

**MINISTRY OF HUMAN AND MINORITY  
RIGHTS AND SOCIAL DIALOGUE  
Human Rights Sector  
Belgrade, 27 January 2021**

**Answers to the Questionnaire of the Special Rapporteur on the Human Rights of Migrants:  
Influence of rejection practices on the human rights of migrants**

**1.**

The Law on Asylum and Temporary Protection prescribes that no one shall be subjected to expulsion or return (refoulement) 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 belief. Furthermore, in accordance with the mentioned law, a foreigner shall not be punished for unlawful entry or stay in the Republic of Serbia, provided that he/she expresses the intention to submit an asylum application without any delay and offers a reasonable explanation for his/her unlawful entry or stay. Also, provisions of Article 35 prescribe that a foreigner (regardless whether foreign national or stateless person), during a border check when entering the Republic of Serbia or in the territory of the Republic of Serbia, may express his/her intention to seek asylum in the Republic of Serbia, in writing or orally. Bearing in mind the foregoing, to every foreigner who expresses his/her intention to file an asylum application, access to the territory shall be enabled, while the entire asylum procedure shall be implemented individually.

**2.**

*Constitutional law, legal framework and subordinate legislation and protection mechanisms*

Provisions of Article 17 of the Constitution of the Republic of Serbia prescribe that pursuant to international treaties, foreign nationals in the Republic of Serbia shall have all rights guaranteed by the Constitution and law with the exception of rights to which only the citizens of the Republic of Serbia are entitled under the Constitution and law.

Entry and stay of foreigners in the Republic of Serbia are regulated by the Law on Foreigners and a foreigner may be expelled only under the decision of the competent authority, in a procedure stipulated by law and if the right of appeal has been provided for him/her, and only when there is no threat of persecution based on his/her race, sex, religion, nationality, citizenship, membership of a particular social group or political opinion, or where there is no threat of serious violations of rights guaranteed by the Constitution. Upon proclamation of the state of emergency or war, derogations from human and minority rights guaranteed by the Constitution shall be permitted only to the extent deemed necessary.

The Law on Foreigners prescribes that during a return procedure of a foreigner who unlawfully stays in the Republic of Serbia, the competent authority shall take into consideration the specific situation of especially vulnerable persons, family and health status of the person returning, as well as the best interest of minors. When undertaking police measures and actions against the foreigners during the return procedure, the competent authority must act in accordance with the regulations governing the position of people with disabilities and international treaties. During the return procedure, actions shall be in accordance with the family unity principle, regarding the unity of all family members present in the territory of the Republic of Serbia. Before issuing a decision on returning an unaccompanied minor, he/she must be provided with

adequate assistance of a service for social protection of children and youth. If necessary, during the return procedure, a translator/interpreter for a language that the foreigner understands, or is rightfully assumed to understand, shall be provided. The competent authority shall, at the foreigner's request, provide written translation of the disposition of the decision on return, translation of the ban on entry if issued, and translation of the legal remedy into a language that the foreigner understands, or may be rightfully assumed to understand.

Also, during the time allowed for voluntary return, the foreigner staying illegally and to whom a decision on return has been issued and set a time allowed for voluntary return, shall have the right to emergency medical assistance in accordance with the law regulating health insurance, and if he/she is a minor, the right to primary school education, as well as the right to be enrolled in the voluntary return programme implemented by the authority responsible for migration management, according to the programme adopted by the Government at the proposal of this authority. After the foreigner is included in the voluntary return programme, he/she will exercise the rights in accordance with the provisions of the law regulating the area of asylum prescribing voluntary return.

Also, in Part 5 of the *Guidelines on Standard Operating Procedures for treatment of irregular migrants and foreigners who express the intention to submit an asylum application*, it is prescribed that during the procedure to which irregular migrants/ foreigners who express the intention to submit an asylum application are subject, the specific situation of persons with special needs, such as minors, persons completely or partly legally incapacitated, children separated from their parents or guardian, persons with disabilities, elderly, pregnant women, single parents with minor children, or persons exposed to torture, rape or other severe forms of psychological, physical or sexual violence, will be taken into consideration. An irregular migrant/ foreigner who expresses the intent to submit an asylum application shall be referred to competent services (such as Centre for Social Work, healthcare centres, Centre for for the Protection of Victims of Human Trafficking, etc.) for the protection of their rights.

*The Protector of Citizens (Ombudsman)* in accordance with competences under the Law on the Protector of Citizens and the Law on the Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Ombudsman shall monitor the procedure of forced removal of a foreigner implemented pursuant to decision on return of the foreigner or decision on revoking stay of the foreigner.

A foreigner may not be forcibly removed to a territory where he would be under threat of persecution on the grounds of his/her race, sex, sexual orientation or gender identity, religion, nationality, citizenship, membership of a particular social group or his/her political views, except if he/she is on reasonable grounds regarded as a threat to security of the Republic of Serbia, or to a foreigner who has been issued an enforceable sentence for a severe criminal offence, wherefore he represents a threat to public order. A foreigner may not be forcibly removed to a territory in which he would be under risk of death penalty, torture, inhuman or degrading treatment or punishment, or where he would be under threat of serious violation of rights guaranteed to him/her by the Constitution. An unaccompanied minor shall not be forcibly removed, unless in case when the competent body is convinced that the minor would be returned to a family member, guardian, or adequate child care institution.

When there is a risk that a foreigner will not be available to the competent authority for the execution of forced removal, and the accommodation of this person in the shelter would not be a proportionate measure, i.e. if a decision to delay forced removal was issued to a foreigner, the competent authority shall determine in a decision issued to the foreigner mandatory stay in a certain place, while to the foreigner without a travel document a temporary identity card shall be issued. To the presumed victim of human trafficking and victim

of human trafficking, temporary stay may be approved even without meeting general eligibility criteria for the issuance of a temporary residence permit.

At border crossing points in the R Serbia, in the border crossing area, posters are positioned in visible places and contact telephone numbers of several governmental and non-governmental organisations for providing legal aid in different fields of the protection of human rights.

#### *Current situation on the ground*

The majority of migrants found in Serbia irregularly crossed the border. The R Serbia is not their final destination, thus, they do not wish to ask for international protection and initiate the asylum procedure, since they are in transit.

Bearing in mind the fact that mixed migration flows are in question, with a large number of migrants belonging to vulnerable groups, the R Serbia has decided to provide access to basic rights to all migrants, regardless of their legal status. The Commissariat for Refugees and Migration provides basic material conditions also for migrants who do not seek asylum in order to regulate their stay in such a manner. To all migrants is enabled access to reception centres with accommodation, food, clothing, healthcare, including mandatory medical examination during reception, psychosocial support, adequate information and free legal aid. During accommodation, all available measures for maintaining the family unity are undertaken (including wider family members, when possible) and privacy of persons respected. The rooms for the accommodation of single men and women are separated by sex. Families with children are accommodated together. Unaccompanied minors are accommodated in separate facilities, and if they are accommodated in the facilities where adults are accommodated, their premises are physically separated.

In the work of reception centres, procedures intended for the asylum seekers are applied, such as: Early identification of persons with special needs (minors, unaccompanied minors, persons with disabilities, elderly, pregnant women, single parents with minor children, victims of human trafficking, seriously ill persons, persons with mental disorders, as well as persons subject to torture, rape or exposed to other severe forms of violence). In accordance with the identified vulnerability, Standard Operating Procedures for the protection of children refugees/ migrants, Manual for treatment of unaccompanied asylum seekers in the Republic of Serbia, Standard Operating Procedures for the prevention of and protection from gender-based violence and Standard Operating Procedures for treatment of victims of trafficking in human beings, are applied. These documents define procedures, roles and accountability of each individual provider of services involved in the prevention of and response for the protection of children refugees/ migrants, gender-based violence and treatment of potential victims of trafficking in human beings. Furthermore, these documents define minimum procedures in permanent and reception asylum centres, in legislative legal and security, healthcare and psychosocial support and protection, and are intended for all institutions and organisations operating along the migrant route, as well as the ones organising short and medium-term care of refugees and migrants in the R Serbia. The employees in the centres are continuously trained in order to provide adequate support to migrants and for the prevention of different forms of violence. All suspicious cases are promptly referred to the competent services in accordance with the Standard Operating Procedures. The application of these procedures provides protection and support to persons in need, regardless of status. Besides, by providing adequate information on asylum and asylum procedure for all persons found in the centres, as well as providing legal aid and access to UNHCR and IOM, vulnerability of irregular migrants has been reduced and facilitates their adequate decision-making.

### **3.**

The Asylum Office was established on January 14, 2015, within the Border Police Administration, and is conducting the first-instance asylum procedure. The Asylum Commission, as an independent body, decides in the second instance and consists of a president and eight members appointed by the Government for four years. Upon the decision of the Commission, the asylum seeker may file a lawsuit with the Administrative Court and initiate an administrative dispute. In Serbia, 143 municipalities have adopted LAPs that represent a good mechanism for managing migration, in accordance with the specific needs of the migrant population in each local community.

The Law on Asylum and Temporary Protection prescribes treatment at the border crossing points or in transit areas when asylum seekers are in question, in terms of the implementation of the entire asylum procedure. However, due to technical deficiencies, this procedure is not yet implemented in practice, namely to all persons entry into the territory of the Republic of Serbia is enabled, and the entire asylum procedure is implemented in the territory of the Republic of Serbia.

#### 4.

As previously mentioned, the majority of migrants found in the R Serbia irregularly crossed the border. Serbia is not their final destination and they do not wish to seek international protection and initiate the asylum procedure because they are in transit.

On this occasion, we would like to point out that the Constitutional Court of Serbia adopted at the end of December 2020 a constitutional complaint in favour of seventeen people from Afghanistan, who expressed their intention to seek asylum in the R Serbia, due to violation of human rights and forcible expulsion from Serbia. The Belgrade Centre for Human Rights turned to the Constitutional Court in March 2017, a month after seventeen people, among whom four children younger than five years and three children younger than seven, were in winter and cold illegally expelled from Serbia to Bulgaria. In the Decision of the Constitutional Court it was established that on this occasion their right to freedom and security was violated (Article 27 paragraph 3 of the Constitution of the RS), in relation with special rights in case of deprivation of liberty without decision of the court (Article 29 paragraph 1 of the Constitution of the RS), as well as the right to freedom of movement (Article 39 paragraph 3 of the Constitution of the RS), in relation with the inviolability of physical and mental integrity (Article 25 of the Constitution of the RS). The Constitutional Court also found that on that occasion adequate legal aid was not provided to them.

#### 5.

Due to the fact that COVID-19 outbreak was declared a pandemic, In the R Serbia on 16 March 2020 state of emergency was proclaimed and remained in force until 6 May 2020, when it was lifted, although certain measures were kept, including epidemiologically important contact tracing with the aim of reducing epidemiological risk. The Government adopted during the state of emergency a series of measures and acts in accordance with the Constitution and laws in order to prevent disease spread among citizens of the Republic of Serbia and other persons, including migrants, asylum seekers and persons to whom the right to asylum was recognized. In accordance with the foregoing, the Government adopted a decision on temporary restrictions concerning movement of the asylum seekers and irregular migrants accommodated in asylum and reception centres. Bearing in mind travel restrictions and border closures in the neighbouring countries as well, the number of persons accommodated in the reception and asylum centres significantly increased.

The MoI performed control of persons at the border crossing points in order to prevent COVID-19 spreading, implemented measures of enhanced state border control (protective equipment was distributed

in accordance with supplies) and persons were referred to Reception centres within the competence of the Commissariat. The MoI acts in compliance with the Guidelines on the Standard Operating Procedures for treatment of irregular migrants and foreigners who express the intention to submit an asylum application. In Part 1 of the mentioned Guidelines it is prescribed that if with visual facial examination visible injuries or skin changes are detected, i.e. if the face shows signs of disturbed state of consciousness, the police officer is obliged to contact the competent medical services.

On the day of proclamation of the state of emergency, 5,912 persons were accommodated in asylum and reception centres. By the end of April, the number of accommodated in the centres increased to 9,100 persons. The Commissariat was forced to take care in the state of emergency of extra 3,000 persons, which exceeds by 50 % the total capacity. In spite of overcrowded facilities, minimum accommodation standards as regards the basic hygienic conditions, food provision, healthcare, identification and referring vulnerable categories, were met.

With the aim of preventing spread of disease in the accommodation facilities, series of measures were undertaken, meaning increased hygiene levels, provision of sufficient quantities of personal protective equipment for the employees and accommodated persons, migrant education on prevention, regular information on the situation in the country and globally, increased health monitoring. The National Institute of Public Health included migrants in protocols and procedures for early detection and prevention of disease spreading, while special expert guidelines were prepared for the employees in the centres and healthcare workers engaged in the centres. Coordination with all competent institutions intensified. The result of good cooperation and coordination particularly reflects in the fact that during the state of emergency no cases of COVID-19 disease have been reported in any asylum or reception centre.

## 6.

In 2019, the CSO Athens, in cooperation with the Commissariat, held a series of educational workshops aimed at informing the refugee and migrant population on issues of recognition and protection from human trafficking and other risks. A total of 120 workshops were held, attended by a total of 811 women and children.

In order to preserve psychosocial health, various activities were organized to occupy the time of these people through sports activities, planting trees within the centers, film screenings, etc., and respecting the social distance, as much as possible in this type of accommodation. In some centers where there is a possibility for that, migrants were engaged in sewing masks for them and employees, which they also distributed to volunteers in the local community.

The situation is especially challenging for school-age migrant children who have been enrolled in schools, because they had to follow the teaching of the Serbian curriculum organized on national TV channels and portals and submit homework electronically. There were difficulties in monitoring Serbian school curricula due to a lack of educational equipment, including televisions. The equipment was provided with the help of UNHCR and UNICEF, which enabled these children to finish the school year. Additional difficulties were the lack of interest of parents to include children in the school system and the overburdening of employees during the state of emergency.

The MoI is the coordinator or participates in dozens of smaller or larger projects that contribute to the process of inclusion and capacity development of the migrant population, of which the project "EU Support to Serbia in Migration Management-MADAD 2" of 16,000,000 euros funded by the EU Regional Trust Fund MADAD and through which about 500 people are engaged to work with migrants and which directly or indirectly involves 5 state bodies, 15 social welfare institutions, all reception / transit and centers for

asylum. Also, over 60 health care institutions, 51 schools and educational institutions, as well as the Border Police Administration. The project ended on December 12, 2019, while the next day the program "Special Measure 6" started, which is financed from IPA 2 funds and which the Ministry of Social Affairs will implement in partnership with the International Organization for migration. The program lasts 18 months and will continue to support the social protection system in working with the migrant population, in order to maintain the level and quality of services provided to both migrants and the domestic population.