushed back on this occasion and who managed to re-enter Serbia after a couple of months that he spent in Greece and Macedonia. He confirmed the narrative and shared with us the video from the police van (here: https://fb.watch/3jCjhx80u_/).

This is not the isolated case of collective expulsions. In November 2020 we collected testimonies of people being pushed back from other camps in Serbia as well. On 15th November one groups of Afghans was taken from the accommodation camp in Pirot and pushed-back to Bulgaria, at the green border, away from the official border crossing point. Another group was taken from the accommodation camp in Divljana on 21st November and also pushed back to Bulgaria.

Please indicate any specific challenges that your Government has encountered, in the context of the COVID-19 pandemic, on ensuring the human rights of migrants crossing international borders, either by land or by sea.

On 15th of March 2020 Serbian government declared the state of emergency on the whole territory of Serbia due to the Covid19 outbreak. The state of emergency was on power until 6th of May. During

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this time all people on the move and asylum seekers were placed under the complete lock-down in camps across Serbia. They were not allowed to leave the camp under any circumstances. This type of limitation of movement is contrary to the Serbian Constitution and national legislation. Also, registration of asylum seekers and all other steps in asylum procedure were suspended during this time, meaning that people on the move didn't have access to asylum procedure during this time.

Serbian authorities increased the presence of the army and police at the south borders which probably resulted in more push-backs to Macedonia/Bulgaria. Also, very important fact is that the Serbian government has adopted a decision to temporary confiscate the land alongside the Bulgarian and Macedonian border. During the summer, after the state of emergency was revoked, the news that Serbian authorities have started building a fence on the Macedonian border has emerged (<https://www.slobodnaevropa.org/a/granica-zicana-ogradna-migranti-srbija-severna-makedonija/30795135.html>). The fence will definitely have a negative effect on the access to asylum in Serbia.

Please indicate any challenges and/or obstacles faced by Governmental institutions or civil society organizations and individuals in protecting the human rights of migrants at international borders, including those in distress at sea and in situations where pushbacks or pullbacks are likely to take place.

Serbian legislation doesn't regulate monitoring mechanisms of civil society organization at the borders or in any other circumstances. Civil society organization can only act as service providers but they don't have the authority to act a monitoring or supervisory authority. This means that none of the civil society organization are allowed do conduct the monitoring of the borders or to be present while the border police conducts its work. This makes it difficult for a civil society organizations to assess whether or not the border procedures are being conducted in accordance with the law. Therefore, we have to put our trust in the testimonies of the people on the move.

In addition, we have been facing the obstruction of our work by the public authorities (mostly police officers and employees of the Commissariat for Refugees and Migration) on several occasions in the villages/towns close to the border where majority of informal squats are. They tried to prevent us from providing free legal and psychosocial support to people on the move, even though we are registered for such type of activities and people on the move are entitled to those service in accordance with the Law.