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## **Submission to the Committee on the Elimination of Racial Discrimination**

*For Consideration by the Committee on the Elimination of Racial Discrimination at the 94  
sessions (20 November to 8 December 2017) concerning Serbia*

**30 October 2017**

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## INTRODUCTION

This submission of the Belgrade Centre for Human Rights in Serbia was prepared for the 94<sup>th</sup> session of Committee on the Elimination of Racial of Racial Discrimination. In line with the obligations undertaken on the occasion of adopting the International Convention on the Elimination of All Forms of Racial Discrimination, the Republic of Serbia as a contracting state, according to Article 9, paragraph 1 of the Convention, is also submitting its Second and Third Periodic Report to the Committee on Elimination of All Forms of Racial Discrimination.

In line with the state report, the Belgrade Centre for Human Rights (BCHR) has prepared this shadow report to Serbia's Second and Third Periodic Report.

The Belgrade Centre for Human Rights was established in 1995 as a non-political and non-profit association of citizens concerned with the advancement of theory and practice of human rights. The principal goals of the Centre are advancement of knowledge in the field of human rights and humanitarian law, development of democracy, strengthening of the rule of law and the civil society in Serbia. For its services and advancement of human rights, the Centre received in October 2000 the prestigious Bruno Kreisky Award. The Belgrade Centre for Human Rights is also the member of the Associations of Human Rights Institutes and one of the founding members of the Human Rights House in Belgrade.

The Belgrade Centre for Human Rights (BCHR) has been providing legal aid to asylum seekers since January 2012. The BCHR's legal team (comprising four legal practitioners) has gained considerable experience and knowledge in this field and is perceived by asylum seekers as a trusted legal aid provider. BCHR was involved in legislation changes, particularly those of the new Law on Asylum and the new Law on Foreigners, while some of the comments and suggestion provided by our office have been adopted and became part of new proposed Laws. BCHR also participates in a relatively newly established Government Working Group on Mixed Migration Flows<sup>1</sup> and regularly holds and/or attends meetings with various stakeholders in the field of asylum and migration. BCHR is also part of the European network of organization dealing with asylum and migration issues, ECRE (*European Council for refugees and exiles*).

This submission has been compiled on the basis of BCHR's longstanding experience in the select areas. The report is structured in accordance with the Government report, CERD article number 5, and General Recommendation XXX on the discrimination of non-citizens. BCHR's recommendations are outlined at the end of the report.

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<sup>1</sup> The Working Group was established in 2015 and comprises the Minister of Labour, Employment and Veteran and Social Affairs, the Minister of Internal Affairs, the Minister of Health, the Minister of Defence, the Minister without Portfolio charged with EU Accession and the Refugee Commissioner. The Decision on the Establishment of the Working Group is available in Serbian at: <http://slg.bazapropisa.net/54-20-05-2015/29541-odluka-o-obrazovanju-radne-grupe-za-resavanje-problema-mesovitih-migracionih-tokova.html>.

## NON-CITIZENS, ASYLUM SEEKERS, MIGRANTS

### GENERAL OVERVIEW

1. During the past two decades, the Republic of Serbia has experienced various types of migration. Until recently, most of these movements of people have concerned either persons leaving Serbia, or ethnic Serbs and others coming to Serbia, in the context of the conflicts of the end of the former Yugoslavia.<sup>2</sup> However, Serbia has always had non-Yugoslavs arriving and establishing through various legal means. Beginning in particular in late 2014 and 2015, a heightened number of migrants and refugees began arriving in Serbia along the so-called “Balkan Land Route”, for the most part aiming to continue on to northern Europe. In 2015, circa 580,000 persons passed through Serbia. Efforts by a concert of states to close the Balkan Land Route in 2016 have been only partially successful. At the time of writing, there are circa 5000 persons in Serbia, the majority “stranded” while hoping to continue on to northern Europe. Political developments related to this episode of large-scale movement of people have also given rise to the forced return of persons to Serbia on the basis of the Readmission Agreement with the European Union. The latter group of persons is comprised very disproportionately of Roma, Ashkalis and Egyptians.<sup>3</sup>

2. Statistics also show that Serbia was faced with an increased number of asylum seekers during the past five years. Following that, in 2011 - 3.132 people expressed the intention to seek asylum in Serbia, in 2012 - 2.723, in 2013 - 5.066 , in 2014 - 16.490, in 2015 - 577.995, in 2016 - 12.821 and by the end of September of 2017 - 4419 .

3. 2015 was an especially challenging year for Serbia and its migration and asylum system. From 1 January 2015 to 31 December 2015, 579,518 migrants from Asia, the Middle East and Africa crossed the national borders of Serbia and expressed their intention to seek asylum.<sup>4</sup> This number was much higher than the number of asylum seekers in previous years. During 2015, the number of asylum seekers in the Republic of Serbia started to increase rapidly; however, the number of asylum seekers accommodated in the asylum centers gradually decreased, and some asylum centers were eventually emptied, due to fact that migrants were only transiting through Serbia in order to continue their journey to EU countries. Migrants transiting through Serbia stayed within its territory for just a few days, the time they needed to organize their further journey towards EU countries and due to the announcements of border closing in Europe.<sup>5</sup>

4. During all these years BCHR would underline the fact that, although there have been a high number of asylum seekers in Serbia, a very small number of asylum applications has been submitted. For example, in 2016, from 1 January to 31 December, there were 12,821 expressed intentions for asylum in the Republic of Serbia. Of that number only 440 requests for asylum were submitted to the Asylum Office of the Ministry of Interior, which means that 440 persons were in

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<sup>2</sup>Announcement of the Commissariat for Refugees and Migrations, On migrations, see <http://www.kirs.gov.rs/articles/migo.php?type1=59&lang=SER&date=0>

<sup>3</sup> During 2015, according to monitoring at the Belgrade airport, 2866 persons were returned to Serbia, of whom 2340 were Romani. The vast majority of returns – 2551 persons total -- were from Germany. Of these, 135 persons officially were homeless, according to the Serbian Government’s Commissariat for Refugees and Migration.

<sup>4</sup> Until mid-2016, persons arriving in Serbia and presenting themselves to the police would register as “intending to seek asylum”, and thereby receive a permit entitling them to stay in Serbia for 72 hours, to travel to one of the official locations to apply for asylum. In practice, during 2015, the vast majority of persons arriving used this status to transit the country.

<sup>5</sup> *Ibid.*61

the asylum procedure in Serbia, 34 of whom were granted refugee protection. Since the beginning of the application of Law on Asylum in 2008, until 30 September 50 persons in total were granted subsidiary protection, and 43 persons were granted refugee status.<sup>6</sup>

5. In September 2016, the Serbian Government Working Group on Mixed Migration Flows adopted the Response Plan in Case of Increased Inflow of Migrants to the Republic of Serbia for the period October 2016-March 2017. The Plan envisaged the expansion of the accommodation capacities for migrants in Serbia, extension of health care and provision of access to the asylum procedure to foreigners who wanted to apply for asylum. The Plan was based on several presumptions: that the uncontrolled transit of refugees and migrants via Western Balkan countries had been halted, that the number of migrants entering Serbia irregularly would drop considerably, that the number of refugees and migrants entering and leaving Serbia on a daily basis would not exceed 30, and that most refugees and migrants would not perceive Serbia as a country of asylum. The authors of the Response Plan, however, **neglected the following fact**: that many more migrants were entering Serbia than leaving it in 2016 (UNHCR reports showed that the average daily arrival of refugees and migrants stood at 200 in July and August and 300 in September). The Plan did not specify the legal status of foreigners irregularly present in Serbia, not wishing to seek asylum but in need of protection because they came from countries in which their liberty and security were at risk or because they find themselves in a vulnerable situation.

6. Most refugees and migrants still do not perceive Serbia as a country of asylum, but rather as a country of transit to states with functional asylum or migrant establishment systems, including social, economic and cultural integration programmes. This fact affected Serbia's policy on migrants as well. A very small number of people came to Serbia intending to seek asylum in it since the Asylum Law entered into force. Most of the asylum seekers were already in Serbia on other grounds at the time the risk of persecution in their countries of origin appeared (*sur place* refugees).<sup>7</sup> On the other hand, most migrants and refugees had not planned on seeking international protection in Serbia when they were fleeing their countries of origin.<sup>8</sup> The major changes in the neighbouring countries' policies on migrants in late 2015 and early 2016 prompted more and more people to decide to seek asylum in Serbia because they were unable to leave Serbia<sup>9</sup> or would put themselves at great risk if they did.<sup>10</sup> Migrants who have sought asylum

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<sup>6</sup> Data of UNHCR Office in Belgrade.

<sup>7</sup> For instance, a number of Libyan nationals, had already been working, studying and/or had formed a family in Serbia.

<sup>8</sup> But in Germany, Austria, the Scandinavian and Benelux countries, et al.

<sup>9</sup>In its August 2016 Report No. 281–60/16 on the Visit to Informal Venues in Belgrade at which Refugees and Migrants Have Been Rallying, the National Preventive Mechanism quoted allegations by a group of refugees from Afghanistan and Pakistan (including children) who had tried to enter Hungary through the green border. They claimed that as soon as they went through the fence, the Hungarian border police apprehended them and applied force against them, resorting to rubber truncheons, tear gas and service dogs to push them back to Serbia. The Report is available at: <http://www.npm.ils.rs/attachments/article/195/Report%20Belgrade%20Park.pdf>. The NPM published the same allegations regarding the practice of the Hungarian border authorities in its Report on the Visit to the Subotica Reception Centre, the Horgoš and Kelebija Border Crossings and the Home for Children with Disabilities Kolevka – Subotica, No. 281–62/16, 13 September 2016. Available at: <http://www.npm.ils.rs/attachments/article/193/Report%20Subotica%20Horgos%20Kelebija%20Kolevka.pdf>.

<sup>10</sup> E.g. with the help of organised crime groups involved in smuggling or by attempting to circumvent the procedures at the Hungarian border. More in "Hungary Steps up Control, Pushes Migrants back behind the Fence," *N1 info*, 6 July 2016, available in Serbian at: <http://rs.n1info.com/a174583/Svet/Region/Madjarska-pojacala-kontrolu-vraca-migrante-iza-ograde.html>.

usually filed their applications after having spent a few weeks or few months in Serbia.<sup>11</sup>

7. On 26 December 2016, the Serbian Government at long last adopted the Bylaw on the Integration of Persons Granted Asylum in Social, Cultural and Economic Life, the enforcement of which was due to begin in 2017. Nevertheless, the government has not adopted any bylaw nor did it propose programs or measures focusing on other categories of migrants, especially those in irregular situations.

## EXPULSION AND DEPORTATION OF NON- CITIZENS

1. In relation to article 5 of the Convention and, and more specifically General recommendation XXX on discrimination against non-citizens, there are several issues to be addressed which were not elaborated on in the Second and Third Periodic Report of the Republic of Serbia, namely in regard to part IV of the recommendation pertaining to the expulsion and deportation of non-citizens.

2. In regard to paragraph 26 of the General recommendation, it is worthwhile to point out that in December 2016, the Ministry of Defense reported preventing 18,000 migrants from illegally entering the territory of the Republic of Serbia.<sup>12</sup> As BCHR previously iterated in its 2016 report titled: "Right to Asylum in the Republic of Serbia"<sup>13</sup>:

Serbia is indisputably entitled to regulate the entry, residence and departure of people from its territory,<sup>14</sup> but, like all other states that ratified the ECHR, it is under the obligation to do so by applying procedures prescribed by national law and in compliance with the principle of non-*refoulement*, as well as the principle based on the prohibition of collective expulsion.<sup>15</sup> It is difficult to believe that 18,000 people were prevented from crossing the border in compliance with CoE standards, i.e. that each of them underwent the procedure prescribed by law, with the assistance of a lawyer and an interpreter for the language he understands, and was served with an individual decision denying him entry into Serbia,<sup>16</sup> which he was entitled to challenge in an appeal with suspensive effect. Essentially, Serbia still lacks a legal framework governing this form of treatment,<sup>17</sup> wherefore sheer denial of entry into its territory, especially of foreigners coming from refugee producing countries, amounts to collective expulsion or so-called push-

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<sup>11</sup> Such as the hundreds of people who spent up to several months on Belgrade streets, in abandoned barracks, or the border area with Hungary. More in the report "Migrants to be covered by Asylum System, Question is How," *N1 info*, 23 November 2016, available in Serbian at: <http://rs.n1info.com/a209990/Vesti/Vesti/Migrante-ukljuciti-u-azilantski-sistem.html>.

<sup>12</sup> "Migrants Dissatisfied with Living Conditions," *Danas*, 27 December 2016, available in Serbian at: [http://www.danas.rs/drustvo.55.html?news\\_id=335391&title=Migranti+nezadovoljni+uslovima+%C5%BEivota](http://www.danas.rs/drustvo.55.html?news_id=335391&title=Migranti+nezadovoljni+uslovima+%C5%BEivota).

<sup>13</sup> *Right to Asylum in the Republic of Serbia 2016*, Belgrade Centre for Human Rights, 2017, p. 28; available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2017/03/Right-to-Asylum-in-the-Republic-of-Serbia-2016-2.pdf>

<sup>14</sup> "As the Court has observed in the past, Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of foreigners. Moreover, it must be noted that the right to political asylum is not contained in either the Convention or its Protocols." (*Chahal v. the United Kingdom*, App. No. 22414/93, para. 73, decision of 15 November 1996).

<sup>15</sup> Article 4, Protocol No. 4 to the ECHR

<sup>16</sup> Article 1, Protocol No. 7 to the ECHR.

<sup>17</sup> Article 15 of the Preliminary Draft of the Foreigners Law lays down the procedure dealing with decisions on denial of entry, which the foreigners at issue may challenge by filing an appeal (Art. 38), albeit without suspensive effect.

back.<sup>18</sup>

**3.** Furthermore, in the AIDA country report prepared by the Belgrade Centre for Human Rights team and ECRE, further cases pertaining to collective expulsion have been detailed:

Between September and December 2016, the Belgrade Centre for Human Rights received 13 complaints concerning collective expulsions or push-backs to FYROM that involved approximately 750 persons. Those removed included people who had predominantly been residing in the reception centre in Preševo, as well as persons who had been intercepted by patrols of the police or army at the border, or mixed patrols deeper within the territory of Serbia.<sup>19</sup>

**4.** There have been various other documented cases of forced expulsion and pushbacks, out of which one stands out as it was followed through by both national and international media. On December 17, 2016, a seven member family consisting of two children, two women and two men were taken out of a bus that was supposed to take them to a reception center by a mixed army-police patrol (that have been functioning in Serbia since 2016) and told to make their way towards Bulgaria<sup>20</sup>:

... a seven-member Syrian family in December 2016 appealed to NGO Info Park for help, asking it to notify the MOI that they were in a forest near the border with Bulgaria, below freezing temperatures (-11c ).<sup>21</sup> The Syrian refugees said that mixed army-police patrols stopped the bus they were taking to the Bosilegrad PC (they had duly issued certificates of intent to seek asylum), took them out of the bus, and drove them to a remote forest, in the immediate vicinity of the border with Bulgaria. They said the army and police officers seized and destroyed their certificates and other items indicating they had been in Serbia and ordered them to return to Bulgaria on foot. The Surdulica PS responded to the SOS call, saved the Syrian refugees and accommodated them in the Preševo PC.<sup>22</sup> It was ascertained several days later that they had registered in the Department for Foreigners, and the Basic Public Prosecution Service in Vladičin Han launched the procedure for establishing the criminal liability of the officers on duty at the checkpoint 20 km away from Bosilegrad.<sup>23</sup> The Ministry of Defence<sup>24</sup> and some state officials<sup>25</sup> refuted the accusations, claiming the members of the mixed patrols had offered to assist the Syrian family, which refused and decided to continue its journey to the Bosilegrad PC on foot.<sup>26</sup>

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<sup>18</sup> *Hirsi Jamaa and Others v. Italy*, App. No. 27765/09, paras. 185 and 186, decision of 23 February 2012.

<sup>19</sup> *Country report: Serbia*, Asylum Information Database (AIDA), prepared by the Belgrade Centre for Human Rights and ECRE, February 2017, p. 11; available at: <http://www.asylumineurope.org/reports/country/serbia>.

<sup>20</sup> *Right to Asylum in the Republic of Serbia 2016*, pp. 28-29.

<sup>21</sup> "Paunović: Refugees Taken to Woods and Left There," N1, 18 December 2016, available in Serbian at: <http://rs.n1info.com/a215445/Vesti/Vesti/Paunovic-izbeglice-odvedene-u-sumu-i-tamo-ostavljene.html>.

<sup>22</sup> More is available in the N1 report of 19 December 2016 entitled "Army and Police Patrol Leaves Migrants in Woods to Die," available in Serbian at: <http://rs.n1info.com/a215703/Vesti/Vesti/Patrola-vojske-i-policije-ostavila-migrante-da-umru-u-sumi.html>.

<sup>23</sup> More is available in the Insajder report of 26 December 2016 entitled "Prosecutors Checking Information about Refugees Left in Woods at -11c," available in Serbian at: <https://insajder.net/sr/sajt/vazno/2523/Tu%C5%BEila%C5%A1tvo-proverava-informacije-o-izbeglicama-ostavljenim-na--11-u-%C5%A1umi.htm>.

<sup>24</sup> More in the Insajder report "Đorđević and Diković in Response to Insajder's Questions: Army did not leave Refugees in Woods," of 23 December 2016, available in Serbian at: <https://insajder.net/sr/sajt/tema/2502/%C4%90or%C4%91evi%C4%87-i-Dikovi%C4%87-na-pitanjaInsajdera-Vojska-nije-ostavila-izbeglice-u-%C5%A1umi.htm>.

<sup>25</sup> More in the Insajder report "Vulin: No Forced Deportation of Migrants from Serbia," of 27 December 2016, available in Serbian at: <https://insajder.net/sr/sajt/vazno/2534/Vulin-Nema-nasilne-deportacije-migranata-iz-Srbije.htm>

<sup>26</sup> The Minister of Labour, Employment and Veteran and Social Affairs denied Serbia was illegally deporting migrants, see the Beta report of 27 December 2016, "Vulin: No Forced Deportation of Migrants," available in Serbian at <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:641915-Vulin-Nema-nasilne-deportacije-migranata>. No other than Vulin said in June 2015 that 400 migrants were pushed back to FYROM overnight. See the Blic report of

The Protector of Citizens also launched a check of the lawfulness of the work of the MOI and the Ministry of Defence.<sup>27</sup> The BCHR was given power of attorney to represent the family in the procedure on the potential violation of Article 3 of the ECHR (and Article 25 of the Serbian Constitution).<sup>28</sup>

5. In regard to paragraph 27 of General recommendation XXX, it is worthwhile to point out that, the Asylum Act of 2008 elaborates on the safe third country concept, stating that it: “shall be understood to mean a country from a list established by the Government, which observes 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.”<sup>29</sup> However, the concept is automatically applied without going into the merits of individual asylum applications, as neither the Law itself, nor individual by-laws provide for a more precise interpretation of the manner in which the safe third country principle is to be applied by the authorities. The list has not been revised since the 2009 Government Decision<sup>30</sup> came into effect despite the numerous claims of mistreatment of refugees in the countries this vulnerable group transits through on its way to Serbia.<sup>31</sup> In its 2016 Report on the Right to Asylum in the Republic of Serbia 2016, the Belgrade Centre for Human Rights stated:

The asylum authorities continued automatically applying the safe third country concept in 2016 as well, in cases of asylum seekers, who had entered Serbia from FYROM and Bulgaria. The Asylum Office dismissed 53 asylum applications (regarding 65 asylum seekers i.e. 54% of the applications it ruled on in the reporting period) by applying Art. 33 (1(6)). These applications were filed by nationals of Pakistan (14), Iraq (10), Russia (9), Syria (7), Libya (5), Afghanistan (5), Bangladesh (3), FYROM (3), Sudan (2), Cuba (2), Somalia (1), Bosnia and Herzegovina (1), Bulgaria (1), Algeria (1) and one stateless person. It applied the safe third country concept in over 95% of the cases and, in most of them, referred to the 2009 Government Decision.<sup>32</sup>

6. Thus, the majority of asylum applications from people who have transited through the countries deemed safe via the 2009 Government Decision have been automatically dismissed in the past, regardless of the fact that that would expose applicants to various human rights abuses, including torture and cruel, inhuman or degrading treatment or punishment.

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23 June 2015 entitled “Vulin: 400 Migrants Returned to Macedonia Last Night,” available in Serbian at: <http://www.blic.rs/vesti/politika/vulin-sinoc-vraceno-400-migranata-u-makedoniju/3k5gvrn>.

<sup>27</sup> More in the Insajder report of 20 December 2016 entitled “Protector of Citizens Launches Oversight in Case of Illegal Deportation of Refugees,” available in Serbian at: <https://insajder.net/sr/sajt/tema/2458/>.

<sup>28</sup> More in the Insajder report of 22 December 2016 entitled “State Doesn’t Care Who Left Migrant Family in Woods,” available in Serbian at: <http://rs.n1info.com/a216466/Vesti/Vesti/Ko-je-ostavio-migrante-u-sumi.html>.

<sup>29</sup> Asylum Act (*Sl. glasnik RS*, 109/07)

<sup>30</sup> RS Government Decision on Safe Countries of Origin and Safe Third Countries (*Sl. Glasnik RS*, 67/09)

<sup>31</sup> For further information and testimonials consult “Safe Passage: Testimony of people arriving in Dimitrovgrad, Serbia from Bulgaria” prepared by Oxfam and BCHR, 2015 - <http://www.bgcenter.org.rs/bgcenter/eng-lat/wp-content/uploads/2015/12/Safe-Passage1.pdf>; “A Dangerous ‘Game’: The pushback of migrants, including refugees at Europe’s borders” prepared by Oxfam and BCHR, April 2017 - <http://www.bgcenter.org.rs/bgcenter/eng-lat/wp-content/uploads/2015/12/Safe-Passage1.pdf>;

<sup>32</sup> *Right to Asylum in the Republic of Serbia 2016*, p. 60.



## ECONOMIC, SOCIAL AND CULTURAL RIGHTS

There are several more issues to be addressed which were not elaborated on in the Second and Third Periodic Report of the Republic of Serbia. This is once more in relation to article 5 of the Convention, and more specifically General recommendation XXX on discrimination against non-citizens, however in this instance in regard to part VII of the recommendation pertaining to the enjoyment of economic, social, cultural rights by non-citizens, notably in the areas of education, housing, employment and health.

1. Under Serbian Laws, foreigners who do not have any legal grounds to stay in the territory of the Republic of Serbia are considered to be illegal migrants. This includes all foreigners who had not entered the territory of the Republic of Serbia in a regular manner or who overstayed the legally allowed stay.
2. The only law which recognizes them is the Law on Migration Governance in Article 10, which provides that the Commissioner for Refugees and Migration is obliged to propose a program to develop a system of measures towards the families of foreigners who are staying on the territory of the Republic of Serbia without relevant national permits (“illegally”) and propose programs to support the voluntary return of such foreigners who are staying on the territory of the Republic of Serbia to their country of origin. To this date, Serbia has not adopted special programs or measures intended for the families of foreigners who are irregularly staying on the territory of the Republic of Serbia.
3. Currently, a foreigner who is not regularly residing in the territory of the Republic of Serbia (“illegally”), *does not have, or has limited access* to economic, social and cultural rights (especially the rights to work, the right to form and join trade unions; the right to education and training; social security and social services and the right to equal participation in cultural activities). The Republic of Serbia has not developed policies or programs relating to other migrants, such as those in transit and/or in irregular situations.
4. Pursuant to current legal provisions - i.e. the Law on Foreigners, the Law on Employment of Foreigners - irregular migrants do not have access to work, and no other Serbian regulations identify them as vulnerable categories. What the Law on Employment of Foreigners stipulates is sanctioning non-regular or unlawful employment as well as the possibility to financially punish employers who employ irregular migrants.<sup>33</sup>
5. A new draft Law on Foreigners<sup>34</sup>, envisages in Article 77 that a competent authority shall issue a decision on return of a foreigner not regularly (“illegally”) residing in the territory of the Republic of Serbia and define a deadline for leaving Serbia. Within the timeframe for voluntary return, the foreigner is entitled to urgent medical assistance, and in the case of minors, to the right to education. Besides, Article 84 envisages that a foreigner with postponed forced removal is recognized the right to urgent medical assistance, and in the case of minors, the right to education. It is certainly an innovative solution for the Serbian legal system, but it must be mentioned that it refers to foreigners whose residence was denounced pending the decisions on their forced or voluntary removal from the country.

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<sup>33</sup> Chapter VII – penalty provisions of the Law on Employment of Foreigners.

<sup>34</sup> Draft of the new Law is available on [http://www.paragraf.rs/nacrti\\_i\\_predlozi/181016\\_nacrt\\_zakona\\_o\\_strancima.html](http://www.paragraf.rs/nacrti_i_predlozi/181016_nacrt_zakona_o_strancima.html)

6. Irregular migrants are not recognized as a vulnerable category in the national strategies for education,<sup>35</sup> but they are recognized as vulnerable in the National Strategy for Prevention and Protection against Discrimination from 2013.<sup>36</sup>

## THE RIGHT TO EDUCATION

7. Although the right to education in Serbia is constitutionally protected, and the law provides foreign nationals and stateless persons with the right to education, under the same conditions and in the same manner as for the citizens of the Republic of Serbia, the current practice in Serbia, unfortunately, did not exist until 2017. Therefore, migrant children (asylum seekers children or irregular migrant children) who were in the territory of the Republic of Serbia did not have access to the education system, at any level. Perhaps one of the reasons is the fact that a large number of migrants are very shortly residing on the territory of Serbia in the hope that they will continue to their country of final destination, and therefore they have not had the opportunity to engage in educational systems. On the other hand, there are schools that simply did not know their jurisdiction regarding migrant children, and very often the Ministry of Education and the relevant local authority must take appropriate measures to solve the problem of enrolling migrant children into the school, programs and measures that should provide additional support because of language barriers. For example, during 2016 3,000 migrant children were accommodated in Governments shelters/ transit or asylum centers and almost 70% of them are below 14 years old. Only 7 of 17 government accommodation centers provided a minimum of child-related activities (from mother and baby spaces, child-friendly spaces, and non-formal education activities).

8. During the school year 2016/2017 the Ministry of Education began taking positive measures, ensuring that migrant and asylum-seeking children are included in formal education, while in the school year 2017/2018 significant efforts were made by UNICEF to improve such practice, although certain obstacles remain. In addition to a series of measures which should achieve full inclusion of vulnerable children into education, the Law on the Education System Foundations introduces the possibility of enrolling such children without having complete personal documentation (register documentation, permanent residence or temporary residence in the municipality in which the school operates).

9. Ninety-four unaccompanied children were enrolled in ten primary schools and the authorities planed on enrolling unaccompanied children in all the schools within the nine regional school administrations covering the municipalities in which the Asylum and Reception Centres are located at the outset of the 2017/2018 school-year.<sup>37</sup> UNICEF and its partner organisations, including the Centre for Educational Policy, planned to extend support to schools and collect data on children of school age to be covered by the Serbian education system during the summer

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<sup>35</sup> There are a few strategies in the area of education: National Strategy for Education (*Official Gazette RS* 107/12), Strategy on Educating Adults in Serbia (*Official Gazette RS* 1/07) and Strategy of Scientific and Technological Development of erbia (*Official Gazette RS* 110/05, 50/06 – altered, 18/10 i 112/15) and Article 45. Para 1 of the Law on Government (*Official Gazette RS* 55/05, 71/05 – altered, 101/07, 65/08, 16/11, 68/12 – US, 72/12,7/14 – US i 44/14).

<sup>36</sup> *Official Gazette RS*, 55/05, 71/05-altered 101/07, 65/08,16/11,68/12 – US i 72/12).

<sup>37</sup> Information obtained from Centre for Educational Policy Project Coordinator Ivana Cenerić.

holidays. In early May 2017, the Ministry of Education, Science and Technological Development issued Guidelines on the Integration of all Children in the Education System (Guidelines),<sup>38</sup> which governs in detail the enrolment of the pupils and extension of support to their inclusion in the school system. The adoption of the Guidelines is a major step forward, particularly in view of the fact that over 2,000 migrant children of school age are living in Serbia<sup>39</sup> and that they have to be integrated in the formal school system without delay, as laid down in the Convention on the Rights of the Child<sup>40</sup> and Serbian law.<sup>41</sup> Under the Guidelines, children lacking school certificates, which migrant children as a rule do not have, will be tested to check their knowledge. Based on the test results, the schools' professional inclusive education teams will draw up individual plans of support, which may entail the engagement of interpreters for the languages the children understand and the inclusion of other professionals, depending on the schools' finances. The support plans may also prescribe preparatory classes for migrant children, lasting between two weeks and two months, to facilitate their gradual adjustment, an intensive Serbian Language course, individualised teaching activities and the children's involvement in extracurricular activities. Given that the Guidelines were adopted at the end of the previous school-year, it will not be possible to assess the effects and scope of their enforcement until the new school-year begins in September 2017.

**10.** In some of the Asylum and Reception Centres in local communities where formal education is not provided, civil society organisations were implementing informal education activities, including lessons in Serbian and foreign languages, math, geography, various forms of vocational training, et al. In May 2017, the humanitarian organisation ADRA started implementing vocational training in specific occupations<sup>42</sup> for unaccompanied children staying at the Asylum Centre in Krnjača. Depending on the occupation, the training lasts between one and three months; the participants are issued certificates they can apply for jobs with. Training has also been implemented within the so-called Integration House, run by the Jesuit Refugee Service, accommodating 20 unaccompanied and separated children under 14 years of age, placed under the guardianship of the city Social Work Centre.<sup>43</sup>

**11.** Serbian authorities still need to ensure compulsory education for every child in residing asylum and reception centers, in accordance with Serbian legislation, regardless of their legal status. Serbian school curricula need to address the needs of refugee and migrant children, to provide linguistic support to children entering the education system and to develop incentives and mechanisms for enhancing school attendance.).

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<sup>38</sup> Ref. No 301-00-00042/2017-18 of 5 May 2017.

<sup>39</sup> Source: Ministry of Education, Science and Technological Development. Available in Serbian at: <http://www.mpn.gov.rs/obrazovanje-dece-migranata>.

<sup>40</sup> Articles 28 and 29 of the Convention.

<sup>41</sup> Articles 3 and 6 of the Education System Law, *Sl.glasnik RS* 72/2009, 52/2011, 55/2013, 35/2015 – authentic interpretation, 68/2015 i 62/2016 – Constitutional Court Decision.

<sup>42</sup> Painter, hairdresser, baker, cook, beautician, tailor, car mechanic, tiler, plumber, et al.

<sup>43</sup> See: <http://jrsserbia.rs/en/our-projects/>.

## THE RIGHT TO WORK

**12.** Asylum seekers in the Republic of Serbia were not allowed to work until December 2014. The right to work had only been recognized to persons granted refuge (i.e. refugee status) on the basis of the Law on Asylum, while for other forms of international protection, this right was not provided. However, after the adoption of the new Law on Employment of Foreigners<sup>44</sup> in December 2014, the situation of persons seeking international protection has changed and that protection has been significantly improved. The issue of work of foreigners is generally regulated by the new Law in a more contemporary manner, and envisages the obligation of obtaining work permits for a much wider circle of foreigners. For the first time, in the Article 2, the Law specifically mentions a refugee as a foreigner who has been granted the right to refuge in accordance with the Law on Asylum, then an asylum seeker, person granted temporary protection, human trafficking victim, or a person who has been granted subsidiary protection, in accordance with the Law on Asylum.

**13.** A newly adopted Regulation on the Integration of Persons Granted Asylum into Social, Cultural and Economic Life (hereinafter “Regulation on Integration”) in December 2016 in article 7, provides that person who has been granted with refugee status shall be provided assistance for the integration into the labor market. The Regulation on Integration applies only to persons who have been granted refugee status into the social, cultural and economic life, but leaves out persons who have been granted subsidiary protection.

Assistance is provided in the form of:

- 1) assistance for obtaining the necessary documents required for the registration with the National Employment Service and the employment agencies;
- 2) assistance for initiating the procedure of recognition of foreign degrees;
- 3) ensured participation in further education and training in line with the labor market needs;
- 4) assistance for participating in the active labor market measures;

**14.** Retraining and additional training courses shall be provided by the service providers that implement certified training courses. The measures referred will be provided in cooperation Commissariat for Refugees and Migration and the National Employment Service. Until this date no additional training courses has been provided by the service providers to refugees in Serbia by the state, only international and national CSOs are providing some courses for vocational training, and also giving support in assistance for obtaining the necessary documents required for the registration with the National Employment Service and the employment agencies. Also, CSOs are providing assistance for initiating the procedure of recognition of foreign degrees.

**15.** Persons who expressed the intention to seek asylum in Serbia do have a right to get a personal work permit if there was no decision on their asylum application within nine months. Such a solution is not harmonized with the Directive on Reception Conditions which in fact envisages that the access to the labor market must be allowed no later than nine months. This issue is regulated

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<sup>44</sup> Official Gazette of the Republic of Serbia, no. 128/14.

by the Law on Employment of Foreigners which was adopted in December 2014. The duration of this type of permit depends on the duration of a person's status, while the situation in the labor market can be taken into account when issuing this permit, if a decision on the quota has already been made. The National Employment Service is the body which is responsible for issuing work permits. Work permit itself is often not enough to gain employment, with certain professions requiring additional permits such as sanitary permits, which can only be issued if a person holds some form of personal ID. As most asylum seekers in Serbia arrive without documents this effectively means that they need an ID card of an asylum seeker. In the first nine months of 2017 only 158 ID cards were issued by the Asylum Office even though there were 4,419 persons who expressed the intention to seek asylum. The situation was similar in 2016 when 12,821 persons expressed intention to seek asylum and the Asylum Office issued only 177 ID cards. The prerequisite to issue an ID card is for a person to be registered as an asylum seeker. In 2016 and first nine months of 2017, 167 and 830 asylum seekers were registered respectively.

**16.** In line with human rights standards, the Serbian government needs to further introduce special programmes for vocational education, training programmes, aimed at gaining practical work experience as well as providing consulting services in the labour market under the same conditions as prescribed for citizens of Serbia. Currently, these types of services are already provided by the National Employment Service, but only for citizens of the Republic of Serbia, while the special category of foreigners has not been included as a target group that is in need for support related to inclusion in the labour market.<sup>45</sup> The National Employment Service can offer programs to migrants who have obtained a working permit, but the official recognition of diplomas is the first obstacle to enjoying this right, having in mind that most of migrants who are coming to Serbia frequently do not have original education diplomas obtained in the country of origin. In some cases, even when they have diplomas, firstly they need to finish the nostrification procedure, which can last several years, so the only way to register with the National Employment Service is without submitting a diploma. As a result, the chances for a proper job are minimal. The second obstacle is language, having in mind that majority of such persons do not speak Serbian, and that Serbian language courses have not been institutionally organized to date in Serbia.

**17.** Also, the draft of the new Law on Asylum and Temporary Protection<sup>46</sup> envisages in Article 58 the access to the labour market for asylum seekers, nine months after submission of the request, if the decision has not been reached by that time, when the person has not contributed to the absence of such decision. This solution is in line with the new Law on Employment of Foreigners, but also to some extent with the standard provided by the Directive on Reception Conditions,

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<sup>45</sup> The draft Law on Asylum and Temporary Protection seeks to eliminate the disadvantages described above in terms of exercising the right of residence for persons whose asylum application has been approved, and therefore prescribes that the decision granting the application for asylum establishes the right to reside, which is proved with the identity card of the person to whom the asylum has been granted. However, the draft Law on Asylum and Temporary Protection does not specify what sort of residence it is nor how long it can last. In this regard, it is necessary to harmonize the Law on Foreigners to regulations governing the asylum matter, i.e. it is necessary to envisage by the Law on Foreigners that persons who have been granted asylum are entitled to temporary residence in a given duration. The only difficulty is paying state taxes, which amount to RSD 12,000, which is not covered by any institution. Bearing in mind that these people are relatively new category to the Serbian labour market, it would be useful to take into account the ability to apply for assistance with the Commissariat for Refugees and Migration.

<sup>46</sup> Draft Law on Asylum and Temporary Protection, Article 58 and 66, available on website of the Ministry of Interior: <http://www.mup.gov.rs/wps/portal/sr/dokumenti/Regulativa/nacrti%20zakona>

which in Article 15 guarantees access to the labour market for asylum seekers. However, the Directive in fact envisages that the access to the labour market must be allowed no later than nine months, while the Member States are left to themselves to regulate this issue and according to more favourable terms. In the view of the author of this submission, there is no evident legitimate reason not to provide the possibility for an asylum seeker to immediately join the labour market, i.e. to change a legal solution and allow this practice, bearing in mind that this is one of the key rights for effective integration of refugees and that our social system is relieved in this way (otherwise, an asylum seeker is forced to ask for social assistance from the state because they are without means to live, or are forced to work on the black market).

**18.** On the other hand, pursuant to current legal provisions, the Law on foreigners, the Law on Employment of Foreigners, irregular migrants do not have access to work, and no other regulation identified them as vulnerable in the Republic of Serbia. What the Law on Employment of Foreigners stipulates is sanctioning non-regular or unlawful employment and possibility of financially punishing employers who employ irregular migrants.<sup>47</sup>

**19.** The new proposal of the Law on Foreigners<sup>48</sup> also does not provide access to the labour market for this category of foreigners. The only law which recognizes them is the Law on Migration Governance<sup>49</sup> in Article 10, which provides that the Commissioner for Refugees and Migration is obliged to propose a program to develop a system of measures towards the families of foreigners who are staying on the territory of the Republic of Serbia without relevant national permits (“illegally”) and propose programs to support the voluntary return of such foreigners who are staying on the territory of the Republic Serbia to their country of origin. To this date, Serbia has not adopted special programs or measures intended for the families of foreigners who are irregularly staying on the territory of the Republic of Serbia.

## THE RIGHT TO HOUSING

**20.** Apart from the five Asylum Centres,<sup>50</sup> in which foreigners who express the intent to seek asylum are accommodated and where the official asylum procedure actions are to be conducted, the 2015/2016 episode of heightened arrival of migrants and refugees to Serbia led the Serbian authorities to successively open Reception Centres at the borders with Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, and Hungary. The purpose of establishing these Centres, apart from providing the migrants with urgent humanitarian accommodation, cannot be clearly deduced from the available information and the practices of the competent authorities. Some of them were opened as “temporary registration centres”, but the migrants were not registered in them. It thus remained unclear how they differed from the other Reception Centres. Furthermore, some of the reception centres operate under the jurisdiction of the Commissariat for Refugees and Migration and others are entities under the jurisdiction of the Ministry of Labour, Employment and Veteran and Social Affairs. Reception Centres had been opened pursuant to a

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<sup>47</sup> Chapter VII – penalty provisions of the Law on Employment of Foreigners.

<sup>48</sup> New draft of Law on Foreigners is available at: <http://mup.rs/wps/portal/sr/>

<sup>49</sup> Official Gazette RS 107/2012.

<sup>50</sup> In Krnjača, Banja Koviljača, Bogovađa, Tutin and Sjenica.

Government decision adopted at the proposal of the Commissariat for Refugees and Migration.<sup>51</sup> Reception Centres were opened in Preševo, Miratovac and Bujanovac, near the border with former Yugoslav Republic of Macedonia, in Bosilegrad,<sup>52</sup> Dimitrovgrad and Pirot,<sup>53</sup> near the border with Bulgaria, in Sombor,<sup>54</sup> Šid, Principovac and Adaševci, at the border with Croatia, and in Subotica and Kanjiža, near the border with Hungary. The Miratovac and Kanjiža Reception Centres were closed by the end of 2016, as refugees and migrants changed route, with more of them coming from Bulgaria. The Serbian authorities said they were planning on opening Reception Centres in Kikinda, Negotin and Zaječar. The Kikinda Reception Center was opened in mid-2017.

**21.** Additionally, during 2016, 1,000 persons were residing in the Belgrade city center in abandoned factories due to a lack of available places in Belgrade, and approximately 150 migrants continued camping at two border sites near the Hungarian border waiting for admission into the Hungarian asylum procedure. In November 2016, Hungary reduced the number of admitted asylum seekers per week from 20 to 10.

**22.** We need to notice positive measure conducted by the Serbian Government, related to accommodation/housing of illegal migrants. Reception-Transit Centers which were open during the refugee crisis in 2015 as temporary centers and serve for short accommodation of migrants who stay in Serbia for several days, are now transforming into the long-term accommodation centers for migrants who do not poses any legal documents, who are not registered in Serbia, and who do not wish to seek asylum in Serbia.

**23.** Once they are granted international protection, the foreigners should be provided with adequate accommodation that will facilitate their integration. This, above all, means that they be housed in apartments not isolated from local communities, which fulfil the conditions for longer-term stay. Given the limited funds at the disposal of the refugees, their lack of social contacts and unfamiliarity with the local communities, finding decent and affordable accommodation in large cities is a real challenge.<sup>55</sup>

**24.** People granted asylum or subsidiary protection are entitled to accommodation commensurate with the capacities of the Republic of Serbia for up to a year from the day the rulings on their status become final.<sup>56</sup> This entails providing them with specific housing or financial aid to rent housing.

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<sup>51</sup> Article 10, Law on Migration Governance of the Republic of Serbia.

<sup>52</sup> The first refugees were referred to the Bosilegrad Centre, under the jurisdiction of the CRM, in mid-December 2016, although the reconstruction of the old army barracks and hospital, where they were accommodated and registered, was completed in April 2016. This Reception Centre can take in up to 50 people.

<sup>53</sup> The Reception Centre was opened on 18 December 2016 and comprises the main building and two auxiliary buildings, each with four smaller rooms. The main building houses the administrative offices, cafeteria and two large dormitories, which can accommodate up to 40 people, and two smaller dormitories, which can accommodate up to 12 people. A total of 180 people can be accommodated in the auxiliary buildings. Each building has a shared toilet/bathroom.

<sup>54</sup> The new Reception Centre in Subotica, under the jurisdiction of the CRM, was opened on 5 November 2016 in the former army barracks. Its renovation had been funded by the German Ministry for Economic Cooperation and Development through the humanitarian organisation *Help*. Mostly families with children were accommodated in this Centre, which can take in up to 120 people.

<sup>55</sup> Lena Petrović and Sonja Tošković, *Institutional Mechanisms for the Integration of People Granted Asylum*, BCHR and the Protector of Citizens, may 2016, p. 15.

<sup>56</sup> Article 44, AL.



**25.** In July 2015, the Government of the Republic of Serbia adopted a Decree on Criteria for Establishing Priority Accommodation of Persons Recognised the Right to Refuge or Granted Subsidiary Protection and the Conditions for the Use of Temporary Housing (hereinafter: Housing Decree).<sup>57</sup> The Decree regulates in detail the allocation of accommodation to persons granted asylum, including the eligibility requirements and the accommodation priorities and conditions. Accommodation shall be provided to persons recognised the right to refuge or granted subsidiary protection and their family members provided the rulings on their status were issued within the past 12 months and they lack the income to resolve their housing needs themselves.<sup>58</sup> Housing may also be provided to persons with income to resolve their housing needs, depending on their personal circumstances and the availability of housing.<sup>59</sup> Under the Asylum Law and the Housing Decree, the beneficiaries will be provided with accommodation for a maximum of one year from the day the ruling recognising their right to refuge or granting them subsidiary protection becomes final.<sup>60</sup>

**26.** As far as the procedure for exercising this right is concerned, the real challenge is to pay the fee for certifying the statement that the applicant does not have any regular or occasional income deriving from work, entrepreneurship, titles to real and movable property or other sources of income. The refugees also need to pay the administrative fees when they apply for their personal work permits in order to register with the NES, which is definitely a huge expense for people not earning any income in Serbia. Furthermore, the Decree envisages the CRM's assistance in the realisation of this right. The technical and financial assistance to refugees to exercise their right to accommodation has mostly been extended by CSOs to date.

**27.** The CRM extended financial aid for the accommodation ten individuals since the adoption of the Regulation on Measures for Establishing Priority for Persons Recognized the Right to Refuge or Granted Subsidiary Protection and Terms of Use of Residential Space for Temporary Accommodation in 2015.

#### THE RIGHT TO SOCIAL SECURITY AND SOCIAL SERVICES

**28.** The Asylum Law also guarantees the right to social assistance to asylum seekers and people granted asylum. The law also specifies that beneficiaries of social protection shall include nationals of Serbia, as well as foreign nationals and stateless persons in accordance with the law and international treaties. Regulations on social assistance to asylum seekers and people granted asylum shall be enacted by the minister in charge of social affairs.

**29.** The Rulebook on Social Assistance to Asylum Seekers and People Granted Asylum (hereinafter: Rulebook) was enacted in 2008. Under the Rulebook, asylum seekers and people granted asylum shall receive monthly allowances provided they are not accommodated in an Asylum Centre and neither they nor their family members have an income or their income is below the threshold set in the Rulebook. This by-law guarantees the right to social assistance only to people living in private lodgings, but not to those living in Asylum Centres, which is contradictory per se, because people who can afford private lodgings definitely are not destitute. In four asylum cases, in which the BCHR represented the asylum seekers in the 2012–2016 period, the asylum seekers applied

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<sup>57</sup> *Official Gazette of the RS* 63/15.

<sup>58</sup> *Ibid*, Article 3.

<sup>59</sup> *Ibid*, Article 4.

<sup>60</sup> *Ibid*, Article 16.



for social assistance. They were all interviewed by the Centers for Social Work, and welfare was granted in one case. The SWCs required additional documentation from the asylum seekers in the other three cases and their decisions were pending at the end of the reporting period

**30.** On the other hand, social assistance and services have not been made available for illegal migrants at all.

#### **EQUAL PARTICIPATION AND PUBLIC ATTITUDE TOWARD MIGRANTS IN SERBIA**

**31.** According to a public opinion attitude survey carried out by TNS Medium Gallup in cooperation with UNDP Serbia in March 2016,<sup>61</sup> negative attitudes towards migrants arose due to fear for safety and security. On the other hand, many Serbian citizens have provided help to migrants by personally donating food and equipment, with a significantly lower level of readiness for closer interaction. Public services and hygiene (water supply, waste water system, waste and transportation) were seen as aspects most severely burdened by the migrant crisis. Persons surveyed cited poverty in Serbia, as well as cultural, religious and linguistic differences, as obstacles to the acceptance of migrants and refugees in Serbia.

**32.** In the survey conducted in December 2016 as part of a project implemented by the Ana and Vlade Divac Foundation in cooperation with USAID,<sup>62</sup> it was concluded that, during the period of large-scale arrival of migrants and refugees in Serbia, fear increased among the public-at-large, while empathy decreased, but also that the population that has the most contact with refugees and migrants has an overall positive attitude towards them.

**33.** Cases of discriminatory behavior towards migrants occurred most frequently in the provision of services in catering facilities and public transport. Potential discrimination was carried out in such a way that persons from the population of refugees, migrants and asylum seekers were prevented from accessing the public transport or vehicle, or were asked not to visit the catering facilities any more.

**34.** Migrants and refugees are still newcomers in Serbian society, and generally the majority of them are still in the process of inclusion into the society. There have not been any attempts to exercise their cultural identity, both legally and practically.

#### **ACCESS TO CITIZENSHIP**

**35.** Under Article 43 of the Asylum Law, people granted asylum shall have the status of foreigners with permanent residence in Serbia. The competent authorities, however, do not regard refugees as permanent residents because they *de facto* do not fulfil the requirements for this category of

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<sup>61</sup> Available <http://www.rs.undp.org/content/serbia/en/home.html>

<sup>62</sup> Survey is available in Serbian at:

[http://www.divac.com/upload/document/kljucni\\_nalazi\\_istrzivanja.pdf](http://www.divac.com/upload/document/kljucni_nalazi_istrzivanja.pdf)

residence under the Foreigners Law, i.e. as residence lasting as long as their status.<sup>63</sup> Furthermore, Article 46 of the Asylum Law sets out that the Republic of Serbia shall facilitate the naturalisation of refugees commensurate with its capacities.

**36.** Refugees, who leave their countries of origin out of well-founded fear of persecution, are actually left without the protection of the states they are nationals of and are *de facto* stateless.<sup>64</sup> From the perspective of the legal relationship between the individual and the state, this means that, although the vast majority of them *de iure* hold the citizenship of a state, they are deprived of the protection afforded by its citizenship when they leave it.

**37.** The provisions of the Foreigners Law are relevant to a large extent to the rights and obligations of beneficiaries of international protection. Namely, applicants for Serbian citizenship must have been continuously registered as permanent residents in the territory of the Republic of Serbia for at least three years.<sup>65</sup> Article 24(1(3)) of the Foreigners Law lists permanent residence among the types of residence foreigners may be granted in Serbia. This Law also lays down the requirements they must fulfil to be granted permanent residence.<sup>66</sup> The Foreigners Law, however, does not recognise people granted asylum as foreigners granted temporary or permanent residence. For instance, in its reply to a request for a certificate of permanent residence by M.S.E., a Syrian national granted asylum in Serbia, the MOI stated that it could not issue him the certificate because he had been granted asylum as a form of international protection and, as a refugee, was not granted permanent residence.<sup>67</sup>

**38.** Namely, under the Foreigners Law, permanent residence shall be granted to foreigners, who have held temporary residence permits and lived continuously in Serbia for over five years.<sup>68</sup> The law does not state that people granted asylum are entitled to temporary residence permits, wherefore they *can never* acquire the right to permanent residence. However, the Foreigners Law specifies that temporary residence may be granted to foreigners for other justified reasons under other laws or international treaties.<sup>69</sup> If interpreted systemically, in accordance with the Asylum Law and the Refugee Convention, this provision may be grounds for issuing temporary residence permits to foreigners granted asylum. However, as described in the case of M.S.E, the MOI is of the view that refugees have a type of *sui generis* residence.

**39.** The Preliminary Draft lays down the following requirements the foreigners must fulfil to be granted permanent residence: that they have sufficient subsistence funds, that they are registered at an address in Serbia, that they have health insurance, that they are not prohibited from

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<sup>63</sup> See: Tošković Sonja (ed.), *Serbia from transit to destination country – Refugee integration challenges and practices of selected states*, BCHR, Belgrade, 2016, p. 25, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2016/06/Srbija-od-zemlje-tranzita-do-zemlje-destinacije-31.pdf>

<sup>64</sup> “Refugees are people who leave their countries of residence, in most cases the countries whose citizenship they hold, in fear of persecution. Even when their state (country of origin) does not deprive them of citizenship, they are its nationals merely formally (they are *de facto* stateless) because they cannot expect protection from it; more precisely, their government wishes to harm rather than help them. This is why their situation is even more difficult than that of stateless persons.” Dimitrijević V., “Human Rights – Textbook,” BCHR, 1997, p. 196.

<sup>65</sup> Article 14(1(3)), Citizenship Law.

<sup>66</sup> Article 37, FL.

<sup>67</sup> MOI – Police Directorate – Border Police Administration MOI 03/8 Ref. No. 26-1342/14 of 29 January 2016.

<sup>68</sup> Article 31(1(1)), FL.

<sup>69</sup> Article 26, FL.

entering Serbia, that they have not been convicted to an unconditional sentence of imprisonment exceeding six months for a crime prosecuted *ex officio* or that the legal effects of the conviction have ceased, and that no security or expulsion orders have been issued against them.

**40.** As noted, if foreigners granted asylum cannot acquire the status of foreigners with permanent residence, they can never qualify for Serbian citizenship, *which is in contravention of Article 34 of the Refugee Convention*. From 2008 when Asylum law was adopted, until this date, no refugee has been granted with Serbian citizenship, although we have refugees residing in Serbia from 2008, which is contravention with CERD convention (article 5, paragraph iii) and General recommendation XXX, section IV (Access to citizenship).

#### RECOMMENDATIONS TO SERBIAN GOVERNMENT:

- **IN THE FIELD OF EXPULSION AND DEPORTATION OF NON-CITIZENS:**

- a) Refrain from collective expulsion and *refoulement* of all non-citizens, especially without going into the merits of all individual cases;
- b) Refrain from automatically applying the safe third country principle;
- c) Revisit the list of safe third countries as information available at this date strongly suggests that some of the countries on that list, such as Bulgaria, Greece, Macedonia, and Hungary, treat migrants in a manner which is not consistent with various international human rights standards.

- **IN THE FIELD OF ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS:**

- a) Enroll and integrate all children into non-segregated mainstream education, in all levels, without delay, so that all children can realize their right to education;
- b) Develop procedures and mechanisms to ensure the access of all school-aged migrant children, regardless of their legal status, including separated and unaccompanied children, as well as undocumented children, to adequate and appropriate education;
- c) The Serbian Government should consider the possibility of including other migrant categories in the labor market while they are residing in the territory of the Republic of Serbia;
- d) Enable and give all categories of migrant's access to the social care system;

e) Establish special programs of vocational education, vocational training, programs focused on practical work experience for refugees, in order to ensure that they have equal access to the Serbian labor market in order to eliminate the discrimination of non-citizens;

f) Serbian authorities should develop sustainable and comprehensive integration policies, through facilitating the sharing of know-how and good practices based on the relevant expertise of other countries, with a special focus on programs against racism and intolerance.

- **IN THE FIELD OF CIVIC RIGHTS**

a) Ensure that refugees can apply and be granted with the status of foreigners with permanent residence, in order to be able to qualify for Serbian citizenship;

b) Recognize the right of non-citizens to apply for Serbian citizenship, with regard to access to citizenship or naturalization, as a measure of long term inclusion into Serbian society.