CBMM Project

Capacity Building of Institutions Involved in Migration Management and Reintegration of Returnees in the Republic of Serbia

International Organization for Migration

PROTECTING THE RIGHTS OF MIGRANTS IN THE REPUBLIC OF SERBIA

HANDBOOK FOR CIVIL SERVANTS AND LOCAL SELF-GOVERNMENT OFFICIALS

IOM - OIM

COMMISARIAT FOR REFUGEES OF THE REPUBLIC OF SERBIA

EUROPEAN UNION

Ministry of Foreign Affairs of the Czech Republic

The project is funded by the European Union through the Delegation of the European Union to the Republic of Serbia

Belgrade, 2012.

Publisher:
International Organization for Migration – Mission to Serbia
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Printed by:
Dosije Studio, Belgrade

Number of copies:
2,000

ISBN 978-86-85003-10-3

The project "Capacity Building of Institutions Involved in Migration Management and Reintegration of Returnees" is funded by European Union.Additional funds are provided by the International Organization for Migration and the Czech Republic.The publishing of this document was supported by the EU. The views expressed in this document do not necessarily reflect the views of the EU.

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FOREWORD

The project *Capacity Building of Institutions Involved in Migration Management and Reintegration of Returnees in the Republic of Serbia - CBMM Project* aims to support the efforts invested by the Government of the Republic of Serbia towards establishing the institutional framework for migration monitoring and management in line with the *acquis communautaire*, as well as the efforts towards strengthening the capacity of institutions at the central and local levels for the purposes of achieving the EU standards relating to migration management, readmission and reintegration of returnees. The CBMM project, which is jointly implemented by the International Organization for Migration and the Commissariat for Refugees of the Republic of Serbia, is for the most part funded by the European Union through the EU Delegation to Serbia, and is co-funded from IOM's 1035 Facility and funds provided by the Czech Republic.

This handbook, authored by Ivana Krstic, PhD, Assistant Professor at the Faculty of Law, University of Belgrade, who teaches International Public Law and International Human Rights Law courses, was developed within the fifth project component that aims to raise awareness – within state institutions, civil society and the public – on the rights of migrants and their needs in terms of integration. The handbook is primarily intended for civil servants and local self-government officials who come across various categories of migrants in their daily work.

The author's intention was to identify different categories of migrants present in the Republic of Serbia, their rights enshrined in different international and domestic legal documents, and problems that they face in their daily lives.

We wish to thank the author for her efforts in producing this handbook, and we hope that civil servants and local self-government officials will find it useful in their daily work.

The CBMM project team

INTRODUCTORY NOTES

The handbook *Protecting the Rights of Migrants in the Republic of Serbia* is intended for civil servants, as well as local self-government officials (the latter hereinafter referred to as: local officials) who come across various categories of migrants. They are expected to act in accordance with the Constitution, relevant international instruments and laws, presented in the handbook. However, mere knowledge of these legal documents is not enough; these civil servants and local officials also need to adequately apply them in practice. To achieve that, they need to understand the problems faced by different categories of migrants and also to identify their own roles and ways of solving these problems. In their conduct towards migrants, civil servants and local officials must ensure respect of all guaranteed human rights, show understanding for migrants' problems and treat them with respect for their human dignity. Although this will not always be easy, especially when it is necessary to integrate migrants into the local environment, the first steps towards this goal will be precisely the good knowledge of the problems and understanding of one's own role in the promotion and protection of migrants' rights.

Integration into the European Union is a strategic commitment of the Republic of Serbia, which implies acceptance of adopted European values and standards, primarily in the field of human rights protection. A strategically, legally and institutionally regulated field of migration is extremely important for Serbia's accession to the EU, for achieving the freedom of movement of its citizens, improving the country's international reputation, but also for achieving a higher level of protection of all persons under its jurisdiction. In order to achieve this, it is necessary to ensure a coordinated system of cooperation between all relevant institutions, including both the republic authorities that create policies and the operational i.e. local authorities that are responsible for implementing those policies. The aim of this handbook is to improve the treatment of migrants at all levels and to encourage civil servants and local officials to achieve more in respect to the enjoyment of their rights.

The handbook has two parts and is divided into six chapters. The first part is related to the relevant legal framework that applies to different categories of migrants. In the first chapter, the phenomenon of migration is explained, as well as each of the special categories of migrants that will be discussed here – foreigners, migrant workers, asylum seekers, refugees, internally displaced persons, returnees under readmission agreements and victims of human trafficking. The second chapter introduces the constitutional framework that determines the position of foreigners in the Republic of Serbia and guarantees their fundamental rights. The constitutional framework is followed up by relevant international standards that apply to all categories of migrants and are divided into universal and European standards. The fourth chapter of the handbook is dedicated to each particular group of migrants through the prism of specialised international norms and relevant legislative framework relating to that particular group. In the second part, the handbook addresses the treatment of migrants in the Republic of Serbia, first at the republic level and then at the local level. This part covers the following topics: the role of government bodies responsible for migration management in the protection of migrants; the conduct of civil servants at the state level; the conduct at the local level; the role of local authorities in the enjoyment of particular rights of migrants, as well as the role of the non-governmental sector. This part insists on presentation of good practice examples and indicates the complexity of the socio-economic position of migrants in the Republic of Serbia. The last, sixth chapter of the handbook, sets out recommendations for further treatment of migrants in the Republic of Serbia, with the view to improving the current legislative framework and better implementation of relevant regulations. Recommendations are divided into general recommendations for conduct of the state and

special recommendations for each group of migrants, which should encourage civil servants and local officials not only to identify their own roles in the process of improving and protecting the rights of migrants, but also to respect relevant international standards and national regulations in this field.

PART ONE

I. MIGRATION

Migrations are a contemporary global phenomenon that denotes any lasting change of place of residence by individuals or social groups, namely any form of temporary or lasting movement of individuals in space.

The Draft Law on Migration Management defines migration as "voluntary or forced departure from the state of origin or state of residence for the purpose of temporary stay or permanent residence in the Republic of Serbia, and voluntary or forced departure from the Republic of Serbia for the purpose of temporary stay or permanent residence in another state (**external migration**), as well as the change of place of permanent residence within the territory of the Republic of Serbia, or change of the place of temporary residence within the territory of the Republic of Serbia, if the change was forced (**internal migration**)." Therefore, migration can exist inside or outside state borders, for which reason there are two different notions: emigration and immigration.

Emigration is the act of departing or exiting from one country with a view to settle in another.[1] **Immigration** is the reversed process, where non-nationals move into a country for the purpose of residence.[2]

International Human Rights Law guarantees the right to freedom of movement, which is a cornerstone of any person's freedom. It primarily implies the right of an individual to freedom of movement and choice of residence within the borders of one state. Freedom of movement also means the right of individuals to leave any country, including their own (regardless of whether the departure is permanent or temporary), as well as the right of individuals to return to their own country (Article 13 of the Universal Declaration). Emigration and immigration may be caused by a host of different reasons, ranging from economic and other voluntary migration, to forced migration.

In the last two decades, the Republic of Serbia has encountered all types of migration: external (mainly emigration) and internal (rural-urban); forced (refugees, internally displaced persons and returnees under readmission agreements) and voluntary; regular and irregular, and labour migration.

After the Second World War, the first wave of emigrants left the Republic of Serbia due to economic factors. The second wave of emigrants left during the sixties and the seventies, when overseas countries such as the USA and Australia were particularly popular. At the 1971 population census, the number of Yugoslav citizens temporarily living and working abroad was recorded for the first time. The said population census determined that 203,981 nationals of the Republic of Serbia were living abroad

[1] International Migration Law, *Glossary on Migration*, International Organization for Migration, 2004, p. 21.
[2] *Ibid*, p.31.

(approximately 2.8% of the total population).[3]

In the early 1990's, the political crisis, ethnic conflicts and disintegration of the former Yugoslav state caused the third wave of migration, which is still ongoing. The 2002 census recorded a total of 414,839 persons working and living abroad (5.3% of the total population), who are mostly situated in EU Member States (Germany, Austria, Switzerland, France, Italy, Sweden).[4] However, the data on these persons show that the stated countries have become less appealing in the past fifteen years or so, but that there has been increased interest in some other states, such as Hungary, the Russian Federation, Great Britain, but also Canada, USA and Australia. This change has resulted from more liberal immigration laws in those countries, but also from growing interest of the young and educated population for leaving the country. [5]

When the International Organization for Migration (IOM) conducted a survey on migration flows in the Balkans in 1998, the survey showed that the then Federal Republic of Yugoslavia (FRY) had a high migration potential - given that as much as 61% of citizens had expressed the desire to work in another country for several weeks, 60% for several months, 53% for several years, and 26% of respondents wanted to permanently move out of the country.[6] Today the situation is even more serious and according to the latest survey of the World Economic Forum, Serbia has been ranked as high as second, after Guinea Bissau, by "brain drain" (of a total of 133 countries surveyed). It is estimated that some four million people live outside of Serbia, including a large part of young and educated population.[7] Although this in no way means that all respondents who expressed a desire to move out will indeed leave Serbia, this number reflects a high degree of dissatisfaction with living conditions in one's own country. The population scan also reflects the following situation: most people living in Serbia are older than 60 years of age (28%), followed by people aged 50 to 59 (18%). The population is generally low-skilled, namely is of secondary (47%) and primary education (32%) skills. The percentage of unemployed persons (26%) and retirees (28%) is higher than the respective percentage of workers (33%), while the majority of people still live in multigenerational families (34%).[8]

On the other hand, during the last decade of the 20th century, a reversed process occurred – a large number of refugees from the former Yugoslavia were forced to move into Serbia. This process reoccurred in late 1990's when a large wave of internally displaced persons came from Kosovo and Metohija. The gradual borders opening and the visa-free travel regime for a certain number of states have resulted in larger migratory flows towards the border of the Republic of Serbia as well. In recent years Serbia has faced an increased influx of asylum seekers, as it is located on the route used by a large number of irregular migrants from African countries, Afghanistan and the Middle East, via Turkey, Greece, Bulgaria and Romania to Hungary and other EU countries. In the course of 2010, about 550 persons applied for asylum, and this number is constantly increasing.[9] It can be expected that Serbia's joining the EU will make it an attractive country for some forms of labour as well, which will result in an increased number of international migrant workers in Serbia, as is currently the case with nationals of the People's Republic of China.

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[3] Migration Profile of the Republic of Serbia for 2010, Government of the Republic of Serbia, Conclusion 05, No. 019-1074/2012, p. 7.
[4] *Ibid*, p. 8.
[5] *Ibid*, p. 9.
[6] Tanja Pavlov, *Serbia's Migration Potential*, Group 484, Belgrade, June 2009, p. 6.
[7] See: *Migration in Serbia: A Country Profile 2008*, International Organization for Migration, p. 11.
[8] *Ibid*, p. 8.
[9] Vesna Petrović, *Human Rights in Serbia in 2010 – Law, Practice and International Human Rights Standards*, Belgrade Centre for Human Rights, Belgrade, 2011, p. 18.

I. DIFFERENT CATEGORIES OF MIGRANTS

Research into the position of migrants is very complex given that migrants are a completely unhomogeneous group that can be divided into migrants who voluntarily leave a part of the territory or the entire territory of their country, and those who do so involuntarily. The first group includes foreigners, namely foreign nationals who on various grounds reside in another state, and persons who had not stayed in their country for a long time, but for some reason return to it voluntarily. International migrant workers are but one group of foreigners, but there are also those who reside in another state for reasons of marriage, education, etc.

The second group includes different groups of migrants such as asylum seekers, refugees, victims of human trafficking and returnees under readmission agreements. They are all in different positions and encounter various problems in the enjoyment of their rights, but what they all have in common is the responsibility of the authorities to take positive steps to facilitate their integration.

The first to be discussed hereinafter will be migrants who voluntarily arrive in the territory of the Republic of Serbia, and then those who do so involuntarily, or as a result of persecution.

1.1. Foreigners

Foreigners are all migrants found in the territory of the Republic of Serbia, who have foreign rather than Serbian nationality. In the past, states used to conclude agreements granting various rights and privileges to foreigners that often exceeded the rights granted to their own nationals. In the second wave, states recognized exclusive rights only for their own nationals. Today human rights are guaranteed to all without distinction, i.e. to both foreign and domestic nationals, except for a small number of rights that are still reserved only for nationals. These exclusive rights reserved for nationals are mostly the active and passive voting right, while states may restrict particular rights for reasons of national and public security.

Foreigners may reside in the Republic of Serbia legally and illegally. Foreigners staying legally in the Republic of Serbia are persons employed in representative offices of foreign companies, banks, at construction sites, in trade and other fields. There are also foreigners who apply for temporary residence permits on grounds of marriage or kinship. According to nationality, the majority of foreigners who were granted temporary residence in the Republic of Serbia in the period from 2007 to 2010 came from People's Republic of China, Romania, the Republic of Macedonia, Bosnia and Herzegovina and the Russian Federation.[10] In 2010, the largest number of visas was issued to nationals of East Asian countries (of which 99% to Chinese nationals), European countries outside the EU, Western Asia (mostly from Lebanon, Syria and Turkey) and the rest of Asia (primarily from India and Iran).[11] In 2010, temporary residence permits were issued to 6,325 foreigners, mostly from China (16%), the Russian Federation (10.9%) and Libya (9.4%).[12] The most common ground for obtaining a temporary residence permit was employment, followed by marriage and kinship with a Serbian citizen. On the other hand, the majority of foreigners were granted permanent residence in Serbia on the basis of marriage with a Serbian citizen.[13] Thus in 2010 there were 6,750 foreigners with

[10] Government of the Republic of Serbia, *Reply to the Questionnaire of the European Commission*, 2011, p. 18.
[11] Migration Profile, p. 10.
[12] *Ibid*, p. 15.
[13] Reply to the Questionnaire, p. 19. In the period from January to October 2010, permanent residence was granted to 1,562 Romanians, 475 Russians and 375 Hungarians.

permanent residence, the majority of which were citizens of Romania, Russian Federation, Macedonia and Ukraine.[14] Therefore, the most frequent reasons for settling in the territory of the Republic of Serbia were work or marriage to a domestic citizen.

Serbia is currently far below its former average as an attractive destination for education and academic research, as confirmed by the increasing number of Serbian nationals who travel abroad in order to acquire further education and training.

Foreigners who have no legal grounds for staying in the territory of the Republic of Serbia are called irregular migrants. An irregular migrant is any foreigner who illegally enters the territory of the Republic of Serbia (entry outside the border crossing, entry with a forged or otherwise irregular travel document), or who enters the country legally but fails to leave the territory of Serbia following the expiry of the legal stay.

The largest number of irregular migrants, foreign citizens discovered in illegal crossing of state border, illegal stay and transit through the territory of the Republic of Serbia were identified as economic migrants, while the number of political migrants, namely asylum seekers, is significantly lower. A special problem among foreign citizens-irregular migrants are minors and women who are the most common target group of human traffickers for the purposes of sexual or labour exploitation.

There is presently in Serbia a problem of monitoring the implementation of the measure of cancellation of residence imposed against a foreigner, because of the possibility to abuse the set deadline for leaving the territory of the Republic of Serbia and because of the non-existence of obligation to record and control exits. It is therefore necessary to establish an efficient system of monitoring the foreigners whose stay was cancelled. Also manifested is the problem of inadequately formulated parameters for statistical monitoring of illegal crossing of state border and illegal entry of foreigners, and for the purposes of eliminating the problem it is necessary to prescribe standards for more efficient monitoring of occurrences of illegal border crossings and illegal entry of foreigners. These problems should be overcome by adoption of a series of measures envisaged by the Strategy for Combating Illegal Migration in the Republic of Serbia for the period 2009-2014.[15]

1.2. Migrant Workers

Migrant worker is a general term for workers seeking a job or working in a place that is more or less remote from their place of residence. Such workers may travel to another place **occasionally** (seasonal workers), **temporarily** (for longer or shorter periods), or stay to work during a period that cannot be predetermined (**permanently**). Migrant workers may work within their own countries, or may go to work in other countries (**migrant workers in the strict sense**).

When they do certain work over a longer period of time or are permanently

[14] Migration Profile, p. 19.
[15] *Official Gazette of RS*, No. 25/09.

employed, migrant workers are usually joined by members of their immediate family (spouse and children migrants). Migrant workers are usually highly skilled population specialized in fields that are sought after in a particular region or country, or low-skilled population performing seasonal jobs (work on plantations) or jobs which the majority population is not interested in (utility jobs). To some extent, the work of migrant workers increases productivity and potentially decreases expenditures for salaries in one country, whereas their work within a country provides the possibility for overcoming the problem of shortage of specific worker profiles in a certain location, as well as the "survival" of underdeveloped regions, especially in countries where the problem of undeveloped regions is particularly manifested. In practice it often happens that these persons are exposed to difficult working conditions, discrimination and exploitation, and each state must make an effort to ensure the exercise of their fundamental human rights.

At the end of 2010, more than 5,000 foreigners with valid work-based temporary residence permits resided in the Republic of Serbia. Of this number, more than half (2,777) were nationals of China, but also represented were nationals of Macedonia, Bosnia and the Russian Federation.[16] In the course of 2010, the National Employment Service issued 2,576 work permits to foreigners, of which 98.3% to foreigners with temporary residence, and 1.7% to foreigners with permanent residence.[17] The number of issued permits has increased since 2006, mostly to professionals who are employed in foreign representative offices, banks, construction and trade.

1.3. Asylum seekers

Asylum is the right to residence and protection enjoyed by a foreigner who is, based on the decision of the competent authority who decided on his application for asylum in the Republic of Serbia, granted refuge or another form of protection envisaged by the Law on Asylum.[18] A person seeking asylum is a foreigner who applies for asylum in the territory of the Republic of Serbia, when a final decision on the application is still pending.

If the competent authority grants the application, having determined that a person's fear of persecution in the state of origin is justified, the person shall enjoy the refugee status.

A refugee is a person who, because of a justified fear of persecution on grounds of race, gender, language, religion, nationality or membership in a particular group or political opinion, is not staying in his/her state of origin and is unable or because of that fear is unwilling to seek the protection of that state, as well as a stateless person who is staying outside the country of his/her former permanent residence and cannot return or because of that fear is unwilling to return to that state.

In addition to refuge, persons can be granted two other forms of protection.

[16] Migration Profile, p. 21.
[17] *Ibid*, p. 22.
[18] *Official Gazette of RS*, No. 109/07.

Foreigners may be granted **subsidiary protection** if, in case of return to their country of origin they would be exposed to torture, inhuman or degrading treatment, or if their life, safety and freedom would be threatened by large-scale violence caused by foreign aggression or internal armed conflicts or a mass human rights violation.

Temporary protection may be granted in the event of mass inflow of persons from a country in which their life, safety or freedom are threatened by large-scale violence, foreign aggression, internal armed conflicts, mass violation of human rights or other circumstances that seriously disturb public order, when due to the mass inflow it is impossible to carry out individual procedures for granting the right to asylum.

In recent years, Serbia has faced a growing number of asylum seekers, and further growth of their number is yet to be expected from the moment Serbia obtains the EU candidate status. Thus in 2010, 520 persons expressed intention to seek asylum in the Republic of Serbia, compared to 270 in 2009. The majority of these persons were Afghans, Palestinians, Iraqis, Somalis and Pakistanis.[19] Of this number, only 215 persons had formally filed the application.

1.4. Refugees

The Republic of Serbia is a country with the highest number of refugees and internally displaced persons in Europe. Their number decreases every year, mostly due to their integration in the Republic of Serbia. According to the data of the Commissariat for Refugees, today the Republic of Serbia provides support and assistance to about 74,000 refugees,[20] while more than 250,000 refugees acquired citizenship of the Republic of Serbia, which is the largest integration process in Europe.[21] Through the return process, which was carried out with different success in Bosnia and Herzegovina and the Republic of Croatia (31% of returnees in BiH and 18% of returnees in the Republic of Croatia), the number of refugees was reduced by additional 149,000. It is estimated that another 49,000 refugees found refuge in third countries.

The **Law on Refugees** was adopted in 1992,[22] and its specific feature is that it narrowly defines the notion of refugee and limits it to persons originating from the territory of former SFRY. At the time of adoption of the 1992 Law on Refugees, the primary goal was to provide a legal framework for humanitarian care of persons who fled to the territory of the Republic of Serbia due to war conflicts in the former SFRY territory. Over time, as it became clear that the problem of refugees was not of temporary nature, but that a large number of persons with refugee status decided to remain in Serbia, it became necessary to amend this law in order to create a clearer legal framework for integration of persons who acquired citizenship of the Republic of Serbia. Thus, the person who opted for integration is understood to mean a person who filed a request for admission into the citizenship of the Republic of Serbia. The new definition of the notion of refugee, which was changed under the amendments to the 2010 **Law on Refugees**,[23]

[19] Migration Profile, p. 41.
[20] In 2010, this number was 86,235. See Migration Profile, p. 47.
[21] Data were taken from the National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons for the period 2011-2014.
[22] *Official Gazette of RS*, No. 18/92, *Official Journal of FRY*, No. 42/2002 – decision of the Federal Constitutional Court, and *Official Gazette of RS*, No. 30/2010.
[23] *Official Gazette of RS*, No. 30/2010.

included also the persons who opted for integration and, consequently, refugees are now, in addition to care for meeting their elementary needs, also provided with assistance in the integration process.

I.5. Internally Displaced Persons

Internally displaced persons include individuals or groups of individuals who have been forced to flee or to leave their homes or places of residence, as a result of (or to avoid the effects of) armed conflict, situations of generalized violence, human rights violations, disasters, whether natural or human-made, and who have not crossed an internationally recognized state border.[24]

A total of 209,148 internally displaced persons from AP Kosovo and Metohija live in Serbia today.[25] In terms of ethnicity, the highest percent of IDPs are Serbs, while there is also a certain percentage of Roma, Montenegrins, Muslims and Bosniaks. As these persons have the citizenship of the Republic of Serbia, they enjoy all of the rights guaranteed by the Constitution and laws of the Republic of Serbia. However, given that they have fled to another part of the territory of their own country, these persons are in a particularly vulnerable position and it is therefore necessary to provide them with special protection so that they can enjoy all guaranteed rights. The situation is made significantly more difficult by the political situation relating to Kosovo's self-proclaimed independence of 17 February 2008 and its recognition by 88 states so far (by 17 February 2012), which impedes the agreement on the return of internally displaced persons to the territory of AP Kosovo and Metohija.

A small number of Serbs and other non-Albanians returned to the territory of AP Kosovo and Metohija since 2000, and many of them have been leaving the Province again due to security reasons. Numerous problems have made their return impossible, and the reason should first be sought in the threat to the right to life, bodily integrity and freedom of movement upon return to AP Kosovo. However, there are also numerous problems relating to the exercise of property rights, such as recovery, reconstruction and entering into possession of property and access to other socio-economic rights. In addition to the subsistence problems relating to employment and housing, a certain number of internally displaced persons, especially Roma, Ashkali and Egyptians, face the problem of obtaining documents, partly because they lack documentation and partly because civil registers from Kosovo have been destroyed or lost. This means that in addition to some of the adopted measures, it is also necessary to additionally facilitate the procedure for issuing documents to this category of persons.

I.6. Returnees under readmission agreements

Returnees under readmission agreements are persons who were returned to the territory of the Republic of Serbia because they did not fulfill or no longer fulfilled the

[24] Guiding Principles on Internal Displacement, Special Representative of the UN Secretary-General on Internally Displaced Persons, 1999.

[25] The data were taken from the website of the Commissariat for Refugees and refer to September 2011. See: *Assessment of the Needs of Internally Displaced Persons in Serbia*, UNHCR, JIPS, Commissariat for Refugees, March 2011, p. 3. The number of IDPs in 2010 was 210,148. See: Migration Profile, p. 49.

criteria for entry and stay in the territory of the state with which the Republic of Serbia had signed a readmission agreement.

Readmission is the process of safe return of persons who do not or who no longer fulfill the conditions for entry, stay or settlement in the territory of a particular state.

Persons are returned to the territory of a particular state under the conditions and following the procedure envisaged by the readmission agreement, which is an international treaty. This state in the readmission process is called the "requesting state", and the state known as the "requested state" in the readmission procedure is the state that the person who is to be readmitted had originally left before trying to enter or before residing in the territory of the requesting state.

When foreign nationals, despite the absence of legal conditions for their entry and stay in the territory of the Republic of Serbia, do enter and are caught unlawfully residing in the territory of the Republic of Serbia, the competent authorities of the Ministry of Interior shall, based on signed readmission agreements, submit the application for readmission of the irregular migrant to his or her state of origin. By way of reciprocity, states with which the Republic of Serbia has signed readmission agreements shall exercise the same right when Serbian citizens are caught unlawfully residing in their territory.

A large number of readmission agreements have been signed to date and the most important one is the Agreement between the Republic of Serbia and the European Community on the readmission of persons residing without authorization (the agreement was signed in 2007 and entered into force on 1 January 2008).[26] The agreement provides the signing of bilateral protocols on its application with each EU member state.

The Republic of Serbia does not have accurate data on the number of citizens of SFRY, FRY and Serbia and Montenegro, or even the nationals of the Republic of Serbia who are residing in other countries on any grounds. The decision on who will be readmitted to the Republic of Serbia, when and where, is taken solely by the authority of the state in which the person was caught residing without authorization.

In 2010, 3,118 readmission applications were granted, from a total of 3,706 applications submitted, while a total of 4,434 nationals of the Republic of Serbia returned to the country.[27] Since 1996, the largest number of persons returned to the Republic of Serbia from Germany, Hungary, Switzerland, Austria, Sweden, Belgium, France and Norway. Among the returnees were members of all ethnic groups, but the majority were Roma. The problem of Roma is most pronounced and most complex, given that their socio-economic status is marginalized, discriminated and extremely difficult and complex. Considering that a large number of people had, before they left the Republic of Serbia for Western European countries from which they are now based on readmission agreements supposed to return, sold their movable and immovable property and left their jobs (if they were employed) and basically have nowhere to return, this creates a serious problem of how and where such a large number of returnees are to be received. This problem is even more pronounced in the conditions of transition and economic crisis that renders the socio-economic reintegration of returnees into the local communities significantly more difficult. Moreover, some people can at the same time be returnees and refugees or internally displaced persons, which further complicates their integration due to the non-existence of an adequate housing facility and, at the same time, the impossibility to return and live in their place of origin.

A special problem was the lack of relevant databases on returnees under readmission agreements. Until recently the data were collected either from reports of the

[26] *Official Gazette of RS - International Treaties*, No. 103/2007.
[27] Migration Profile, p. 44.

Readmission Office at the "Nikola Tesla" airport, which mostly included persons who returned under escort, or from reports on the implementation of various projects intended for returnees. The Commissariat for Refugees recently set up a database on returnees. Likewise, the Council for the Reintegration of Returnees under Readmission Agreements was set up, which handles returnees and whose activities are focused on the functioning of local migration councils and the preparation and implementation of local migration action plans. According to the report of the Commissariat for Refugees of the Republic of Serbia and the Readmission Office for 2010, of 1,164 persons who returned via "Nikola Tesla" airport in Belgrade, 632 persons were of Roma ethnicity.[28] This trend has continued in 2011 and the Roma population most often decides to leave the country because of everyday problems they face such as poverty, low education level, lack of documents, exposure to discrimination, etc.

A certain number of so-called "fake asylum seekers" has appeared in Serbia recently, namely domestic nationals seeking asylum in EU countries even though they were not subject to persecution on any of the grounds required for granting asylum. Following the visa liberalization for citizens of the Republic of Serbia in December 2009, 17,000 people from Serbia sought asylum in EU countries in the following year alone, especially in Sweden, Belgium and Germany. These are primarily impoverished citizens who applied for asylum believing that their lives would be easier in EU countries. About 95% of them are Roma, and the rest are mostly Albanian minorities from Preševo and Bujanovac. These persons often sell their entire property in order to start a new life in a foreign country, and if they are returned under the readmission agreement that raises the question of whether it is fair to grant these persons the same privileges that are granted to other returnees.

1.7. Victims of human trafficking

Human trafficking implies a particularly severe form of exploitation and deprivation of fundamental human rights, which unfortunately has not been eradicated to date. Although this phenomenon is very old, no binding definition of human trafficking existed until 2000. It was only with the adoption of the **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime** that this phenomenon was defined (Article 3). The Protocol not only introduced for the first time the definition of human trafficking at the international level, but did so by very broadly defining all its manifestations.

Trafficking in human beings implies various acts (recruitment, transportation, transfer, harbouring and receipt of persons), committed by means of threat of force, use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, or the giving or receiving of payments or other benefits to achieve the consent of a person having control over another person. The purpose of these measures is exploitation, which, at a minimum, includes exploitation of the prostitution of others or other forms of sexual exploitation, forced labour, slavery or practices similar to slavery, or the removal of organs.

[28] *Access to Rights and Integration of Returnees under Readmission Agreements, Analysis of the Main Problems and Obstacles*, Praxis, August 2011, Belgrade.

For human trafficking to exist, it is not necessary that the victim has crossed an internationally recognized border, as is the case with human smuggling. Therefore, the victim of human trafficking is any natural person who has been subject to human trafficking, whether it is a domestic or a foreign national. The consent of the victim of trafficking to planned exploitation is irrelevant if means of coercion are used (the use of threat, force or other forms of coercion, abduction, fraud, deception, abuse of power or vulnerability, or the giving or receiving of payments or other benefits to achieve the consent of a person having control over another person for the purpose of exploitation).

Human trafficking became a problem in the region with the outbreak of the economic crisis and the break-up of Yugoslavia in late eighties of the last century. This problem has not been solved to date, although a system for combating this phenomenon was established some ten years ago, and is constantly being improved. Because of its favourable geographical position and its difficult economic situation, Serbia is mainly a transit country and not a destination country, as was the case in the eighties. That is why Serbia has largely become a country of origin, mainly for women seeking employment abroad, who often end up in forced prostitution. However, since 2008 there has been an increase in the number of human trafficking cases within Serbian borders, and the majority of victims identified are Serbian nationals. It is difficult to specify the number of victims and perpetrators of this crime. Different institutions offer different data (according to Serbia's Ministry of Interior, a total of 383 victims were identified in the 2002-2009 period, according to the Agency for the Coordination of Protection of Victims of Trafficking, a total of 484 victims were identified in the 2004-2009 period, and according to NGO ASTRA, a total of 351 victims were identified from 2002 to 2009)[29], but what is certain is that their number is much higher because victims of human trafficking are hard to discover. Hence the information that 76 trafficking victims were identified in 2010 should be considered with some caution.[30] On the other hand, an important fact is that the most common form of exploitation is sexual exploitation and that as much as 92.1% of all registered victims of human trafficking are women. These persons require a wide range of assistance, from psychological to economic, considering the serious human rights violations to which they are exposed, sometimes over a very long period of time.

♦ ♦ ♦

Different categories of migrants have different statuses, and hence fall under different legal frameworks. That is why it was necessary at the beginning to identify the groups of migrants on which this handbook has focused. Before analysing the existing international standards and legal framework for each of these individual groups of migrants, it is necessary to present the constitutional framework of Serbia relevant for migrants.

[29] *Human Trafficking in Serbia - Report for the Period 2000-2010*, ASTRA, 2011, p. 52.
[30] Migration Profile, p. 38.

II. CONSTITUTIONAL PROVISIONS PROTECTING THE RIGHTS OF MIGRANTS

The highest legal act of the Republic of Serbia is the 2006 Constitution.[31] The Constitution of the Republic of Serbia begins with the provision that defines the Republic of Serbia as follows: it is the "state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values." Article 1 of the Constitution promotes the principle of a national, not a civil state. Serbia is a state of Serbian people, but this basic characteristic is accompanied with the fact that Serbia is a multiethnic state.

Furthermore, the Constitution contains a number of articles that are relevant for the field of migration management. Article 13 of the Constitution stipulates that the Republic of Serbia shall protect the rights and interests of its citizens abroad and that it shall develop and promote the relations between Serbs living abroad and their motherland. Therefore, this article promotes an active relationship of Serbia towards its nationals who temporarily or permanently do not reside in its territory, primarily in terms of protection of their rights and interests (paragraph 1). The attitude of the state towards these nationals is reflected in the field of linkage with the motherland and is manifested through various activities connecting them with their motherland (paragraph 2). Article 80, paragraph 3 of the Constitution guarantees the right to establish, develop and maintain relationships and cooperation with compatriots living abroad, and is related to members of national minorities.

I. THE POSITION OF FOREIGNERS UNDER THE CONSTITUTION OF THE REPUBLIC OF SERBIA

Article 17 of the Constitution addresses the position of foreigners. Foreigners are in principle guaranteed the same rights as Serbian nationals. Exceptions to this rule are rights that the Constitution expressly guarantees to nationals only. These include voting rights (Article 52, paragraph 1) and the right of the state to regulate the entry and stay of foreigners by law, which means that foreigners may be expelled from its territory (Article 39, paragraph 3). However, expulsion can only occur when relevant conditions are met, namely when the decision is taken by the competent authority, in a procedure stipulated by law, when the foreigner is ensured the right to an appeal and if there is no threat of persecution based on his race, gender, religion, national origin, citizenship, association with a social group, political opinion, or when there is no threat of serious violation of rights guaranteed by the Constitution in the country from which he is expelled.

In the part of the Constitution dealing with human and minority rights and freedoms there are a number of provisions that are relevant for different categories of migrants. The Constitution envisages direct implementation of constitutionally guaranteed human and minority rights (Article 18), as well as the prohibition of discrimination and the proclamation of equal protection before the law (Article 21). All forms of discrimination, direct or indirect, on any grounds, especially on grounds of race, gender, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age and mental or physical disability is prohibited. However, the introduction of so-called positive measures for achieving full equality of persons or groups of persons who are essentially in an unequal position compared to other citizens, which may be of great importance for certain groups of migrants, is not considered

[31] *Official Gazette of RS*, No. 98/2006.

discrimination.

Human rights guaranteed by the Constitution that are especially important for migrants, include the following:

- The right to dignity and free development of personality (Article 23);
- The right to life (Article 24);
- The right to inviolability of physical and mental integrity, i.e. the prohibition of torture (Article 25);
- The prohibition of slavery, servitude and forced labor (Article 26);
- The right to freedom and security (Article 27);
- The obligation of humane treatment of persons deprived of liberty (Article 28);
- The right to a fair trial (Article 32);
- The right to legal certainty in criminal law – prohibition of retroactive criminal penalties, the presumption of innocence, *ne bis in idem*, etc. (Article 34);
- The right to citizenship (Article 38);
- The freedom of movement (Article 39);
- The freedom of thought, conscience and religion (Article 43);
- The prohibition of incitement to racial, ethnic and religious hatred (Article 49);
- The right to asylum (Article 57);
- The right to health care (Article 68);
- The right to social protection (Article 69); and
- The right to education (Article 71).

The Constitution guarantees to foreign natural and legal persons the right to ownership of real estate in accordance with the law or international treaty to which the Constitution expressly refers (Article 85, paragraph 1). In addition to real estate ownership, the Constitution guarantees to foreigners the right of concession, which they may acquire on natural resources and resources of general interest (Article 85, paragraph 2). The Constitution also prescribes, by one general provision, the possibility for foreigners to enjoy other rights regulated by law (Article 85, paragraph 2).

Finally, the Constitution of the Republic of Serbia guarantees a foreign national who reasonably fears persecution on grounds of race, gender, language, religion, national origin or association with a group, or on grounds of his political beliefs, the right to asylum in the Republic of Serbia (article 57 paragraph 1 of the Constitution).

2. THE STATUS OF GUARANTEED RIGHTS OF MIGRANTS

All these constitutionally guaranteed rights from the human rights corpus are implemented directly (Article 18). This means that the court and any other authority can directly invoke the constitutional norm, regardless of whether or not there is a law in place that more closely regulates the proclaimed right. The law may only prescribe the manner of exercising human rights, in compliance with the conditions and frameworks set by the Constitution.

Particularly important is that the Constitution explicitly guarantees the protection of rights that citizens already enjoy, since it proclaims that the attained level of human rights may not be reduced (Article 20), which means that the state cannot abolish the

stated rights, or the scope of their enjoyment. The state may only restrict certain rights under the condition that the restriction is prescribed by law, for the purposes permitted by the Constitution, to the extent necessary in a democratic society and without encroaching upon the substance of the relevant right (Article 20). All public authorities are obliged to be mindful of the substance of the right that is being restricted, the importance of the purpose of restriction, the nature and extent of restriction, the relationship between the restriction and the purpose of restriction, and whether there is a way to achieve the purpose of restriction in a different manner, by a smaller restriction of the right. The Constitution also recognizes the derogation, i.e. revocation of certain human rights in case of a state of emergency or war (Article 202), which may not be discriminatory and which shall be terminated with the cessation of the emergency. However, the Constitution explicitly stipulates the rights that may not even in this situation be revoked, namely it guarantees so-called absolute rights. This group includes the majority of the rights specified here as particularly important for migrants.

Any person whose human right guaranteed by the Constitution was denied has the right to court protection and to the removal of consequences arising from such action (Article 22). However, for such a right to be exercised before the court, the mode of interpreting existing provisions on human rights is important. Hence, it is extremely important that the interpretation of human rights provisions is underpinned by applicable international human rights standards and the practice of international institutions which supervise their implementation (Article 3). This primarily implies the jurisprudence of the European Court of Human Rights and the practice of UN committees, which will be discussed in the next section.

III. INTERNATIONAL STANDARDS IN THE FIELD OF PROTECTION OF MIGRANTS

International norms and standards in the field of protection of migrants are extremely important because the 2006 **Constitution of the Republic of Serbia** proclaims that generally accepted rules of international law and ratified international treaties are an integral part of the internal legal system of the Republic of Serbia. This means that courts and other state authorities can directly apply the norms of international law, but in practice this is often not the case due to the inaccuracy of these norms. For this reason, the majority of international norms need to be introduced into the internal system in the form of legal provisions.

Article 16 of the Constitution lays down the hierarchy of legal norms, as it states that these sources must be in accordance with the Constitution (Article 193, paragraph 3 of the Constitution contains an identical provision). Generally accepted rules of international law include general international customs, whereas ratified international treaties include agreements and conventions that have been ratified. Given that the largest number of international norms is related to human rights of different categories of migrants, particularly important is Article 18 of the Constitution, which, as noted above, proclaims that these rights are implemented directly and that they are interpreted to the benefit of promoting the values of a democratic society, pursuant to valid international standards in human and minority rights.

International migration law consists of rules established in various subsystems of public international law, such as the international human rights law, international humanitarian law and international criminal law, which concern migrants. Given that migrants are a very diverse group, there is no set of norms at the international level yet that would be directly related to migrants. One of the reasons lies in the fact that migrants were not the focus of the international community for a long time and that this branch of international law developed over time. Thus the rules of migration law are “extracted” from other subsystems of international law, and different instruments are applied depending on the context and the migratory group concerned, namely depending on whether these are refugees, displaced persons, migrant workers. The only international convention that specifically concerns migrants is the 1990 **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, adopted under UN auspices. Other conventions relate to migrants in certain parts or certain areas of life. However, one should not lose sight of the fact that all human rights conventions establish rules for all persons found within the territory of a state, including for migrants.

Due to the limited scope of the handbook, only the most important sources will be discussed in the following section. A brief overview will be given of the most important universal and European international instruments concerning all migrants, as well as the protection mechanisms available to migrants in case the state fails to comply with international standards arising from these instruments.

I. UNIVERSAL STANDARDS UNDER THE AUSPICES OF THE UNITED NATIONS

The universal system for the protection of human rights was established within the most important universal international organization, the United Nations. This organization aims to bring together all states of the international community and has almost achieved its goal nowadays, because it has 193 member states. Care for human rights is one of the main tasks of this organization. In the course of over 60 years of its existence, the UN has developed various mechanisms to control and improve the human rights situation in member countries. The organization primarily does this through its bodies: the General Assembly, the Economic and Social Council and the UN Human Rights Council. However, of greatest significance are multilateral treaties, i.e. conventions in the field of human rights that establish mechanisms for monitoring the implementation of commitments assumed by the states.

1.1. Universal instruments for the protection of human rights

After the Second World War and the founding of the UN, the **Universal Declaration of Human Rights** was adopted in 1948 in the form of a UN General Assembly Resolution that provided the first catalog of human rights and which is still a source of customary international law. This means that its provisions are binding upon all member states of the international community. The Universal Declaration contains a number of rights that are of particular importance for migrants. Thus, the Universal Declaration guarantees the right to life, liberty and security, prohibition of slavery and torture and other forms of abuse, non-discrimination, prohibition of arbitrary arrest, detention and expulsion, the right to a fair trial, the right to private and family life, the freedom of movement, the right to a nationality, the right to marry and to found a family, the right to property, freedom of religion, expression, and assembly and association, as well as political rights. The Universal Declaration also guarantees the right to social security, the right to work and rights related to work, the right to education and the right to participate freely in the cultural life of the community. Particularly important is Article 14, which for the first time at the international level guarantees the right to asylum, proclaiming that everyone has the right to seek and to enjoy in other countries asylum from persecution, unless they have committed a non-political crime or a crime that is contrary to the purposes and principles of the UN Charter.

After nearly twenty years since the adoption of the Universal Declaration, the first human rights conventions were adopted in 1966: the International **Covenant on Civil and Political Rights**[32] and the International **Covenant on Economic, Social and Cultural Rights**[33] which are an important source of human rights for all, including migrants. The first Covenant provides a catalogue of civil and political rights that concern the individual's relationship with the state, and the possibility of participation of individuals in the government. The International Covenant on Civil and Political Rights contains a set of the following rights: the right to life (Article 6), prohibition of torture, inhuman or degrading treatment or punishment (Article 7), prohibition of slavery and forced labour (Article 8), the right to liberty and security of person (Article 9), the right of persons deprived of liberty to humane treatment (Article 10), prohibition of imprisonment on the ground of inability to fulfill a contractual obligation (Article 11), the right to liberty of movement (Article 12), the right of movement of foreigners (Article 13), the right to a fair trial (Article 14), the right to *ne bis in idem* (Article 15), the right to

[32] *Official Journal of SFRY*, No. 7/71.
[33] *Ibid.*

recognition of legal personality (Article 16), the right to protection of the private life, family, home and correspondence (Article 17), the right to freedom of thought, conscience and religion (Article 18), freedom of expression (Article 19), prohibition of propaganda for war and incitement to national, racial or religious hatred (Article 20), the right to freedom of peaceful assembly (Article 21), freedom of association (Article 22), the right to protection of the family (Article 23), protection of the child (Article 24), the right to take part in public affairs (Article 25), protection against discrimination (Article 26), and protection of members of national minorities (Article 27).

On the other side are rights guaranteed under the International **Covenant on Economic, Social and Cultural Rights**. States are obliged to provide individuals with favourable working conditions, a fair remuneration for their work, social security, primary education or the fulfillment of the individuals' cultural needs. These rights, regardless of the laws that states have in place, are not easy to ensure since they depend on the state's economic power, but states must seek to achieve these rights to the maximum of their available resources. These include: the right to work (Article 6), the right to just and favorable conditions of work (Article 7), the right to form trade unions (Article 8), the right to social security (Article 9), the right to protection of the mother, child and family (Article 10), the right to an adequate standard of living (Article 11), the right to health (Article 12), the right to education (Article 13), the right to take part in cultural life and to enjoy the benefits of scientific progress (Article 15).

SFRY ratified both covenants on 2 June 1971, and after the democratic changes in 2000 and the renouncement of continuity with the former state, the Republic of Serbia succeeded to both covenants on 12 March 2001.

In addition to these international instruments, the following international treaties ratified by Serbia are also of relevance for migrants:

- The International Convention on the Elimination of All Forms of Racial Discrimination;[34]
- The Convention on the Elimination of All Forms of Discrimination against Women;[35]
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;[36]
- The Convention on the Rights of the Child;[37]
- The Convention on the Rights of Persons with Disabilities;[38] and
- The International Convention for the Protection of All Persons from Enforced Disappearance.[39]

The 1965 **International Convention on the Elimination of All Forms of Racial Discrimination** proceeds from the fact that the existence of theories based on racial superiority or hatred, such as the policies of apartheid, segregation or separation, is very dangerous. The Convention confirms that discrimination between human beings on the grounds of race, colour or ethnic origin is prohibited, since it is an obstacle to friendly and peaceful relations among nations and since it is capable of disturbing peace and security in the international community. The Convention requires that states take necessary measures for speedily eliminating all forms of racial discrimination, and to combat racist doctrines and practices.

SFRY ratified the Convention on 2 October 1967 and the Republic of Serbia

[34] *Official Journal of SFRY*, No. 31/67.
[35] *Official Journal of SFRY – International Treaties*, No. 11/81.
[36] *Official Journal of SFRY – International Treaties*, No. 9/91.
[37] *Official Journal of SFRY – International Treaties*, No. 15/90 and *Official Journal of FRY – International Treaties*, Nos. 4/96 and 2/97.
[38] *Official Journal of SFRY – International Treaties*, No. 42/09.
[39] *Official Journal of SFRY – International Treaties*, No. 1/11.

accepted it on 12 March 2001.

The 1979 **Convention on the Elimination of All Forms of Discrimination against Women** is the most comprehensive document related to women's human rights. According to this Convention, the states' main task is to recognize and protect women's human rights in all cases by national constitutions, laws and bylaws. States are also obliged to abolish penal provisions and customs and to abandon any form of practice of establishing and maintaining discrimination against women. The Convention prohibits all forms of discrimination against women and requests the elimination of all forms of trafficking in women and exploitation of prostitution of women. The Convention is particularly committed to improving the situation of women living in rural areas and it guarantees equal rights in terms of acquisition, change and retention of citizenship, particularly when marrying a foreigner.

SFRY ratified the Convention on 26 February 1982 and the Republic of Serbia accepted it on 12 March 2001.

The 1984 **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** defines and prohibits three types of abuse: torture, inhuman and degrading treatment and punishment. It envisages a number of legislative, administrative, legal and other measures concerning the prevention, investigation, bringing to justice of those who fail to comply with the provisions on the prohibition of abuse, as well as indemnification to victims. The Convention expressly excludes the possibility of invoking an exceptional circumstance that would make torture allowed. All states parties undertake to ensure that all acts of torture are offenses under its criminal law and that perpetrators of such offenses are punished as appropriate, depending on the severity of the offence. Based on the 2002 Optional Protocol (OP) the Subcommittee on Prevention of Torture was set up with a view to establishing regular visits to places where persons deprived of their liberty are kept. The Subcommittee performs this function in accordance with the UN Charter, recognized standards in the field of detention, and based on principles of confidentiality, independence, universality, objectivity and non-selectivity (Article 2 of the OP). States parties are obliged to allow the Subcommittee to visit any place of detention, for the purpose of reducing and suppressing the acts of torture. They are also obliged to establish similar bodies at the national level in order to achieve a systematic prevention of torture.

SFRY ratified the Convention on 10 September 1991 and the Republic of Serbia accepted it on 12 March 2001.

The 1989 **Convention on the Rights of the Child** provides a catalogue of human rights recognized to persons under the age of 18. The Convention makes it binding upon the states to respect and ensure the rights of every child within their jurisdiction without discrimination of any kind, irrespective of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, and other status. States undertake to ensure the child such protection and care as is necessary for his or her well-being. The Convention envisages the following rights: attainment of the highest possible standard of health care and preventive and medical care, the right to free primary education, the right to rest, leisure, play and to participate in cultural and artistic events, the right to information, the right to express their views freely and the right to be heard, the right of children to live with their parents and have contact with both parents if they are living separately, whereas children with disabilities are entitled to special support and promotion, as well as active participation in social life. States parties have assumed an obligation to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual

abuse.

The Republic of Serbia ratified the Convention on 4 October 2001.

The 2006 **Convention on the Rights of Persons with Disabilities** guarantees full and equal enjoyment of all human rights of persons with disabilities and promotes respect for their inherent dignity. States parties have assumed an obligation to adopt the necessary legislative, administrative and other measures to ensure equality and non-discrimination of persons with disabilities and the respect of rights recognized by this Convention. States are required to take all necessary measures to abolish or amend all regulations, customs and practices that constitute discrimination against persons with disabilities. The Convention provides a catalogue of specific rights of persons with disabilities, with special emphasis on accessibility as one of the key prerequisites for equal participation of these persons in all fields of social life. The Convention also regulates such issues as freedom and integrity of person and guarantees protection from torture and inhuman treatment, protection from violence, abuse and exploitation, protection of physical and mental integrity, as well as the right to education, right to work and establishment of necessary support services.

The Republic of Serbia ratified the Convention on 31 July 2009.

The 2006 **International Convention for the Protection of All Persons from Enforced Disappearance** prohibits enforced disappearance. The Convention defines enforced disappearance as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law." The Convention requires all states to take appropriate measures to examine the existence of this offence, to identify the perpetrators and punish them accordingly.

The Republic of Serbia ratified the Convention on 18 May 2011.

All of the above mentioned conventions apply to all persons in the territory of the Republic of Serbia, including all of the different categories of migrants to be found in its territory.

1.2. Supervision of the implementation of the commitments of States assumed by UN Committees

A special position within the United Nations system belongs to so-called treaty bodies. These are committees established by the stated human rights treaties for the purpose of controlling their implementation. Their members, who are independent experts and act in their personal capacity, are not elected by UN bodies but by countries that have ratified or acceded to the international convention concerned. In this sense, the treaty bodies are autonomous bodies outside the UN hierarchy, but connected with the UN system. Their costs are borne by the United Nations, the UN Secretariat provides them with administrative services, and they are required to report on their work to the Generally Assembly through the Economic and Social Council.

The following treaty bodies have been set up to date:

- Committee on the Elimination of Racial Discrimination (Convention on the Elimination of All Forms of Racial Discrimination);
- Committee on Human Rights (Covenant on Civil and Political Rights);

- Committee against Torture (Convention against Torture);
- Committee on the Elimination of Discrimination against Women (Convention on Discrimination against Women);
- Committee on the Rights of the Child (Convention on the Rights of the Child);
- Committee on the Rights of Migrant Workers (International Convention on the Protection of the Rights of All Migrant Workers);
- Committee on the Rights of Persons with Disabilities (Convention on the Rights of Persons with Disabilities); and the youngest one,
- Committee on Enforced Disappearance (International Convention for the Protection of All Persons from Enforced Disappearance).

There is also the Committee on Economic, Social and Cultural Rights, which was not established under the Covenant on Economic, Social and Cultural Rights but under the 1985 Resolution of the UN Economic and Social Council; nonetheless, it operates the same way as other committees.

Within human rights protection, treaty bodies primarily examine and evaluate states parties' periodic reports on compliance of their legislation and practice with commitments assumed under relevant conventions. Following an exchange of views with government representatives, treaty bodies in their conclusions give an opinion on the human rights situation in a particular state and recommendations for improving the situation.

EXAMPLE

During its session in April and May 2005, the Committee on Economic, Social and Cultural Rights considered the initial report of Serbia and Montenegro on the implementation of the International Covenant on Economic, Social and Cultural Rights. In its concluding observations, published in June 2005, the Committee also addressed the issue of returnees: "The Committee expresses its deep concern about the uncertain residence status of and the limited access by [...] returnees from third countries [...] to personal identification documents, which are a requirement for numerous entitlements such as eligibility to work, to apply for unemployment and other social security benefits, or to register for school".[40]

Treaty bodies also deal with interpretation of particular provisions of the Convention or general issues relating to their interpretation by formulating and publishing general comments, usually once a year. For example, the Committee on the Rights of Migrant Workers has so far adopted Comment No. 1 relating to "migrant domestic workers".[41] This general comment deals with migrants who perform domestic jobs such as, for example, housekeeping jobs. It is particularly noted that protection of migrants extends not only to the period when they are actually working, but also relates to the preparation for migration, departure from the country, transit, the entire period of stay and performance of activity, as well as the return to the state of origin or the state of habitual

[40] UN High Commissioner for Human Rights, Implementation of Covenants on Human Rights in Serbia, Belgrade, 2006, p. 28.
[41] CMW/C/CG/1, General Comment no. 1 on migrant domestic workers, 23 February 2011, par. 3.

residence". This interpretation is very important for the application of the Convention, namely for a clearer and more precise understanding of some of its provisions.

A certain number of conventions (the Convention against Torture, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Protection of All Persons from Enforced Disappearance) envisage another means of control in terms of whether the states are meeting their international obligations in the form of investigative procedure. This procedure commences with the reception of reliable information about a serious and systematic violation of provisions of some of the stated conventions. The committees may then invite a state to cooperate and to submit comments on the information obtained. The committees may designate one or more of their members who will conduct the investigation and notify other committee members thereof without delay. The investigation that is conducted is confidential and is based on cooperation of the state on which the information is submitted. In line with this principle, investigation can be conducted in the territory of a particular state only with the consent of that state and when that is necessary. The investigation findings and the committee's review in the form of comments are submitted to the State, which has a six-month deadline to submit its feedback on these comments. After the expiry of this deadline, the committee may invite the state to provide detailed information about the measures it has taken, as well as additional information when the committee finds it necessary. After this examination, the committee shall create a summary of the findings and put it in a report submitted to the UN General Assembly, and the report may also be published in order to be made available to other states, but only with the consent of the state which was subject to examination.

Most treaty bodies are also authorized to examine communications from individuals claiming to be victims of a violation of rights envisaged by a particular convention. Individuals can address not only the Committee on the Rights of the Child but also the Committee on Economic, Social and Cultural Rights. The application has to meet the following requirements:

1. The applicant must show a legitimate interest, namely that he or she is a victim of violation of a right under the Convention;
2. The applicant must exhaust all domestic legal remedies;
3. The claim must be related to the violation of a particular right under the Convention (compatibility with the international convention);
4. The claim must not constitute an abuse of the right to address the committee; and
5. An essentially identical claim may not be concurrently communicated to different committees.

Decisions rendered by committees on individual applications are not judgments, but recommendations in terms of interpretation of a certain right and indication to states how the violation should be rectified. Nevertheless, states generally accept these recommendations because of the authority that committees enjoy.

EXAMPLE

Discrimination

In the case of *Aumeeruddy Cziffra v. Mauritius*,[42] the Human Rights Committee considered the communication submitted by twenty women from Mauritius claiming to

[42] *Aumeeruddy Cziffra v. Mauritius*, Human Rights Committee, communication No. 35/1978, 1981.

be victims of discrimination. They believed that before the enactment of the 1977 Immigration and Deportation Acts, foreign men and women who were married to Mauritian nationals enjoyed the same residence status, that is to say they had the right to live in the country with their husbands or wives from Mauritius. Under the new laws, foreign men married to women from Mauritius lost the right to reside in Mauritius and had to apply for a "residence permit", which the Minister of Interior could deny or revoke at any time. The new laws, however, do not affect the status of foreign women married to Mauritian husbands, who retain their legal right to residence in the country. The applicants further contend that under the new laws foreign husbands may be deported under a ministerial order which is not subject to judicial review.

The Human Rights Committee found that states were obliged to respect and ensure the rights of the Covenant "without distinction of any kind, such as ... (inter alia) sex", and more particularly under Article 3 "to ensure the equal right of men and women to the enjoyment" of all these rights, as well as under Article 26 to provide "without any discrimination" for "the equal protection of the law". In this particular case, an adverse distinction based on sex is made, affecting the alleged victims in their enjoyment of one of their rights. At the same time, the Committee believes that the legislation which only subjects foreign spouses of Mauritian women to those restrictions, but not foreign spouses of Mauritian men, is discriminatory in respect of Mauritian women and cannot be justified by security requirements.

2. EUROPEAN STANDARDS OF MIGRANT PROTECTION

In addition to the universal system of human rights protection, there are also three regional systems of protection: Inter- American, African and European system for the protection of human rights. For the Republic of Serbia certainly the most important is the European system of protection, which is applied within three regional organizations: EU, the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE). Because of their importance and contribution to the promotion and protection of rights of migrants, the EU and the Council of Europe are highlighted below.

2.1. Standards established in the European Union

The European Union is a *sui generis* supranational organization, which includes 27 European Member States with about 500 million inhabitants. The first organization was created in 1957, when the Treaty of Rome established the European Economic Community (EEC) for the purpose of economic unification of six leading Western European countries. The European Union, founded by the 1992 Maastricht Treaty, was enlarged through the accession of new member states, and through linkage on not only economic but also political and social grounds. The most recent enlargement of the European Union occurred in 2007, when Bulgaria and Romania joined the organization, and the European Council adopted a decision to allow Turkey, Iceland and the Western Balkans to accede in the future. Serbia signed the Stabilization and Association Agreement with the European Union in April 2008 and submitted its application for membership in December 2009.

In order to join the European Union, Serbia must meet relevant economic,

political and administrative conditions and respect the principles of liberty, democracy, human rights and fundamental freedoms, as well as the rule of law principle. It is therefore important for Serbia to recognize and comply with the fundamental principles established in this organization by the adoption of the relevant laws and their proper implementation, if it wishes to become a full EU member as soon as possible. This activity of the European Union is particularly important in the field of asylum policy.

2.2. The Treaty of Lisbon

The Treaty of Lisbon that was signed in December 2007 and entered into force on 1 December 2009 has changed and expanded the political and legal structures of the European Union. The preamble to the Lisbon Treaty states that the enactment of this document was mainly inspired by the common European heritage, which is founded upon human rights, freedom, democracy, equality and the rule of law. Particularly important is Article 2 paragraph 3 which proclaims that the European Union shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. The European Union was tasked to promote, inter alia, social cohesion and solidarity between Member States. In external relations, the European Union must take measures to reduce poverty and protect human rights. Therefore, the European Union has now, for the first time, focused on human rights and is able to better implement new policies that will improve social conditions and achieve social cohesion.

The 2000 **Charter of Fundamental Rights of the European Union** contains a catalogue of human rights in the EU and is incorporated into the text of the Lisbon Treaty, which made this document legally binding. The Charter affirms the principles underlying the EU and the rights and freedoms belonging to citizens of EU Member States. Among other, Article 21 paragraph 1 of the Charter prohibits any discrimination on any grounds. The Charter guarantees a number of human rights and freedoms, which in some segments goes beyond the protection that is provided under the European Convention on Human Rights, which will be discussed later.

The Charter guarantees inviolability of human dignity and protects the corpus of civil, political, economic, social and cultural rights. Thus, the Charter prohibits all forms of abuse (Article 3), prohibits forced labour and trafficking in human beings (Article 5), guarantees third country nationals who have a work permit in some Member State the right to work under the same conditions as citizens of the Union (Article 15), guarantees the right to asylum (Article 18), prohibition of expulsion (Article 19), prohibition of discrimination based on any ground (Article 21), respect for cultural, religious and linguistic diversity (Article 22), and a number of rights relating to labour relations, social security and social protection. The Charter also provides the right to diplomatic and consular protection for every citizen of the Union who shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, under the same conditions as the nationals of that Member State.

2.3. Standards of protection of migrants within the Council of Europe

The Council of Europe is the first European regional organization, created just after World War II (1949). Several European states, having learned the lesson after the war destructions and inspired by the great ideas on the European unification, decided to create an organization that would achieve greater unity between its members (Article 1 of the Statute) and protect and promote freedom, democratic values and human rights.

Respect for human rights was set as one of the primary tasks and conditions for membership in the organization (Articles 3 and 4 of the Statute). When establishing the organization, the founding members expressed their desire for all European states to join the organization and this goal has been almost achieved today – the only European state that is not in this system is Belarus. Serbia has been a member state of the Council of Europe since 3 April 2003.

A large number of human rights conventions were adopted within the Council of Europe, with a special place belonging to the European Convention on Human Rights.

2.4. The European Convention on Human Rights

Shortly after the founding of the Council of Europe, the first convention in the field of human rights was adopted – **the European Convention for the Protection of Human Rights and Fundamental Freedoms**,[43] popularly referred to as the **European Convention on Human Rights** (hereinafter referred to as the ECHR) that was signed in Rome in 1950 by thirteen Council of Europe member states. The rights and freedoms guaranteed by the ECHR apply to any person, including different categories of migrants.

The fundamental rights and freedoms under the ECHR related to all persons include: the right to life (Article 2), prohibition of torture, inhuman and degrading treatment (Article 3), prohibition of slavery and forced labour (Article 4), the right to liberty and security (Article 5), the right to a fair trial (Article 6), no punishment without law (Article 7), the right to respect for private and family life (Article 8), freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10), freedom of assembly and association (Article 11), the right to marry (Article 12), the right to an effective remedy (Article 13) and prohibition of discrimination (Article 14).

Up to now, the ECHR has been supplemented by fourteen additional protocols, some of which deal with procedural issues, while others add to the catalogue of guaranteed human rights by introducing new, substantive provisions. Among them are the First Protocol (the right to peaceful enjoyment of property (Article 1), the right to education (Article 2) and the right to free elections (Article 3)), the Fourth Protocol (prohibition of imprisonment for debt (Article 1), freedom of movement (Article 2)), the Sixth Protocol (prohibition of imposition and execution of death penalty (Article 1)), the Seventh Protocol (the right of appeal in criminal matters (Article 2), the right to compensation for wrongful conviction (Article 3), the right not to be tried or punished twice for the same offence (Article 4) and equality between spouses (Article 5)), the Twelfth Protocol (general prohibition of discrimination (Article 1)), and Thirteenth Protocol (absolute prohibition of the death penalty (Article 1)). Certain rights guaranteed by the protocols concern only foreigners: The Fourth Protocol (prohibition of expulsion of nationals (Article 3) and the prohibition of collective expulsion of aliens (Article 4)) and the Seventh Protocol (safeguards in the procedure of expulsion of aliens (Article 1)).

Today, all states have ratified the ECHR, except for Belarus. In relation to Serbia, application of the ECHR began on 3 March 2004.

The ECHR has established the most complete system of supervision over the implementation of commitments assumed by States Parties at the international level in the form of the European Court of Human Rights.

[43] *Official Gazette of Serbia and Montenegro*, Nos. 9/2003, 5/2005 and 7/2005 – corr.

2.5. Relevant practice of the European Court of Human Rights

The European Court of Human Rights (hereinafter referred to as the European Court) is the basic body for supervising the adherence to commitments assumed under the ECHR. It is located at the seat of the Council of Europe, in Strasbourg (France), and its number of judges corresponds to the number of state parties to the ECHR – namely forty-seven judges. Judges act in their individual capacity and work solely in the interest of promoting and protecting human rights, rather than for their own interests or the interests of their state of origin.

Proceedings before the European Court can be instituted by states (inter-state applications) and by individuals (individual applications). Under Article 34 of the ECHR, the European Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation of a right guaranteed by the ECHR and its protocols, when the alleged violation is committed by a state that has accepted the ECHR. This is most often the state of citizenship, but may also be any other state when the application is submitted by a foreigner who found himself under the jurisdiction of that state or by a stateless person (person with no citizenship).

The conditions for accepting individual applications are the same as those of UN committees, but there are also some additional conditions that have to be met in order for an application to be declared admissible. These conditions are as follows:

- The European Convention on Human Rights provides for a time period within which an individual may address the European Court – a period of six months from the date when a final decision before the national authority in the particular case was brought;
- The European Court requests that the application is not manifestly ill-founded, and on these grounds it has rejected many submissions so far. This condition affords the European Court the possibility to be relieved of trivial and querulant applications;
- One of the new conditions introduced by Article 12 of the Fourteenth Protocol that amended the former Article 35 of the ECHR is the possibility of rejecting the application if the applicant has not suffered a “significant disadvantage”. In this case, the European Court will not consider the application, unless respect for human rights requires an examination of application on the merits and if domestic courts did not duly consider the case.

The European Court renders judgments by a majority vote of the judges present, which are binding for the state party against which the judgment was rendered. Judgments usually impose compensation, but individual and general measures may also be ordered. Individual measures are undertaken when just satisfaction is not sufficient to remedy the violation, and so the court may order that the case be reopened, that the decision on deportation be revoked, etc. General measures are taken when necessary to prevent new violations in the future, caused by gaps in legislation or by its misinterpretation and inadequate practice of judicial authorities. In this case the state needs to amend existing regulations and practices as soon as possible, in accordance with recommendations of the Court.

The Committee of Ministers of the Council of Europe supervises the fulfillment of the states’ obligations, which are required to submit reports on measures they have taken to enforce the judgment (Article 46, paragraph 2 of the ECHR). The Committee of Ministers holds several meetings a year, at which it considers whether or not the judgments were enforced, and when the Committee makes sure that the state has implemented the measures ordered by the Court, it shall adopts a special resolution noting that the State has fulfilled its obligation. If the state refuses to enforce a judgment, the

Committee of Ministers may take diplomatic initiatives, adopt resolutions imposing provisional measures for the purpose of such enforcement within the set deadlines, threaten to suspend the state's membership rights in the Council of Europe and invite other member states to take measures against such state.

States are also obliged to follow and respect the standards established in judgments rendered against other states, because the European Court is authorized to provide authentic interpretation of the ECHR, which as such is binding on all states parties. The European Court has a very rich jurisprudence, and has up to now dealt with a myriad of various issues, such as the prohibition of expulsion of foreigners when they are at risk of abuse, prohibition of collective expulsion of foreigners, the right to family reunification, etc. Although the ECHR prohibits forced labour, the European Court did not deal with the issue of human trafficking until 2010, and so it was unclear whether this convention protected individuals against this crime as well. Today this dilemma is over.

EXAMPLES

Human trafficking

In January 2010, in the case of *Rantsev v. Cyprus and Russia*, the European Court rendered the first historic decision on human trafficking in Europe, which established that Russia and Cyprus had violated a number of provisions from the ECHR.[44] The judgment confirmed that human trafficking was not in accordance with the values protected under this Convention. The case concerned the death of a twenty-year-old Russian Oxana Rantseva, who was a victim of trafficking and who had been transferred from Russia to Cyprus on an artist visa for the purpose of sexual exploitation in a cabaret in Limassol. She was found dead beneath the balcony of the apartment that belonged to a cabaret employee. The European Court found that Cyprus failed to protect this girl from being trafficked, and from being unlawfully detained, and that it failed to conduct an efficient investigation into her death. On the other hand, Russia was declared responsible for failing to efficiently investigate the way in which the girl became a victim of trafficking. The European Court emphasized that human exploitation is based on power and the use of force and threats against the victims who live and work in difficult conditions, and that it is a modern form of slavery, and as such prohibited by the European Convention on Human Rights.

Discrimination against asylum seekers

In the case of *Conka v Belgium* from 2002,[45] several families of Slovakian citizens of Roma nationality sought asylum in Belgium because they had been assaulted on several occasions by "skinheads" in Slovakia. A certain number of Roma families were ordered to report to the police station so that the documentation relating to their applications for asylum could be completed, but on that occasion they were actually

[44] *Rantsev v. Cyprus and Russia*, application No. 25965/04, judgment of 7 January 2010.
[45] *Conka v. Belgium*, application No. 51564/99, judgment of 5 February 2002.

served with a decision for their deportation and an order for their detention until expulsion. These families were taken to the closed transit centre near the Brussels airport, and four days later some 70 persons were returned to Slovakia. The European Court held that the circumstances of the case led to a conclusion that there had been a violation of Article 4 of the Fourth Protocol to the ECHR in terms of collective expulsion because the decisions on expulsion had been made in an identical way, all persons had been required to report to the police station at the same time, it had been difficult for them to contact a lawyer, and the procedure for granting asylum had not been completed.

Prohibition of expulsion

In *Said v. the Netherlands*[46] from 2005, the applicant was an Eritrean national seeking asylum in the Netherlands. He claimed that he fought on Eritrea's side in the war against Ethiopia, but that he criticized the army and that after a while he deserted, which put him at risk of abuse if he returned to his country. The European Court found that the war ended in 2000, but that the available information suggested that Eritrean authorities did not demobilize their army, and that various reports testified to the inhuman treatment of deserters. Based on this, the Court concluded that deportation to Eritrea would expose the person to the risk of ill-treatment. Likewise, in the case of *Baysakov and others v. Ukraine*[47] from 2010, four members of political opposition in Kazakhstan argued that if extradited to this country they would be exposed to torture and even the death penalty. In order to determine the actual risk of torture, the European Court examined the concluding observations of the Committee against Torture and reports of some NGOs. They had documented a widespread practice of torture against members of the political opposition in Kazakhstan and the European Court agreed with the claim that their extradition would be a violation of Article 3 of the ECHR.

Hate speech

In *Jersild v. Denmark*[48] from 1994, the applicant was a TV journalist who had interviewed three members of a racist group from Copenhagen. During the interview, the members of the group gave negative statements about immigrants, the black population and other ethnic minorities in Denmark. After the interview, the journalist was convicted of aiding and abetting in discrimination in the form of hate speech. When considering the case, the European Court emphasized that the audiovisual media had a much more powerful effect on individuals than the print media and that one should be particularly careful there, but the Court found that the criminal conviction of the journalist had not passed the proportionality test. The European Court took into account that the programme was not made with the intention to propagate racist attitudes, but to discuss topics of

[46] *Said v. the Netherlands*, application No. 2345/02, judgment of 5 June 2005.
[47] *Baysakov and others v. Ukraine*, application No. 54131/08, judgment of 18 February 2010.

[48] *Jersild v. Denmark*, application No. 15890/89, judgment of 23 September 1994.

public interest, and that the programme was broadcast within a serious news programme and was intended for a well-informed audience. On the other hand, in the case of *Le Pen v. France*[49] from 2010, the European Court assumed the position that freedom of political speech could not be a justification for hate speech. Calling for accountability for statements made in the context of a general debate on problems associated with the integration of immigrants depends on the state's assessment of whether that is necessary in a democratic society. Thus, Le Pen, president of the French *National Front* party, warned in his speeches of the increasing number of members of the Muslim community, which according to him presented a latent threat to the dignity and security of the French people. The European Court held that his comments, directed against Muslims, were unallowed because they gave rise to a feeling of rejection and hostility.

♦ ♦ ♦

International conventions and standards presented here are legally binding on the Republic of Serbia and constitute a framework for establishing the system for the protection of migrants under the 2006 Constitution, in addition to the sources adopted within the European Union. Besides these most important conventions, which apply to all persons under the jurisdiction of the state or to particular categories of persons, including migrants, there are also specialized conventions that specifically apply to a particular category of migrants. These conventions will be referred to in the next section, within the review of the legal regime established for that particular category of migrants.

[49] *Le Pen v. France*, application No. 18788/09, judgment of 20 April 2010.

IV. NATIONAL LEGAL FRAMEWORK FOR MIGRANTS

Apart from the relevant provisions of the Constitution and the general international norms and standards, each category of migrants is covered by specialized international conventions, relevant laws and strategies whereby the state defines its priority goals for improving their position and the ways for achieving such goals. These sources are presented below for each individual category of migrants.

I. FOREIGNERS

In short, foreigners are persons who do not enjoy citizenship of a particular state. International law does not regulate when and under what conditions a person acquires citizenship of a particular state, as this is a discretionary right of each state. However, the development of international human rights law has led to the recognition of the right to citizenship, and so under Article 15 of the **Universal Declaration of Human Rights** everyone is entitled to a citizenship and may not be arbitrarily deprived of or denied the right to change that citizenship. In order to achieve this right, international law is primarily aimed at solving the problem of stateless persons, i.e. persons with no citizenship. Thus the **Convention relating to the Status of Stateless Persons** was adopted in 1954.[50] The aim of this Convention is to regulate and improve the status of stateless persons, and to ensure that their fundamental rights and freedoms are recognized, without discrimination. However, the decision on whether a person is entitled to the benefits provided by this Convention shall be made by each State, in accordance with its established procedures. The 1961 **Convention on the Reduction of Statelessness**[51] aims to reduce the number of stateless persons by introducing rules that reduce the possibility of statelessness at birth. The Convention, on the other hand, does not prohibit the possibility of revocation of citizenship under certain circumstances, nor does it retroactively grant citizenship to currently stateless persons. The Convention only requires that states adopt national legislation which reflects the prescribed standards in terms of acquisition and loss of citizenship. The Republic of Serbia committed itself to respecting the obligations arising from these conventions.

At the regional level, within the Council of Europe, the **European Convention on Nationality** was adopted in 1997. The Convention sets the principles and rules relating to citizenship of persons, as well as the rules regulating military service obligations in cases of multiple citizenship with which the internal law of states parties must be harmonized. The Republic of Serbia has not yet accepted this convention.

The **Law on Foreigners of the Republic of Serbia**[52] states that a foreigner is "any person who does not have citizenship of the Republic of Serbia" (Article 3). However, the Law excludes from its application all persons who applied for asylum or persons who were granted asylum in the Republic of Serbia, persons who acquired refugee status and persons who enjoy privileges and immunities under international law, as regards the provisions of the Law that are excluded as a result of those privileges and immunities (Article 2). Stateless persons are subject to provisions of the Convention relating to the Status of Stateless Persons, if those provisions are more favourable for them. In other words, foreigners in the Republic of Serbia are all persons who do not enjoy its citizenship and do not have a special status like the status granted to stateless persons, refugees and asylum seekers.

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[50] *Official Journal of FPRY* – addendum, No. 9/1959. The Republic of Serbia accepted the Convention on 12 March 2001.
[51] *Official Gazette of RS – International Treaties*, No 8/11.
[52] *Official Gazette of RS*, No. 97/2008.

The **Law on Citizenship of the Republic of Serbia**[53] regulates who can acquire its citizenship and under what conditions. Thus, Article 6 prescribes that citizenship is acquired by:

- Descent;
- Birth in the territory of the Republic of Serbia;
- Admission; and
- Pursuant to international treaties

Citizenship of the Republic of Serbia is acquired based on entry of the fact of citizenship into the birth register. In terms of admission, citizenship is acquired based on a final decision passed by the Ministry of Interior following the conducted procedure.

Also important is the moment of termination of citizenship, and thus Article 27 of the Law envisages the following reasons for termination of citizenship:

- Release;
- Renunciation;
- Acquisition of citizenship of another state; and
- Pursuant to international treaties

A foreigner who is granted permanent residence in the Republic of Serbia may, at his request, be admitted to citizenship of the Republic of Serbia, provided that:

- He has reached 18 years of age and has not been deprived of legal capacity;
- He is released from foreign citizenship or has submitted evidence that he will be granted release if admitted to citizenship of the Republic of Serbia, unless the application is submitted by a stateless person or a person who provides evidence that he will, under the law of his country of citizenship, automatically lose citizenship through admittance into the citizenship of the Republic of Serbia;[54]
- Before submitting the application, he had had registered permanent residence in the territory of the Republic of Serbia for at least three years in continuity; and
- He submits a written statement that he considers the Republic of Serbia his own state.

If a person is born in the territory of the Republic of Serbia, such person may be granted citizenship if he had resided in the territory of the Republic of Serbia for at least two years in continuity prior to submitting the application, and if he submits a written statement that he considers the Republic of Serbia his own state (Article 16).

Permanent and temporary residences are defined under the **Law on Permanent and Temporary Residence**[55] (Article 3). Thus, **permanent residence** implies "a place in the Republic of Serbia where a citizen settled with the intention of living in it permanently, namely a location of the centre of his life activities, economic, social and other ties that prove his permanent bond with the place in which he has settled", whereas

[53] *Official Gazette of RS*, Nos. 135/04 and 90/07.

[54] If the foreign state does not allow release from citizenship or sets the conditions for release that the foreigner cannon fulfill, this condition will not be required if the applicant submits a statement that he renounces the foreign citizenship in case of acquiring the citizenship of the Republic of Serbia. Renouncement or termination of former citizenship will not be required if that is not possible or if it may not reasonably be expected.

[55] *Official Gazette of RS*, No. 87/11.

temporary residence is a "place in the Republic of Serbia where a citizen temporarily resides outside his place of permanent residence for more than 90 days".

A foreigner who has been married to a national of the Republic of Serbia for at least three years and who was granted permanent residence in the Republic of Serbia may be admitted to citizenship of the Republic of Serbia if he submits a written statement that he considers the Republic of Serbia his own state (Article 17).

An emigrant, namely a person who emigrated from the Republic of Serbia with the intention of permanently living abroad, and his descendant may be admitted to citizenship of the Republic of Serbia if they have reached eighteen years of age and have not been deprived of legal capacity, and if they submit a written declaration that they consider the Republic of Serbia their own state (Article 18).

The majority of laws apply to all persons, including foreigners, unless the law excludes its application to foreigners. However, there are also laws that apply solely to foreigners. The most important law in this group is the already mentioned Law on Foreigners, which regulates the conditions for entry, movement and stay of foreigners in the Republic of Serbia. However, there are also laws that are related to a specific area of social life, as is the case with the Law on the Conditions for Establishing a Labour Relation with Foreign Citizens.

1.1. Entry, movement and stay of foreigners

The conditions for entry, movement and stay of foreigners in the Republic of Serbia and the competence and activities of public administration authorities relating to these issues are regulated under the **Law on Foreigners** and under by-laws adopted based on that law.[56]

1.1.1. Entry of foreigners into the Republic of Serbia

The provisions of the Law on Foreigners provide that a foreigner may enter into

[56] These include: the Regulation on more detailed conditions for rejection of the foreigner's entry into the Republic of Serbia (*Official Gazette of RS*, No. 75/09); Rulebook on the method of keeping registers and contents of registers maintained by the Ministry of Interior under the Law on Foreigners (*Official Gazette of RS*, No. 59/09); Rulebook on the elaborated conditions and the procedure for issuing visa at the border crossing point (*Official Gazette of RS*, No. 59/09); Rulebook on the layout, content and the procedure of entering the permission for temporary residence into a foreign travel document (*Official Gazette of RS*, No. 59/09); Rulebook on elaborated conditions, the form of the application and the procedure for extension of the visa validity term (*Official Gazette of RS*, No. 59/09); Rulebook on the layout and content of a foreigner's travel certificate (*Official Gazette of RS*, No. 59/09); Rulebook on the method of entering cancellation of stay and prohibition of entry in the foreign travel document (Official Gazette of RS, No. 59/09); Rulebook on the method of registration of temporary residence, permanent residence, change of address and termination of foreigner's permanent residence (*Official Gazette of RS*, No. 59/09); Rulebook on the fulfilment of the conditions for granting temporary residence to a foreigner for family reunification (*Official Gazette of RS*, No. 59/09); Rulebook on the fulfilment of health insurance related conditions for granting temporary residence to foreigners (*Official Gazette of RS*, No. 59/09); Rulebook on the fulfillment of the conditions for granting temporary residence to foreigners on educational basis, for studying or attending specialized study programmes, scientific-research work, practical training, participation in international pupil or student exchange programmes, or other scientific-educational activities (*Official Gazette of RS*, No. 59/09); Rulebook on more detailed conditions for granting permanent residence and the appearance, content and manner of adoption of a decision for entering the permanent residence permit in a foreign travel document and identification card, and the form for the renunciation of the right to permanent residence (*Official Gazette of RS*, No. 59/09); Rulebook on the form, content and method of issuing the foreigner identity card (*Official Gazette of RS*, No. 66/09); Rulebook on the manner of entering the mandatory residence into the travel document and the layout of a temporary identity card (*Official Gazette of RS*, No. 66/09) and the Rulebook on visas (*Official Gazette of RS*, No. 27/10).

and stay in the Republic of Serbia, under the conditions stipulated by this Law, using a valid travel document containing a visa or a residence permit, unless otherwise stipulated by law or international treaty. When entering the territory of the Republic of Serbia, foreigners are required to undergo border control which is performed in accordance with the **Law on State Border Protection**.[57] A foreigner's stay or movement in a particular area in Serbia shall be restricted or prohibited when that is required by reasons of protection of public order or national security and its citizens. The law also allows entry into and exit from the territory of the Republic of Serbia based on a collective travel document and defines what is considered unlawful entry into the Republic of Serbia.

A foreigner may be denied entry into the Republic of Serbia, among other, for the following reasons:

- If the foreigner does not have a valid travel document, or a visa if required;
- If the foreigner does not have sufficient means of subsistence;[58]
- If the foreigner does not have a certificate of vaccination or other proof of good health, when arriving from areas affected by epidemics of infectious diseases;
- If the foreigner is registered as an international felon in the relevant records;
- If the foreigner does not meet the conditions for entering a third country if he is in transit through Serbia.

An international treaty or a Government decision may establish that nationals of particular countries may enter the Republic of Serbia without a visa,[59] and that nationals of particular countries may enter based on a valid identity card or other document suitable for verifying their identity and citizenship.[60] This category of foreigners is allowed to stay for up to ninety days, within the period of six months from the date of the first entry.

The Law on Foreigners envisages four types of visas:

1. **Airport transit visa** (type A visa);
2. **Transit visa** (type B visa);
3. **Short stay visa** (type C visa); and
4. **Temporary residence visa** (type D visa).

A visa is obtained prior to entry into the Republic of Serbia and is, as a rule, issued by a diplomatic or consular mission of the Republic of Serbia. Exceptionally, when there are serious humanitarian reasons or it is in the interest of the Republic of Serbia, the border police may, with the consent of the Ministry of the Interior, issue a transit visa (type B) for a single transit or a short stay visa (type C) for a single entry with a term of validity of up to fifteen days, if the foreigner did not have the opportunity to apply for a visa via a diplomatic or consular mission of the Republic of Serbia and provided that he

[57] *Official Gazette of RS*, No. 97/2008.

[58] The Regulation on more detailed conditions for rejection of the foreigner's entry into the Republic of Serbia has specified that the required amount is EUR 50 per one day of stay.

[59] See, for example, the Law on Ratification of the Agreement between the Government of the Republic of Serbia and the Cabinet of Ministers of Ukraine on Cancellation of Visas for Ukrainian nationals (*Official Gazette of RS – International Treaties*, No. 8/11).

[60] See, for example, the Law on Ratification of the Agreement between the Government of the Republic of Serbia and the Government of the Republic of Macedonia on Conditions of Mutual Travel of Citizens (*Official Gazette of RS – International Treaties*, No. 11/11).

presents adequate evidence of the urgency of the trip for which he needs the visa, in accordance with the Rulebook on the elaborated conditions and the procedure for issuing visa at the border crossing point.

The Rulebook on the elaborated conditions and the procedure for issuing visa at the border crossing point provides that a visa application is, as a rule, submitted personally to the diplomatic-consular mission in the state of which the foreigner is a national, or in which he has permanent residence or a regulated temporary residence. The Rulebook also defines situations in which personal submission is not mandatory, namely in case of issuance of a collective visa; in case of persons with special needs; if there are no diplomatic or consular missions of the Republic of Serbia in the state from which the visa applicant comes and his personal attendance would result in large financial expenses, etc. The diplomatic-consular mission shall communicate the electronic visa application form to the Ministry of Foreign Affairs for further processing, for obtaining relevant consent of the Ministry of Interior and for entering the data into the records of issued visas, or the records of denied visa applications. After the consent of the Ministry of Interior is obtained, visas are issued by diplomatic-consular missions.

In exceptional cases, applications for issuance of visas type A, B or C can be decided upon by the head of the diplomatic and consular mission (e.g. visas issued to bearers of diplomatic or official passports, members of foreign state-economic delegations, for serious humanitarian reasons, etc.), in which case the decision is to be notified to the Ministry of Foreign Affairs, which shall record the data in its records of issued visas, i.e. denied visa applications, and notify the Ministry of Interior thereof.[61]

A transit visa (type B) is issued for a single or for multiple transits through the territory of the Republic of Serbia, with the term of validity of up to six months and a maximum stay of up to five days during one transit. It is issued if the foreigner has a visa for the state of destination, or the state through which he is transiting, unless the foreigner's obligation to have that visa is abolished by an international treaty.

A short stay visa (type C) is issued for the purpose of tourism, business and other travel and may be issued for one or more entries. The duration of an uninterrupted stay or the total duration of successive visits may not exceed ninety days within the period of six months from the date of the first entry.

A temporary residence visa (type D) is the permission for entry and temporary residence of foreigners in the Republic of Serbia. This type of visa is issued for the purposes, under the conditions and with the term of validity stipulated by the Law on Foreigners with respect to the permission for temporary residence. If a foreigner intends to stay in the Republic of Serbia for more than ninety days, he shall be required to obtain a temporary residence visa or to obtain approval for temporary residence from the competent authority during his stay in the Republic of Serbia.

A visa's validity is generally not extendable, except for humanitarian, professional or personal reasons, or due to force majeure, in line with the provisions of the **Rulebook on elaborated conditions, the form of the application and the procedure for extension of the visa validity term**. The application is submitted by a foreigner, to the organizational unit of the Ministry of Interior responsible for foreign affairs, according to the place of foreigner's temporary residence. The application has to be submitted before the expiry of the visa's validity, and the validity may be extended for a maximum period of ninety days.

The Law on Foreigners defines the notion of unlawful stay of a foreigner as **stay in the territory of the Republic of Serbia without a visa, temporary residence permit or other legal grounds**. A foreigner unlawfully residing in the Republic of Serbia is obliged to leave its territory immediately or within the time limit determined by the

[61] Visas issued this way are filled out by hand and issued without a photograph of the bearer of the foreign travel document. Records of issued visas and denied visa applications are kept in electronic form with the Ministry of Foreign Affairs, in the form of a database.

decision of the competent authority, provided that this time limit may not exceed thirty days from the date of adoption of the decision.

1.1.2. Stay of Foreigners

The Law on Foreigners provides for three types of stay of foreigners – stay up to ninety days, temporary residence and permanent residence.

1.1.2.1. Temporary residence

Temporary residence may be granted to a foreigner who intends to stay in the Republic Serbia longer than ninety days for the purposes of work, education, family reunification or other justifiable reasons, in accordance with the law or international treaty. A foreigner who is granted temporary residence is required to reside in the Republic of Serbia in accordance with the purpose for which his residence was approved.

A foreigner already residing in the Republic of Serbia on other grounds may apply for temporary residence. If the foreigner wishes to extend his temporary residence, he shall be obliged to submit an application for extension not later than thirty days before the expiry of the temporary residence. The application shall be accompanied by proof that he has sufficient means of subsistence, proof that he has health insurance and proof that his reasons for temporary residence are justified and in accordance with the purpose of temporary residence.

Pursuant to the **Rulebook on the fulfilment of health insurance related conditions for granting temporary residence to foreigners**, this proof is considered to include an international health insurance policy; a form or other document issued in accordance with concluded bilateral social security agreements, which is adequate for determining the insured person status; a voluntary health insurance policy issued in the Republic of Serbia or a health insurance certificate issued in the Republic of Serbia in line with applicable regulations in the field of health insurance. If such proof is not submitted, the foreigner is required to prove that he has sufficient funds to cover medical expenses that may arise in the Republic of Serbia while his application is pending, and during the period of temporary residence. Temporary residence may be granted for a period of up to one year and may be extended for the same period.

Temporary residence may be granted for the purposes of schooling, studying or specialization, research work, practical training, participation in international pupil or student exchange programmes, or other scientific and educational activities. A foreigner applying for temporary residence on these grounds is obliged, in accordance with the **Rulebook on the fulfillment of the conditions for granting temporary residence to foreigners on educational basis, for studying or attending specialized study programmes, scientific-research work, practical training, participation in international pupil or student exchange programmes, or other scientific-educational activities**, to submit proof of fulfillment of conditions for granting temporary residence. This type of temporary residence may be extended for a maximum of two years upon the expiry of the time period prescribed for attending the school, university, advanced education or practical training.

A foreigner's stay may be terminated upon the expiry of the period for which it was granted, by cancellation of stay or if a protective measure of removal or a security measure of expulsion is imposed against the foreigner. A granted stay of up to ninety days and granted temporary residence may be cancelled if some of the obstacles that are the grounds for denying a foreigner's entry into Republic of Serbia occur (Article 11 of the Law on Foreigners), or if the existence of the obstacle is subsequently discovered. When his stay is cancelled, the foreigner shall be given a deadline not longer than thirty days for

leaving the country, and the time period during which the foreigner shall be prohibited from entering the Republic of Serbia shall be determined. The cancellation of stay and the prohibition of entry shall be entered into the foreign travel document in line with the provisions of the **Rulebook on the method of entering cancellation of stay and prohibition of entry in the foreign travel document**.

1.1.2.2. Permanent residence of foreigners

The Law on Foreigners also defines the conditions for granting permanent residence to a foreigner. Permanent residence may be granted to a foreigner:

1. Who had, before applying for permanent residence, resided uninterruptedly in the Republic of Serbia for more than five years based on a temporary residence permit;
2. Who has been married to a national of the Republic of Serbia or a foreigner with permanent residence, for at least three years;
3. Who is a minor temporarily residing in the Republic of Serbia, if one of his or her parents is a national of the Republic of Serbia or a foreigner with permanent residence, subject to the consent of the other parent; and
4. Who has ancestral links to the territory of the Republic of Serbia.

As an exception, permanent residence also may be granted to other foreigners who have temporary residence permits, if required by humanitarian reasons or if this is in the interest of the Republic of Serbia. A foreigner who is granted permanent residence is made equal in terms of rights and obligations with nationals of the Republic of Serbia, except in respect of the rights and obligations from which he is exempt pursuant to the Constitution and law.

The Rulebook on more detailed conditions for granting permanent residence and the appearance, content and manner of adoption of a decision for entering permanent residence permit in a foreign travel document and identification card and the form for the renunciation of the right to permanent residence defines more detailed conditions for granting permanent residence and documents that are submitted as proof along with the application for permanent residence. The application is to be submitted in person, to the organizational unit of the Ministry of Interior responsible for foreign affairs, according to the foreigner's place of residence.

Applications for permanent residence are decided upon by the Ministry of Interior, and appeals against decisions denying the application are decided upon by the Government. **The Law on Foreigners** defines the reasons for denying an application for permanent residence. Apart from failure to meet the prescribed requirements, an application may be denied to a foreigner who has been convicted for a criminal offense prosecuted *ex officio* or if proceedings for such offence have been instituted, to a foreigner who has no means of subsistence, health insurance, place of residence, or for reasons of safeguarding public order or security of the Republic of Serbia and its citizens.

A foreigner who is granted permanent residence is required to register his place of permanent residence and to register the change of address in the place of permanent residence within eight days from the date of arrival in the place of permanent residence, or from the date of changing the address. Temporary residence, in terms of the Law on Foreigners, is a place where a foreigner who was granted temporary residence in the Republic of Serbia intends to stay for more than 24 hours, while permanent residence is the place where a foreigner who was granted permanent residence intends to live permanently at a specific address. The method of registration of temporary residence, permanent residence and change of address and termination of foreigner's permanent

residence are more closely regulated by the **Rulebook on the method of registration of temporary residence, permanent residence, change of address and termination of foreigner's permanent residence**. It is envisaged that foreigners may register their place of residence by e-mail. A foreigner is obliged to register the termination of his permanent residence prior to the date of leaving the place of permanent residence.[62]

The **Law on Foreigners** defines the reasons for which the stay can be cancelled to a foreigner who was granted permanent residence in the Republic of Serbia. Among other, the stay shall be canceled if the foreigner has no means of subsistence, health insurance or a place of residence, if the foreigner is sentenced by a final decision to unconditional imprisonment of more than six months for a criminal offence prosecuted *ex officio* or if he provided false information about his identity. When stay is cancelled, the foreigner shall be given a deadline not longer than thirty days for leaving the country and the time period during which the foreigner shall be prohibited from entering the Republic of Serbia shall be determined. Exceptionally, for humanitarian reasons, the time period in which the foreigner is to leave the Republic of Serbia may be extended for up to six months. The cancellation of stay and the prohibition of entry shall be entered into the foreign travel document in line with the provisions of the **Rulebook on the method of entering cancellation of stay and prohibition of entry in the foreign travel document**.

The right to permanent residence shall be terminated if:

- ascertained that the foreigner has moved out of the Republic of Serbia or that he resided abroad in continuity for longer than one year and has failed to notify the competent authority accordingly;
- the foreigner's stay has been canceled; and
- the foreigner has renounced the right to permanent residence.

1.2. Detention and removal of a foreigner

The **Law on Foreigners** also allows detention of foreigners. In exceptional circumstances, if required for reasons of securing forced removal, a foreigner may be detained in the premises of the competent authority, but not longer than 24 hours. Detention of foreigners is subject to provisions of the **Law on Police**.

A foreigner may be detained in the Detention Centre for Foreigners or a measure of compulsory stay in a particular place may be imposed against him.

The Law on Foreigners recognizes the category of a **Detention Centre for Foreigners**, to which foreigners are referred if it is not possible to forcibly remove them and foreigners whose identity has not been ascertained or who do not possess a travel document. The Detention Centre for Foreigners is located within the Border Police Department and is within the competence of the Section for Reception and Accommodation of Foreigners, as a separate unit of the Foreigners Division. Foreigners stay in the Detention Centre under increased police surveillance. The stay in the Detention Centre lasts until the forced removal of the foreigner and may not exceed ninety days. A foreigner's stay in the Detention Centre may be extended if:

- the foreigner's identity has not been ascertained;
- the foreigner intentionally obstructs forced removal; or

[62] The Law on Foreigners envisages an obligation of natural and legal persons providing services to foreigners for a fee, as well as persons hosting foreign visitors, to notify competent authorities of the foreigner's stay within 24 hours.

– the foreigner has filed an asylum application in the course of the forced removal procedure in order to avoid forced removal

Total duration of stay in the Detention Centre may not exceed 180 days.

In order to ensure the enforcement of the protection measure of forced removal, foreigner's travel and other documents and travel tickets may be temporarily seized, on which a receipt shall be issued. However, in accordance with international standards, the Law prescribes that a foreigner may not be forcibly removed to a territory where he would be under threat of persecution on the grounds of his race, sex, religion, nationality, citizenship, membership of a particular social group or his political views. A foreigner may not be forcibly removed to a territory in which he would be under threat of torture, inhuman or degrading treatment or punishment.

A foreigner may not leave the Detention Centre without approval and is obliged to observe the house rules and the rules of stay in the Detention Centre. The Guidelines on House Rules and Rules of Stay in the Detention Centre for Foreigners, signed by the Minister of Interior on 14 October 2009, is a strictly confidential act. The law provides that an underage foreigner shall be placed in the Detention Centre together with a parent or other legal representative, unless the competent authority estimates that another type of accommodation is more suitable to the minor. **An underage foreigner may not be returned to the country of origin or to a third country willing to receive him or her, until appropriate reception has been ensured.** The Law on Foreigners also defines the ways in which accommodation in the Detention Centre shall be terminated.

If the foreigner's identity is known and if the foreigner has accommodation and means of subsistence and cannot be forcibly removed immediately, the competent authority may adopt a decision to impose the **measure of mandatory residence in a particular place** against the foreigner. A foreigner subject to mandatory residence is obliged to remain at a particular address and to regularly report to the nearest competent authority, and he may temporarily leave the place of mandatory residence only on condition that he is allowed to do so by decision of the competent authority. Duration of mandatory residence may not exceed 180 days. Mandatory residence is entered into the foreigner's travel documents, in line with the **Rulebook on the way of entering the mandatory residence into the travel document and layout of temporary identity card**. A foreigner who does not possess a travel document shall be issued a temporary identification card. The Law on Foreigners also defines the ways in which mandatory residence shall be terminated.

The Constitution of the Republic of Serbia, Article 39, paragraph 3, prescribes when a person can be forcibly removed, namely "under a decision of the competent authority, in a procedure stipulated by law, if the right to appeal has been ensured and only when there is no threat of persecution based on his race, sex, religion, nationality, citizenship, association with a social group, political opinion, or where there is no threat of serious violation of rights guaranteed under this Constitution" (Article 39, paragraph 3). These conditions are prescribed by Article 47 of the **Law on Foreigners**, except for the last condition which under the Constitution and international standards has to be fulfilled. This prohibition shall not apply to a foreigner who might reasonably be considered a threat to security of Serbia or who was convicted of a serious criminal offence by a final decision, because of which he represents a threat to public order. Expulsion of a foreigner from the country is one of the security measures envisaged by Article 79 paragraph 1 item 8 of the Criminal Code (CC), which may be imposed if a punishment or suspended sentence is pronounced against the offender (Article 80, paragraph 5 of the CC). Nevertheless, regardless of this provision, it was already mentioned that not even in this case may a foreigner be forcibly removed to a territory in which he would be under threat of torture, inhuman or degrading treatment or

punishment.

In the course of the forced removal procedure, the competent authority shall be mindful of the specific situation of a foreign national who falls into the category of persons with special needs, such as minors, children separated from parents or guardians, persons with disabilities, etc. (Article 58 of the Law on Foreigners). It is important to note that the competent authority is obliged to treat these persons in accordance with the regulations regulating the status of persons with special needs and with international treaties.

2. MIGRANT WORKERS

The term migrant worker implies individuals looking for a job or working in a place that is more or less remote from their place of residence. These may be foreign or a domestic citizens. In other words, the most important category of foreigners are foreigners residing in the territory of the Republic of Serbia for work, employment, or performing economic or other professional activity. In addition to migrant workers coming to the Republic of Serbia for performing certain economic activity, there are also citizens of the Republic of Serbia going to other countries for the same reason.

At the international level, it took a long time before the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** was finally adopted in 1990. Under Article 2 of the Convention the general definition of a migrant worker, as well as definitions of special categories of these workers were provided. According to the Convention, the term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. The Convention, *inter alia*, defines the term of "frontier worker"[63] and "seasonal worker"[64]. Under Article 4, the term "members of the family" is defined. Those are persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned. Migrant workers and members of their families are entitled not to be subjected to discrimination regarding their fundamental rights. However, they enjoy several specific rights - the right to be fully and timely informed of all conditions and requirements applicable to their admission; to be temporarily absent in accordance with their needs and without effect upon their authorization to stay or to work; the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there; the right to participate in public affairs of the state of origin; the right to access to educational institutions and services, access to vocational guidance and placement services, access to vocational training and retraining facilities and institutions, access to housing, access to social and health services; access to and participation in cultural life; protection against dismissal; unemployment benefits; social and state protection of their family; the right to exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity; the right to transfer their earnings and savings, in particular those funds necessary for the support of their families from the state of employment to their state of origin or any other state. The Republic of Serbia signed the Convention on 11 November 2004, but has not ratified it yet, which means that it is not bound by its provisions. However, owing to the importance of this Convention and the increasing inflow of migrant workers, the Convention should

[63] Migrant worker who keeps his permanent residence in the neighboring country into which he returns on a daily basis or at least once a week.

[64] Migrant worker, whose work in its character depends on seasonal circumstances and which is not performed throughout the whole year.

be ratified as soon as possible.

On the other hand, the Republic of Serbia is bound by the provisions of two Conventions adopted under the auspices of the specialized agency of ILO (International Labour Organization) and dealing with the status of migrant workers. The **ILO Migration for Employment Convention (No. 97)**[65] binds all states to make available information on national policies, laws and regulations relating to emigration and immigration, information on special provisions concerning migration for employment and the conditions of work and livelihood of migrants for employment as well as the information concerning general agreements and special arrangements on these issues concluded by the state party. The state is obliged to provide the existence of adequate and free service to help migrant workers and provide access to medical services. The state is especially obliged to enable migrant workers the treatment no less favourable than that which it applies to its own nationals in respect of a number of economic and social rights. **ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143)**[66] binds all State Parties to this Convention to respect the basic human rights of all migrant workers under Article 1. Each State Party to this Convention is obliged to systematically seek to determine whether there are any illegally employed migrant workers in its territory and whether there are any movements of migrants for the purpose of employment that depart from, pass through or arrive in its territory, in which the migrants are subjected to conditions contravening relevant international or national laws or regulations. State parties are obliged to suppress clandestine movements of migrants for employment and illegal employment of migrants, as well as to undertake measures against the organizers of illicit or clandestine movements of migrants for employment.

At the regional level, the **European Convention on the Legal Status of Migrant Workers** was adopted in 1977 by the Council of Europe. The Convention focuses on the legal status of migrant workers primarily dealing with employment, medical examinations, vocational tests, travel, residence and work permits, family reunions, working conditions, transfers of savings and social security, social and medical assistance, expiry of employment contracts, dismissal and re-employment. In accordance with the Convention, the Consultative Committee was formed with the aim of examining the reports of States Parties on the application of the Convention and then reporting on it to the Committee of Ministers of the Council of Europe. Until 1 February 2012 the Convention was ratified by only 11 states, therefore a large number of Member States of the Council of Europe are not bound by the provisions of the Convention, including the Republic of Serbia.

In accordance with the **Law on Foreigners of the Republic of Serbia**, temporary residence for **work, employment, performance of economic or other professional activities** may be permitted. Temporary residence may be permitted to a foreigner who has been granted the right to work, or if the permission for temporary residence is a precondition for the exercise of that right, in accordance with the regulations defining the work of foreign citizens in the Republic of Serbia, or to a foreigner intending to stay in the Republic of Serbia in the period longer than 90 days, if he fulfills other conditions defined by the Law on Foreign Citizens, and does not require a work permit in terms of regulations defining employment of foreign citizens in the Republic of Serbia. Under the **Law on the Conditions for Establishing a Labour Relation with Foreign Citizens**[67]**,**

[6565] *Official Journal of SFRY – International treaties and Other agreements*, No. 5/68. The Republic of Serbia ratified the Convention on 24 November 2000.

[66] *Official Journal of SFRY – International treaties and Other Agreements*, No. 12/80. The Republic of Serbia ratified the Convention on 24 November 2000.

[67] *Official Journal of SFRY*, No. 11/78 and 64/89, *Official Journal of FRY*, No. 42/92, 24/94, 28/96, and *Official Journal of RS*, 101/05.

foreign citizens without work permits can be employed if they have temporary or permanent residence and if they are being employed for reasons of professional work as determined by a contract on business-technical co-operation, long-term productive cooperation, transfer of technology and foreign investment. In that case temporary residence is permitted until the expiry of the term of approved employment contract in the Republic of Serbia.

According to the available data, 2,534 work permits were issued in the Republic of Serbia in 2010 to foreigners who have temporary residence in the Republic of Serbia, as well as 42 work permits to foreigners with permanent residence. Most of the work permits were issued to citizens of the People's Republic of China, Macedonia, the Russian Federation and Bosnia and Herzegovina[68].

2.1. Migrant workers' right to work under applicable regulations

Employment of foreign citizens is regulated by the **Law on the Conditions for Establishing a Labour Relation with Foreign Citizens**[69] in the Republic of Serbia. According to the said law, foreign citizens and stateless persons may establish a labour relation if fulfilling general and special conditions.

General conditions are defined under the **Labour Law**[70]**.** According to these conditions, employment relationship may be established with a person above the age of 15. General conditions also imply the conditions stipulated by the collective agreement and general document referring to a specific job post. Under this Law, general prohibition of discrimination is proclaimed in all respects, especially with regard to employment conditions and selection of candidates for a certain job, working conditions and all rights resulting from the labour relationship, education, training and advanced training, promotion at work and termination of the employment contract.

Special conditions imply the following conditions:

1. A foreign citizen may establish an employment relationship if he has permission for permanent residence, i.e. temporary residence (the permission is not required if the employment relationship is established for reasons of professional work as determined by a contract on business-technical co-operation, long-term productive cooperation, transfer of technology and foreign investment); and

2. If he gets a work permit.

A foreigner's labour relation shall terminate upon:

1. The expiry of the permission for temporary residence; or
2. Cancellation of temporary residence; or
3. Annulment of the residence permit.

[68] Vesna Lapcic, From top managers to hidden seasonal workers, Econom East Media Group, 8 October 2011.

[69] The Instruction for the submission of the request for the issuance and granting permission for the establishment of labour relations with foreign citizens was adopted- *Official Journal of SFRY*, No. 51/81 and *Official Journal of Serbia and Montenegro*, No. 1/2003 – Constitutional Charter) and the Rulebook on Conditions and Manner of Issuing Work Permits to Foreign Citizens or Stateless Persons (*Official Journal of RS*, No. 22/2010).

[70] *Official Gazette of RS*, No. 24/05, 61/05 and 54/09.

Employment relationship may be extended to a foreign citizen if his temporary residence is extended and if he is granted a new permission for the establishment of a labour relation.

The Rulebook on Conditions and Manner of Issuing Work Permits to Foreign Citizens or Stateless Persons[71] adopted in 2010 defines the conditions and the manner of issuing work permits to foreign citizens or stateless persons in detail, as well as the role of the National Employment Service in that procedure. In accordance with the said Rulebook, the National Employment Service, in accordance with the law, issues a work permit to foreigners who have been granted permanent residence or temporary residence permits issued by the Ministry of Interior. The foreign citizen who is granted permanent residence submits an application for the issuance of the work permit himself to the branch of the National Employment Service according to the place of residence. He is issued the work permit for the period for which permanent residence is granted. If the foreigner has been granted temporary residence, the application is submitted by the employer, along with an explanation on the need to employ a foreigner. In that case, the work permit is issued for the period for which the foreign citizen has been granted temporary residence.

The branch of the National Employment Service may deny the application for the issuance of work permit to a foreign citizen who has been granted temporary or permanent residence in the Republic of Serbia, if there are unemployed citizens of the Republic of Serbia fulfilling conditions for the performance of the activities stated in the application for the issuance of the work permit of the foreign citizen. If those citizens are not interested in the job, the branch may issue the said work permit to the foreign citizen.[72]

A foreign citizen who is granted temporary or permanent residence does not need permission for the establishment of the employment relationship in situations when the employment relationship is established for reasons of professional work as determined by the contract on business-technical co-operation, long-term productive cooperation, transfer of technology and foreign investment. Likewise, this permission is not required with regard to occasional and temporary jobs not lasting longer than 120 work days in the calendar year.

The National Employment Service keeps special records on work permits issued to foreign citizens who were granted permanent or temporary residence based on the **Rulebook on immediate data content and method of keeping the records in the field of employment**[73] adopted in 2010.

Activities related to employment are regulated by the **Law on Employment and Insurance in Case of Unemployment**[74]. In accordance with the said Law, all forms of discrimination are prohibited during employment and impartiality is proclaimed in the conduct of employment activities both with regard to citizens of the Republic of Serbia and to migrant workers. Under Article 85, a foreign citizen or stateless person may register as unemployed to the National Employment Service if he has a permanent or temporary residence permit and a valid work permit. If there is a record kept on a foreign citizen or stateless person in the registry of jobseekers of the National Employment Service, they have equal treatment with the nationals with regard to the rights and possibility for employment. They are also included in the programmes and active employment policy measures conducted by the National Employment Service. They are also entitled to obtaining information on employment opportunities, vocational guidance, career counseling, participation in programmes related to further education and training,

[71] *Official Gazette of RS*, No. 22/10.
[72] See Article 5 of the the Rulebook on Conditions and Manner of Issuing Work Permits to Foreign Citizens or Stateless Persons ("Official Journal of RS", No. 22/2010).
[73] *Official Gazette of RS*, No. 15/10.
[74] *Official Gazette of RS*, No. 15/10.

financial support during employment, i.e. they may avail themselves of the right to employment subsidies and support to self-employment[75].

If a foreign citizen has been insured in case of unemployment in the territory of the Republic of Serbia, and has been introduced into the Registry of the National Employment Service, he shall exercise the right to financial compensation in the manner and under the same terms as the citizens of the Republic of Serbia. A foreign citizen who registers as unemployed with the National Employment Service is entitled to participation in the additional educational and vocational training programmes.

2.2. The new Law on Employment of Foreigners

Bearing in mind that the Law on Employment of Foreigners was adopted in 1978, a new wording of the **Law on Employment of Foreigners** has been drafted and is currently pending adoption by the National Assembly of the Republic of Serbia. Under Article 4 of the said Draft Law, a foreigner employed in the Republic of Serbia has the same rights and obligations in terms of work, employment and self-employment that citizens of the Republic of Serbia have in accordance with the Law.

According to the Draft Law, nationals of Member States of the European Economic Area and Swiss Confederation have free access to the labour market as well as the members of their families who are not nationals of these states but have permission for temporary or permanent residence with regard to members of their families in those states[76]. They must have provided housing, health insurance and subsistence funds guaranteeing that they will not become beneficiaries of social assistance. That right shall not be terminated:

- If the employment is terminated during temporary incapacity for work owing to an illness or accident at work;
- If an individual gets dismissed without his own guilt, whereas the job lasted at least a year in the Republic of Serbia and the individual has been registered with the National Employment Service; and
- If he participates in educational and training programmes.

If an employment which lasted less than a year was terminated, or if an individual was dismissed from a permanent job during the first twelve months of stay without his own guilt, whereas an individual was registered in both cases with the National Employment Service, he will be entitled to free access to the labour market within six months starting with the date of the termination of employment (Article 7).

According to the Draft Law, employment of foreigners is carried out provided that the foreigner has either a temporary or a permanent residence permit, as well as the work permit in accordance with the Law. The previous condition is not required if the individual has registered temporary residence.

A work permit is issued for:

1. Employment;
2. Special cases of employment; and

[75] See National Action Plan for Employment for 2010 *Official Gazette of RS*, No. 7/10); National Action Plan for Employment for 2011 (Official Gazette of RS, No. 55/10); National Action Plan for Employment for 2012 (*Official Gazette of RS*, No. 79/11).

[76] "Family members" are spouses or cohabitants, direct descendants younger than 21 or adopted children or stepchildren younger than 21, children older than 21 not capable of supporting themselves, and direct ancestors an individual is obliged to support.

3. Self-employment.

A work permit for employment is issued at the request of an employer, in accordance with the situation on the labour market if the employer:

- Has not adopted the programme related to the resolving of the redundancy of his employees six months prior to the submission of the request for the issuance of the work permit;
- Has not found the citizens of the Republic of Serbia, individuals having free access to the labour market or individuals with a personal work permit, having adequate qualifications, in the registry of the National Employment Service three months prior to the submission of the request for the issuance of the work permit; and
- Encloses a proposal of the employment contract (Article 14).

The employer covers the expenses related to the issuance of the work permit. The employer is also obliged to report the foreigner so as to obtain compulsory social insurance, as well as to notify the National Employment Service that the foreigner has not commenced working within 15 days starting with the date of the issuance of the permit.

A work permit for special cases of employment is issued for the following:

- Performing seasonal jobs in the field of agriculture, forestry, civil engineering and other activities characterized by temporary significant increase in the workload;
- Vocational training, specialization, obtaining qualifications or training;
- Expatriate workers;
- Movements within the company registered abroad;
- Independent professionals;
- Pupils and students under 26 years of age; and
- Daily migrant workers (Article 16).

Under Articles 17-24 the conditions for the issuance of the work permit with regard to all of these situations have been defined.

Work permit for self-employment is regulated under Article 25. It is issued at the request of a foreigner who has a temporary residence permit in the Republic of Serbia lasting as long as the temporary residence, that is one year at the longest, with the possibility of extension if the foreigner proves that he continues the performance of the same job under the conditions related to the issuance of the permit. The foreigner is obliged to commence business activities within ninety days starting with the date of the issuance of the permit.

Under Article 26 of the Draft Law, the Government may decide to limit the number of foreigners to whom work permits are issued in case of disturbances on the labour market and in accordance with the migration policy and movements on the labour market. In that situation, the quota is defined by the Government, at the proposal of the Ministry of Labour, having previously acquired the opinion of the Social and Economic Council[77] and the organization responsible for employment.

[77] Established in accordance with the Law on Social and Economic Council, *Official Gazette of RS*, No. 125/04.

2.3. Other rights of migrant workers and members of their families

Foreigners working in the territory of the Republic of Serbia enjoy the same rights as the citizens of the Republic of Serbia, except for the rights exclusively acknowledged solely to the citizens of the Republic of Serbia. Owing to their importance, rights to health care and social security are especially emphasized.

According to the **Law on Health Insurance**[78], compulsory health insurance is organized according to the principle of reciprocity and solidarity. It includes insurance covering diseases and injuries not related to work and insurance covering work-related injuries or professional diseases. Compulsory health insurance is provided through the obligation of paying contributions imposed on the employees and employer as well as all other contribution payers in accordance with the Law, which is as a precondition for the exercise of rights from compulsory health insurance. Insured persons are considered to be both the insured and members of the insured persons' family. They are foreign citizens employed in the territory of the Republic of Serbia with foreign legal entities or private persons, unless otherwise provided by international agreement, and with international organizations and institutions and foreign diplomatic and consular offices, if such insurance is envisaged by an international treaty. Under Article 29 of the Law on Health Insurance foreign citizens with whose countries an international agreement on social insurance has been concluded, exercise the right deriving out of compulsory health insurance in the same manner and to the same extent as the citizens of the Republic of Serbia until they have residence in its territory, unless otherwise stipulated by an international social security agreement. In addition, the principle of equal treatment is present in all social security agreements concluded by the Republic of Serbia.

Health care of foreigners is regulated under Articles 238-242 of the **Law on Health Care**[79] according to which foreigners having permanent or temporary residence in the territory of the Republic of Serbia are entitled to health care in accordance with the Law, unless otherwise provided by bilateral social security agreements concluded by the Republic of Serbia. Nationals of countries which this agreement was not signed with are provided with emergency health care. Under Article 240 of the Law on Health Care, health institutions and private practice, as well as health workers are required to administer emergency medical care to foreigners, where foreigners cover the expenses for provided emergency medical care, as well as for the other types of health services provided to them at their request. Likewise, insured persons who are not covered by compulsory insurance may be included in compulsory health insurance in order to provide health care for themselves and members of their immediate family. In that case, these individuals pay contributions from their own resources. Under Article 2 of the **Rulebook on the procedure for inclusion in compulsory health insurance of persons who are not compulsory insured**[80]**,** a person who is included in compulsory health insurance shall acquire the status of the insured person on the date of applying for compulsory insurance to the branch of the Republic Fund of Health Insurance in the territory of his permanent or temporary residence.

Under the new **Law on Social Welfare of the Republic of Serbia**[81], beneficiaries of social welfare are citizens of the Republic of Serbia. However, beneficiaries may also be foreigners and stateless persons, in accordance with the Law and international treaties. The law envisages a large number of social welfare services, including the right to financial social assistance and right to professional rehabilitation. The procedure related to the usage of services defined by the Law is implemented by the centre for social work, *ex officio* and at the request of the beneficiary. The local jurisdiction of the centre is

[78] *Official Gazette of RS*, Nos. 107/05 and 109/05 – corrigendum and 57/11.
[79] *Official Gazette of RS*, No. 107/05, 72/09 – other law and 88/10, 99/10.
[80] *Official Gazette of RS*, Nos. 24/06, 68/06 – other regulation, 95/07 and 23/09.
[81] *Official Gazette of RS*, No. 24/2011.

determined according to the beneficiary's place of permanent residence. In exceptional circumstances the procedure may be conducted by the centre for social work in whose territory the beneficiary has temporary residence.

Under the **Law on Pension and Disability Insurance**[82], employees are both foreign nationals and persons without citizenship who are employed in the territory of the Republic of Serbia by foreign legal entities and natural persons, unless international agreements specify otherwise, and by foreign and international organizations and institutions, foreign diplomatic and consular missions, provided that international agreements provide for such insurance. If there is a ratified international social security agreement, and if it comprises pension and disability insurance rights, that agreement will be applied to citizens of the countries which the agreement was concluded with in terms of exercise of pension and disability insurance rights.

Migrant workers performing professional activity in the territory of the Republic of Serbia may bring members of their immediate family with them. Their stay is regulated under Article 32 of the **Law on Foreigners**. Temporary residence of a foreigner who is a family member may be granted to last up to one year. The extension of the temporary residence may be granted up to the period of one more year, unless otherwise provided by law or international treaty. Family members are granted temporary residence for the same period it is granted to the family member who is the holder of their stay (that is, who performs professional activity in the Republic of Serbia). Proof of justifiability of the request for the approval of temporary residence is the proof of kinship, as evidenced by birth and marriage certificates, certificate from the Embassy, etc. If family members want to work, they are required to obtain working permits. However, in most of the situations, family members are migrant workers' children continuing their education in the Republic of Serbia. Owing to this, the right to education is emphasized as a particularly important area of social life enabling further education and development for migrant workers' children.

The right to education is regulated in Serbia by the **Law on the Basis of the Education System**[83], whereas certain levels of education have been regulated by the **Law on Preschool Education**[84], **Law on Primary Education**[85], **Law on Secondary Education**[86] **and Law on Higher Education**[87]. These laws regulate the issues related to the education of foreign citizens and stateless persons in the Republic of Serbia, as well as the procedure for recognition of foreign documents.

According to the Law on the Basis of the Education System, foreign citizens are enrolled into preschool institutions, primary and secondary schools and are entitled to education under the same conditions and in the same manner as prescribed by the law applicable to the citizens of the Republic of Serbia.

The school is obliged to organize, for children and students foreign citizens who are not familiar with the language in which instruction is delivered or certain programme content of significance to the continuation of education, language learning classes, preparation for instruction or additional instruction classes, according to special instructions prescribed by the minister.

While in the Republic of Serbia, a child or a student who is a citizen of a

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[82] *Official Gazette of RS*, Nos. 34/2003, 64/2004 – decision of CCRS, 84/2004 – other law, 85/2005, 101/2005 – other law, 63/2006 – decision of CCRS, 5/2009, 107/2009 and 101/2010.
[83] *Official Gazette of RS*, No. 72/2009, 52/11.
[84] *Official Gazette of RS*, No. 18/10.
[85] *Official Gazette of RS*, Nos. 50/92, 53/93, 67/93, 48/94, 66/94 – Decision of CCRS, 22/2002, 62/2003 – other law, 64/2003 – corrigendum of other law, 101/2005 – other law and 72/2009 – other law. New text is in the form of draft in the parliamentary procedure.
[86] *Official Gazette of RS*, Nos. 50/92, 53/93, 67/93, 48/94, 24/96, 23/2002, 25/2002 – corrigendum 62/2003 – other law, 64/2003 – corrigendum of other law, 101/2005 – other law and 72/2009 – other law. New text is in the form of draft in the parliamentary procedure.
[87] *Official Gazette of RS*, Nos. 76/2005, 100/2007 – authentic interpretation, 97/2008 and 44/2010.

European country is entitled to attend lessons of his language and culture, either free-of-charge based on the reciprocity condition or with his parents paying for the tuition, in the premises of the school designated by the local self government unit authority.

The **Law on Preschool Education** aims to increase the coverage of children in preschool education, which is considered most significant for the socialization of children and their preparation for attending primary school. Preschool education is available to everyone irrespective of the gender, ethnicity, social, cultural, religious or other background, place of residence, financial status or health condition, developmental disabilities and invalidity (Article 4). According to the Law, part of the preschool programme or the whole programme may be conducted in the foreign language. Under Article 13, it is strictly defined that during the enrollment of children into a preschool institution whose founder is the Republic of Serbia, autonomous province or the local self-government unit, children from vulnerable groups are prioritized. Children of various groups of migrants definitely belong to this group.

Under the **Law on the Basis of the Education System,** the institution of pedagogue assistant has been introduced for the first time, as support to children with special needs within the development of the inclusive education system. A pedagogue assistant provides assistance and additional support to children and students in keeping with their needs, but also to teachers, preschool teachers and psychologists/pedagogues for the purpose of improving their work with these children; establishes cooperation with parents or guardians, while at the same time cooperating with the managing director so as to establish cooperation with competent institutions, organizations, associations and the local self-government unit. Children in need of, *inter alia*, additional help and support are: children coming from very poor and deprived environments, children coming from marginalized groups, children who are not fluent in the language of instruction, and children whose life has been disturbed by painful and tragic circumstances.

The **Law on Primary Education** and the **Law on Secondary Education** regulate the procedure related to the recognition of school documents acquired abroad in primary education and the procedure related to the recognition of foreign school documents acquired in secondary school. These two procedures are almost identical. Foreign citizens and stateless persons are entitled to request validation or the recognition of equivalence of foreign school documents by the Ministry of Education, if they have legal interest in that respect. By the means of the validation procedure, the foreign school document is fully equalized with the corresponding domestic school document with regard to the rights pertaining to its holder related to the continuation of education and the right to employment. An individual who has submitted the request for validation, i.e. recognition of the equivalence of a foreign school document, may enroll conditionally into the next grade if the procedure has not been finalized prior to the termination of the deadline defined for the enrollment of students into the following grade.

The **Law on Higher Education** regulates the procedure related to the recognition of a foreign document of higher education and the evaluation of foreign study programmes. Recognition of a foreign document of higher education is a procedure on the basis of which the right of the holder of that document to continue education and/or to seek employment is established, namely:

1. In the recognition procedure for the purpose of continuing education within the higher education system, the right of the holder of a foreign document of higher education to continue commenced higher education, i.e. the right to be admitted to the levels of higher education is established; and
2. In the procedure for recognition for the purpose of employment, type and the level of studies of the holder of a foreign document of higher education, as well as his professional, academic and/or scientific title are established.

3. ASYLUM SEEKERS

The **Universal Declaration of Human Rights** is the first international instrument acknowledging the right to asylum and envisaging that "everyone has the right to seek and to enjoy in other countries asylum from persecution" (Article 14). As one can conclude from the formulation of this Article, the right to asylum means that an individual is entitled to seek protection, but not the entitlement to obtain the said protection. A large number of resolutions and declarations relating to asylum have been adopted so far both by the UN and the Council of Europe. However, an international convention that would regulate this issue in the form of compulsory international agreement has not been adopted to date. Nevertheless, even though the 1951 **Convention relating to the Status of Refugees** that is binding upon the Republic of Serbia[88], does not expressly envisage the right to asylum; it assumes that the states would protect an individual who is persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

The Law on Asylum of the Republic of Serbia was adopted in 2007 (its implementation commenced on 1 April 2008)[89]. It prescribes the principles, conditions and procedure for the granting and cessation of asylum, as well as the status, rights and obligations of asylum seekers and persons granted the right to asylum in the Republic of Serbia.

An **asylum** is defined as the right to residence and protection accorded to a foreigner to whom, on the basis of a decision of the competent authority deciding on his application for asylum in the Republic of Serbia, refuge or another form of protection provided for by this Law was granted.

A **refuge** is defined as the right to residence and protection granted to a refugee in the territory of the Republic of Serbia with respect to whom the competent body has determined that his fear of persecution in the state of origin is well-founded.

A **refugee** is a person who, on account of well-founded fear of persecution for reasons of race, sex, language, religion, nationality, membership of a particular social group or political opinions, is not in his country of origin, and is unable or unwilling, owing to such fear, to avail himself of the protection of that country, as well as a stateless person who is outside the country of his previous habitual residence, and who is unable or unwilling, owing to such fear, to return to that country (the term of refugee has been defined differently under the Law on Refugees).

Subsidiary protection is defined as a form of protection that the Republic of Serbia grants to a foreigner who would be subjected, if returned to the country of origin, to torture, inhumane or degrading treatment, or where his life, safety or freedom would be

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[88] *Official Journal of FPRY – International Treaties*, No. 7/60. The Republic of Serbia accepted the Convention on 12 March 2001.

[89] By-laws accompanying the Law are as follows: Rulebook on the House Rules of the Asylum Centre (*Official Gazette of RS*, No. 31/2008); Regulation on the Conditions of Accommodation and Provision of Basic Living Conditions in the Asylum Centre (*Official Gazette of RS*, No. 31/2008); Rulebook on the Manner of Keeping and the Contents of the Records on the Persons Accommodated at the Asylum Centre (*Official Gazette of RS*, No. 31/2008); Rulebook on Social Benefits provided to Asylum Seekers or Persons granted Asylum (*Official Gazette of RS*,No. 44/2008 and 78/2011); Rulebook on Content and Layout of the Asylum Application Forms and Documents that may be Issued to Asylum Seekers and Persons Granted Asylum or Temporary Protection (*Official Gazette of RS*, No. 53/2008); Rulebook on Medical Examination of the Asylum Seekers upon the Admission to the Asylum Centre (*Official Gazette of RS*, No. 93/2008); Decision on the Establishment of the Asylum Centre (*Official Gazette of RS*, No. 112/2008) owing to which the Asylum Centre in Banja Koviljaca was established; Decision on Determining the List of Safe Countries of Origin and Safe Third Countries (*Official Gazette of RS*, 67/2009); Decision on the Establishment of the Asylum Centre (*Official Gazette of RS*, 34/2011) owing to which the Asylum Centre in Bogovadja was established.

threatened by generalized violence caused by external aggression or internal armed conflicts or massive violation of human rights. If the foreigner is not eligible for being granted the right to refuge in the Republic of Serbia, the competent authorities shall consider *ex officio* whether the conditions for granting subsidiary protection exist.

3.1. Procedure for granting asylum

Under the **Law on Asylum**, with respect to asylum applications and the cessation of the right to asylum, the competent organizational unit of the Ministry of Interior- the Asylum Office conducts the procedure and takes all decisions **in the first instance**. Owing to the fact that the Asylum Office still has not been established, all duties within its competence are performed by the Asylum Department within the Division for Foreigners belonging to the Border Police Directorate. For the sake of clarity, the term "Asylum Department" will be used hereinafter instead of the term "Asylum Office" used under the Law on Asylum.

The Asylum Commission is comprised of the Chairman and eight members appointed by the Government for a four-year term. It decides **in the second instance** on complaints lodged against the decisions taken by the Asylum Department. A person may be appointed the Chairman or a member of the Asylum Commission if he is the citizen of the Republic of Serbia, has a university degree in law and a minimum of five years of working experience as a practicing lawyer, and is familiar with regulations in the field of human rights[90]. The Asylum Commission is independent in its work and passes decisions by a majority vote of the overall number of its members. The Ministry of Interior performs administrative tasks for the Asylum Commission.

An appeal against first-instance decisions issued in the asylum procedure is lodged within fifteen days of the date of receipt of the first-instance decision. Pending the adoption of the final decision on asylum applications, asylum seekers are provided with accommodation and basic living conditions at the **Asylum Centre** which is part of the Commissariat for Refugees. The Government has so far established two asylum centres through its decisions:

1. The Asylum centre in Banja Koviljaca was established on 15 December 2008; and
2. The Asylum centre in Bogovadja was established on 23 May 2011.

The possibility of establishing one more Asylum Centre is currently being taken into consideration.

Pending adoption of the final decision on asylum applications, asylum seekers are provided with accommodation and basic living conditions at the Asylum Centre. Funds for the work of Asylum Centres are provided in the budget of the Republic of Serbia.

The Commissioner for Refugees has adopted the **House Rules of the Asylum Centre**[91], defining the code of conduct of asylum seekers who are placed in the Asylum Centre in accordance with the Law on Asylum, as well as other issues significant for unhindered functioning of the Centre. The **Regulation on the Conditions of Accommodation and Provision of Basic Living Conditions in the Asylum Centre**[92] has been adopted. According to the Regulation, an asylum seeker may be accommodated in the Centre if he:

1. Was previously recorded or registered and referred to the Asylum Centre by the Ministry of Interior;

[90] The Chairman and the members of the Asylum Commission have been appointed by Government Decision 24 No. 119-1643/2008 of 17April 2008.
[91] *Official Gazette of RS*, No. 31/2008.

2. If the medical examination has been performed in accordance with the regulation passed by the Minister of Health; and
3. If the accommodation capacity of the Centre allows it.

Information on the fulfilment of vacancies in the Asylum Centre is submitted to the Asylum Department. If there is no available accommodation, the Centre is not obligated to accept and accommodate the referred individual. Individuals in need of other person's assistance and care, mentally ill individuals or individuals in need of regular kidney dialysis, as well as other persons in need of health care of an appropriate institution, which may not be provided by the Centre, may not be placed in the Centre.

The procedure for granting asylum is implemented in several phases:

1. A foreigner may, verbally or in writing, express his **intention** to seek asylum to an authorized police officer of the Ministry of Interior, during a border check in the course of entering the Republic of Serbia, or inside its territory.
2. An authorized officer of the Ministry of Interior, to whom the foreigner has expressed an intention to seek asylum, will make a **record** of it and direct the foreigner into the Asylum Department, i.e. the Asylum Centre. The entry into records includes the issuance of a prescribed certificate containing the personal data that the foreigner has provided about himself or that can be established on the basis of the identification papers and documents available on his person. The certificate serves as proof that the foreigner in question has expressed an intention to seek asylum and that he has the residence right for 72 hours. A foreigner is under an obligation to report within 72 hours to an authorized officer of the Asylum Department, i.e., the Asylum Centre. If the authorized officer of the Ministry of Interior suspects that one of the reasons for the restriction of movement applies to the case in hand, he will escort the foreigner to the Asylum Department or the Asylum Centre. The authorized police officer is entitled to search the foreigner and his personal belongings for the purpose of finding identification papers and documents required for the issuance of the certificate. All identification papers and documents which have been found are recorded in the certificate.[93]
3. The authorized officer of the Asylum Department shall **register** a foreigner and his family members[94]. The registration includes:

1) Establishing identity;
2) Taking a photograph;
3) Taking fingerprints, and
4) Temporary seizure of all identification papers and documents which can be of relevance in the asylum procedure, of which a certificate is issued to a foreigner.

A foreigner who possesses a passport, identity card or some other identification document, a residence permit, a visa, a birth certificate, a travel ticket and/or another document or some official communication of relevance to the asylum procedure, is obliged to submit them upon registration or when filing an asylum application, but prior to his interview at the latest. The form of the asylum

[92] *Official Gazette of RS*, No. 31/2008.
[93] The manner of keeping records of the asylum seekers should be defined in more detail by the Regulation issued by the Minister. The said by-law is currently in the phase of development.
[94] The manner of performing registration of asylum seekers should be defined in more detail by the regulation issued by the minister. However, the said by-law also has not been adopted so far.

application is printed in Serbian Cyrillic alphabet and in English. The content of the form of the asylum application is translated orally into the language the asylum seeker understands.[95] The form of the asylum application is completed in the language in which it is printed. If the asylum seeker does not understand the language, he can complete it in the language he understands; the foreigner who deliberately inhibits, avoids or does not consent to registration is not allowed to submit an asylum application.

4. **The procedure for granting asylum** is initiated by submitting an asylum application to an authorized officer of the Asylum Department on a prescribed form, within 15 days of the day of registration, and in justified cases, the Asylum Department may extend this time limit at the request of a foreigner. A foreigner will lose the right to reside in the Republic of Serbia if he unjustifiably fails to abide by the defined time limit. Before the submission of the asylum application, the foreigner shall be informed of his rights and obligations.
5. The authorized officer of the Asylum Department shall **interview an asylum seeker** in person as soon as possible. An asylum seeker may be interviewed more than once. An audio recording of an interview may be provided after the asylum seeker in question is informed of this. A legal representative of an asylum seeker and a UNHCR representative may be present at an interview, provided that the asylum seeker does not object to that. An authorized officer of the Asylum Office endeavours during the interview to establish all the facts of relevance to making a decision on an asylum application, and in particular:

1) The identity of the asylum seeker in question;
2) The grounds on which his asylum application is based;
3) The asylum seeker's movement after leaving his country of origin, and
4) Whether the asylum seeker has previously sought asylum in any other country.

An asylum seeker is obliged to fully cooperate with the Asylum Department and to accurately present all the facts of relevance to decision-making.

After conducting the procedure, the Asylum Department shall **pass a first-instance decision**. The Department may determine that an asylum seeker fulfills legal conditions and then adopt the application recognizing the right to refuge or extending subsidiary protection to a foreigner. The Department may also conclude that the application was unjustified and take decision on refusing an asylum application and ordering the foreigner to leave the territory of the Republic of Serbia within the set time limit, unless he has some other grounds for residence. The reasons for denying the status have to be justified.

3.2. Rejecting asylum applications

The Asylum Department shall **reject** an asylum application without examining the eligibility of an asylum seeker for the recognition of asylum if established:

1) That the asylum seeker could have received effective protection in another part of the country of origin, unless he cannot be reasonably expected to do so in view of all the circumstances;
2) That the asylum seeker enjoys the protection of, or receives assistance from, an agency or a body of the United Nations Organization, other than UNHCR, or has been granted asylum in some other country;

[95] Rulebook on Content and Layout of the Asylum Application Forms and Documents that may be Issued to Asylum Seekers and Persons Granted Asylum or Temporary Protection (*Official Gazette of RS*, No. 53/2008) defines the content and the layout of the asylum application.

3) That the asylum seeker has citizenship of a third country;
4) That the asylum seeker can receive protection from a safe country of origin, unless he can prove that it is not safe for him;
5) That an asylum application, which the asylum seeker has submitted in another country that complies with the Geneva Convention was previously denied, and the circumstances upon which the application was based have not changed in the meantime, or if he has already filed an asylum application in another country that complies with the Geneva Convention;
6) That the asylum seeker has come from a safe third country, unless he can prove that it is not safe for him;
7) That the asylum seeker has deliberately destroyed a travel document, an identification paper or some other written official communication, which could have been of relevance to the decision on asylum, unless he can state valid reasons for that.

Before issuing a decision on rejecting an asylum application, the Asylum Department will question the asylum seeker with respect to all the circumstances which exclude the reasons for rejecting an asylum application.

3.3. Refusing asylum applications

The Asylum Department shall **refuse** an asylum application if established that the person who has filed the application does not meet the requirements prescribed for granting the right to refuge or subsidiary protection, and in particular:

1) If the asylum application is based on untruthful reasons, fraudulent data, forged identification papers or documents, unless the applicant can provide valid reasons for that;
2) If the statements given in the asylum application regarding facts of relevance to the decision on asylum contradict the statements made in an interview with the asylum seeker in question or other evidence gathered in the course of the procedure (if, contrary to the statements given in the application, it has been established in the course of the procedure that the asylum application was submitted for the purpose of postponing deportation, that the asylum seeker has come for purely economic reasons and the like); or
3) If the asylum seeker refuses to make a statement regarding the reasons for seeking asylum or if his statement is unclear or does not contain information indicating persecution.

A foreigner whose asylum application was previously refused in the Republic of Serbia may file a new application if he provides evidence that the circumstances relevant for the recognition of the right to refuge or for granting subsidiary protection have substantially changed in the meantime. If he fails to do so, the application will be rejected.

3.4. Suspension of proceedings *ex officio*

The procedure for granting asylum shall be **suspended** *ex officio* by the Asylum Department if the asylum seeker:

1) Withdraws his asylum application;
2) Despite having received a duly served summons, fails to appear for an interview or declines to make a statement, without providing a valid reason for doing so;

3) Without a valid reason, fails to notify the Asylum Office of a change of address at which he resides within three days of the said change, or if he prevents the service of a summons or another written official communication in some other way;
4) Leaves the Republic of Serbia without the approval of the Asylum Department.

In its decision to suspend the procedure, the Asylum Department will set a time limit within which a foreigner who has no other grounds for residing in the Republic of Serbia must leave its territory, and if he fails to do so, he will be forcibly removed, in accordance with the law governing the stay of foreigners.

3.5. Denying the right to asylum

The Asylum Department **will deny** the right to asylum to a person with respect to whom there are serious reasons to believe that:

1. The said person has committed a crime against peace, a war crime, or a crime against humanity, according to the provisions of international conventions adopted with a view to preventing such crimes;
2. The said person has committed a serious non-political crime outside the Republic of Serbia prior to entering its territory;
3. The said person is responsible for acts contrary to the purposes and principles of the United Nations.

The right to asylum will not be recognized to a person who enjoys protection or assistance from some of the institutions or agencies of the United Nations, other than UNHCR.

The right to asylum will not be recognized to a person to whom the competent authorities of the Republic of Serbia recognize the same rights and obligations as to the citizens of the Republic of Serbia.

3.6. Rights of asylum seekers

An asylum seeker enjoys several rights guaranteed by the Law on Asylum and other relevant laws. Those are the following rights:

- An asylum seeker will not be punished for unlawful entry or stay in the Republic of Serbia, provided that he submits an application for asylum without delay and offers a reasonable explanation for his unlawful entry or stay;
- The competent authorities will take all the available measures for the purpose of maintaining family unity during the asylum procedure and after the granting of the right to asylum. Persons granted asylum will be entitled to family reunion. If the asylum seeker requests, the right to refuge will be granted to his family members who are outside the territory of the Republic of Serbia. A person who has been granted subsidiary protection will have the right to family reunion in accordance with the regulations governing the movement and stay of foreigners;
- A foreigner who has expressed his intention to seek asylum in the Republic of Serbia is entitled to be informed about his rights and obligations in the course of the entire asylum procedure;
- An asylum seeker is entitled to free legal aid and representation by UNHCR and NGOs whose objectives and activities are aimed at providing legal aid to refugees;
- An asylum seeker who does not understand the official language of the procedure will

be provided with free services for the purpose of translation into the language of the country of origin or a language he can communicate in. An asylum seeker may engage an interpreter of his own choice and at his expense;
- An asylum seeker is entitled to contact authorized UNHCR staff at any stage of the asylum procedure;
- Any written official communication in the procedure is delivered to an asylum seeker or his legal representative in person. A written official communication is considered delivered when either of the above-mentioned persons has received it;
- It is ensured that an asylum seeker is interviewed by a person of the same sex or provided with a translator or an interpreter of the same sex, unless it is not possible or is associated with disproportionate difficulties for the body conducting the asylum procedure;

- Care will be taken in the asylum procedure of the specific situation of persons with special needs who seek asylum, such as minors, or persons completely or partially deprived of legal capacity, children separated from parents or guardians, persons with disabilities, elderly people, pregnant women, single parents with minor children and persons who were subjected to torture, rape or other serious forms of psychological, physical or sexual violence;
- A guardian is appointed by the guardianship authority before the submission of an asylum application, in conformity with the law, for an unaccompanied minor or a person without legal capacity who does not have a legal representative. The guardian shall be present in the course of an interview with an unaccompanied minor or a person without legal capacity;
- Any foreigner who has filed an asylum application is entitled to a verbal and direct interview, carried out by an authorized officer of the competent organizational unit of the Ministry of Interior, regarding all the facts relevant to the recognition of the right to refuge or to the granting of subsidiary protection;
- The data on the asylum seeker obtained in the course of the asylum procedure constitute an official secret;
- Upon admission to the Asylum Centre, all asylum seekers shall undergo a medical examination in accordance with a regulation passed by the Minister in charge of public health;
- At the Asylum Centre, in addition to accommodation, the basic living conditions are provided to asylum seekers: clothes, food, financial assistance and other conditions, in conformity with special regulations and the principles of the asylum procedure;
- If an asylum seeker possesses his own financial assets or if they have been provided to him in some other manner, he shall be obliged to co-finance the costs of accommodation at the Asylum Centre, and at his request, if there are no reasons for restriction of movement, the Asylum Office will allow him to reside outside the Asylum Centre;
- An asylum seeker and a person who has been granted asylum in the Republic of Serbia have equal rights to health care, in accordance with the regulations governing health care for foreigners. In accordance with Article 241 of the Law on Health Care the expenses of health care services provided to foreigners having been granted an asylum in Serbia will be covered by the budget of the RS if they are financially insecure;
- An asylum seeker and a person who has been granted asylum have the right to free primary and secondary education and the right to welfare benefits, in accordance with a special regulation. Detailed conditions under which the right to welfare benefits is realized are defined by the **Regulation on Welfare Benefits for Asylum Seekers and Persons Granted Asylum,** which was amended in October 2011. According to the Regulation**,** monthly financial benefits may be received by an asylum seeker or his family members, provided that they are not accommodated in the Asylum Centre and that this person and his family members have no income or that this income is below the limit set

by this Regulation[96]. A request for exercising the right to monthly financial benefit is decided on by the social work centre in the municipality of residence of the asylum seeker or person granted asylum;
- Persons whose right to refuge in the Republic of Serbia has been recognized have rights equal to those of the citizens of the Republic of Serbia with respect to intellectual property protection rights, free access to courts of law, legal aid, exemption from the payment of court fees and other fees payable to state organs, and the right to freedom of religion;
- Persons whose right to refuge in the Republic of Serbia has been recognized have rights equal to those of permanently residing foreigners with respect to the right to work and rights arising from employment, entrepreneurship, the right to permanent residence and freedom of movement, the right to movable and immovable property, and the right of association;
- To persons whose right to refuge or subsidiary protection has been recognized, accommodation shall be provided commensurately with the capacities of the Republic of Serbia, but not for longer than one year from the final decision on status recognition. Accommodation implies the provision of a certain habitable space for use, or of financial assistance necessary for housing. The Republic of Serbia, commensurately with its capacities, creates conditions for the inclusion of refugees in its social, cultural and economic life, and enables the naturalization of refugees.

After residing in the Republic of Serbia for three years from the date of the recognition of the right to refuge, a refugee is exempt from possible reciprocity measures in respect of the rights due to him according to the law.

At the request of a person over 18 years of age who has been granted the right to refuge in the Republic of Serbia, the Asylum Department issues a travel document on a prescribed form, valid for a period of 2 years, in accordance with the law. In exceptional cases of humanitarian nature, the travel document is issued to persons enjoying subsidiary protection who do not possess a national travel document, with a validity period of up to 1 year.

3.7. Obligations of asylum seekers

In addition to the rights he enjoys, an asylum seeker has to fulfill certain obligations in order to enjoy the above mentioned rights. An asylum seeker is obliged:

- To adhere to the measures for restriction of movement, when it is necessary for the purpose of establishing identity, ensuring the presence of a foreigner in the course of the asylum procedure, if there are reasonable grounds to believe that an asylum application was filed with a view to avoiding deportation, or if it is not possible to establish other essential facts on which the asylum application is based without the presence of the foreigner in question, protecting national security and public order. Restriction of movement lasts for as long as the stated reasons apply, but not for longer than three months. Restriction of movement may be extended for another three months in exceptional circumstances in cases when it has been established for reasons of protecting national security and public order. Restriction of movement is implemented by ordering accommodation at the Reception Centre for Foreigners under intensified police

[96] The amount of the benefits for October 2011 was determined based on the difference between the basis of social assistance for the said month, determined in accordance with the law regulating protection and the amount of the average monthly income of the asylum seeker, that is the person granted asylum and the members of his family realized during the three months preceding the month when the application was submitted.

surveillance and imposing a ban on leaving the Asylum Centre, a particular address and/or a designated area;[97]
- To inform the Asylum Department in writing of any change of address within three days of such a change of address;
- To abide by the House Rules, if he is accommodated at the Asylum Centre;
- To respond to summons and cooperate with the Asylum Office and other competent authorities at all the stages of the asylum procedure;
- To hand over to an authorized officer his identification papers, travel document and other documents, which can be of relevance for his identification;
- To cooperate with authorized staff during his registration and medical examination;
- To stay on the territory of the Republic of Serbia pending the completion of the procedure for granting asylum.
- To leave the Asylum Centre after the final decision on asylum application has been taken.

3.8. The institute of temporary protection

The Law on Asylum also recognizes the institute of temporary protection. The decision on the provision of temporary protection is taken by the Government, when it is not possible to carry out an individual procedure for granting the right to asylum due to the massive inflow of people. Individual decisions on granting temporary protection are taken by the Asylum Department. Temporary protection is an extraordinary measure and may last for up to one year. If the reasons for providing temporary protection continue to apply, it may be extended. Competent authorities may, in justifiable cases, allow family reunion and also grant temporary protection to family members of a person enjoying temporary protection in the Republic of Serbia. Temporary protection ceases upon the expiry of the period for which it was granted, or when the reasons for which it was granted have ceased to exist, which is decided by the Government.

A foreigner who has been granted temporary protection has the right:

1) To residence during the period of the validity of temporary protection;
2) To a personal document confirming his status and residence right;
3) To health care, in accordance with the regulations governing health care for foreigners;
4) To free primary and secondary education in public schools, in accordance with a special regulation;
5) To legal aid, under the conditions prescribed for asylum seekers;
6) To freedom of religion, under the same conditions that apply to the citizens of the Republic of Serbia;
7) To accommodation, in accordance with a special regulation;
8) To affordable accommodation, in the case of persons with disabilities.

A foreigner who has been granted temporary protection is equal in terms of obligations with persons whose right to refuge has been recognized.

[97] Complaint lodged against the decision on the limitation of movement does not delay execution.

3.9 Cessation of the right to refuge

Termination of the asylum may take place on the following grounds:

1. Owing to reasons leading to the termination of the decision on granting the asylum; and
2. Owing to reasons leading to the annulment of the decision on granting the asylum.

The right to refuge shall cease when the Asylum Department **cancels** the decision on granting asylum *ex officio* for the following reasons:

1. If a person has voluntarily re-availed himself of the protection of his country of origin;
2. If, having lost his citizenship, a person has voluntarily re-acquired it;
3. If a person has acquired a new citizenship, and thus enjoys the protection of the country of his new citizenship;
4. If a person has voluntarily returned to the country he left or outside which he has remained owing to fear of persecution or ill-treatment; or
5. If a person can no longer, because the circumstances that led to his being granted protection have ceased to exist, continue to refuse to avail himself of the protection of his country of origin.

The Asylum Department shall *ex officio* **revoke** the decision on granting asylum for the following reasons:

1. When a decision on granting asylum was taken on the basis of falsely presented facts or of concealment of facts by an asylum seeker and that, due to the above reason, at the time of the submission of the asylum application he was not eligible for being granted of asylum, and
2. When reasons exist for which, on the basis of the law, he would have been denied the right to refuge, had these reasons been known at the time of submission of the asylum application.

The foreigner whose asylum application has been refused or rejected, or whose asylum procedure has been suspended, and who does not reside in the country on some other grounds, is obliged to leave the Republic of Serbia within the time limit specified in that decision. The time limit within which a foreigner is obliged to leave the Republic of Serbia cannot be longer than within 15 days of the receipt of the final decision.

If the foreigner fails to voluntarily leave the Republic of Serbia within the time limit specified, he will be forcibly expelled in accordance with the provisions of the law governing the movement and stay of foreigners.

4. REFUGEES

Immediately after World War II, the **Convention relating to the Status of Refugees**[98] was adopted, defining in Article 1/A/2 that the term refugee applies to any person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the

[98] *Official Journal of FPRY – International Treaties and Other Agreements*, No. 7/60. The Republic of Serbia accepted the Convention on 12 March 2001.

country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it". The Convention defines a number of obligations of the state in which the refugee resides. Under Article 33(1), it envisages that "no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." The implementation of this Article does not depend on the existence of residence permit of a refugee in the territory of certain state. Article 33(2) envisages that the benefit of the stated provision may not, however, be claimed by a refugee for whom there are reasonable grounds to be regarded as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country. The Convention aimed at resolving the problem of refugees that occurred during and after the World War II, therefore it is limited by space and time. However, owing to the fact that reality confuted the authors of the Convention, the **Protocol relating to the Status of Refugees**[99] was adopted in 1967 as a supplement to the Convention relating to the Status of Refugees, thus making it possible to be used for all the future situations.

Even though SFRY had ratified the Convention in 1959, the **Law on Refugees**[100] was adopted as late as in 1992. It is specific for defining narrowly the term of refugees and limiting them to persons coming from the territory of former SFRY. Article 1 of the Law of 1992 defines refugees as: "Serbs and citizens of other nationalities, who were forced, on account of the pressure from the Croatian authorities, or the authorities of other republics, a threat of genocide, as well as persecution and discrimination on the grounds of their religion and nationality or political opinion, to leave their places of residence in those republics and take refuge in the territory of the Republic of Serbia".

At the time when the Law was adopted, the aim was primarily to provide the legal framework for humanitarian care of persons who found refuge in the territory of the Republic of Serbia owing to war conflicts in the territory of former SFRY. As the time was passing by, it turned out that the refugee problem was not temporary. A large number of refugees decided to stay in Serbia. Therefore, it was necessary to amend the Law so as to create improved legal framework for the integration of persons who acquired the citizenship of the Republic of Serbia. The Law on Asylum was adopted in 2007 harmonizing the asylum institute with international obligations of the Republic of Serbia. Therefore, the provisions of the Law on Asylum are implemented with regard to the persons the Law on Refugees cannot be applied to. However, the existing **Law on Refugees** of 1992 **was amended** in May 2010[101].

Even though the definition of refugees was still narrowly defined in terms of the needs of the Law, it was broadened compared to the original text from 1992. According to the amended Law, the refugees are defined as:

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[99] *Official Journal of SFRY – International Treaties and Other Agreements*, No.15/67.

[100] *Official Gazette of RS*, No. 18/92, *Official Gazette of FRY*, No. 42/2002 – decision of the FCC and *Official Gazette of RS*, No. 30/2010. Several by-laws have been adopted in addition to this Law: Regulation on the Provision of Care to Refugees (*Official Gazette of RS*, No. 20/92, 70/93, 105/93, 8/94, 22/94, 34/95 and 36/04); Regulation on the Manner of Provision of Care to the Persecuted People (*Official Gazette of RS*, No. 47/95); Rulebook on Keeping Records of Refugees (*Official Gazette of RS*, No. 23/92); Rulebook on Refugee Identity Card (*Official Gazette of RS*, No. 23/92 and 139/2004); Rulebook on the Form of Refugee Identity Card (*Official Gazette of RS*, No. 23/92, 22/94 and 61/94), and Regulation on Detailed Conditions and Defining Priorities related to the Resolving of the Housing Needs of Refugees (*Official Gazette of RS*, No. 58/2011).

[101] According to the amendments of the Law the Government should adopt by-laws to define in detail conditions and criteria for reduction or termination of the right to provision of care (still in the phase of development) and conditions and criteria for defining priorities in resolving the housing needs of refugees (the Regulation has been adopted).

"Persons who owing to the events taking place in the period 1991-1998 and their consequences were persecuted from former Yugoslav republics, or took refuge in the territory of the Republic of Serbia, and are unable to return to the country of their former habitual residence owing to the fear from persecution or discrimination, inclusive of the persons who opted for integration."

The person who opted for integration implies the person who submitted the request for the citizenship of the Republic of Serbia. The new definition of the term "refugee" has thus included the persons who determined to integrate. In accordance with this, refugees are being assisted in the process of integration as well as in housing aiming at satisfying their basic life needs.

4.1. Recognition and cessation of the refugee status

Under the Law on Refugees the **Commissariat for Refugees** was established as an independent institution for carrying out professional and other tasks associated with the provision of care to refuges, return and integration of refugees. The Commissariat for Refugees takes decisions **in the first instance** related to the recognition and cessation of the refugee status, right to providing care to refugees, its reduction and termination. An appeal may be lodged against the decision of the Commissariat within fifteen days from the day of the receipt of the decision. The Ministry of Interior decides on the appeal lodged against the decision of the Commissariat on recognition and cessation of the status of refugees. The Government's Commission established in order to resolve the housing needs of refugees decides on the appeals lodged against the decisions on the right to provide care to refugees and decisions on reduction or termination of right to provide care to refugees.

On the basis of the decision on the recognition of refugee status the Ministry of Interior issues a refugee identity card, presenting a public document proving the identity of its holder, on the basis of which a refugee exercises the rights pertaining to him under the law. The refugee identity card contains the information prescribed by the regulations on the identity card. The regulations governing the identity card are also applied to the issuance, safekeeping and replacement of the refugee identity card[102]. The Ministry of Interior keeps records of issued refugee identity cards and changes of a refugee's habitual residence.

The procedure for the termination of the refugee status may be initiated *ex officio* or at the elaborated personal request of a refugee. The Commissariat *ex officio* takes decision on the termination of the refugee status:

1) if an individual has acquired the citizenship of the Republic of Serbia and initiated the procedure related to the registration of domicile;
2) if an individual has voluntarily returned to the country of his previous habitual residence which is a former SFRY republic;
3) if an individual moves to the third country; or
4) To beneficiaries of the programme of housing solutions in the integration process.

The Commissariat for Refugees shall submit the decision on the cessation of the refugee status to the Ministry of Interior, whereas the Ministry shall withdraw the refugee identity card of the person whose refugee status has ceased.

[102] The form of refugee identity card and the manner of keeping records on refugee identity cards, the change of the place of habitual residence of the refugee has been defined by the Rulebook on Refugee Identity Card, *Official Gazette of RS*, No. 23/92 and 139/2004.

4.2. Rights of refugees

In accordance with the Law, the provision of care to refugees includes organized reception, temporary accommodation, aid in food, material and other assistance, as well as rights to health care and social protection, employment and education. They have a duty to fulfill the labour obligation, on the same terms as citizens of the Republic of Serbia. Refugees exercise the stated rights according to their place of residence in the Republic of Serbia.

The **Regulation on the Provision of Care to Refugees**[103] defines in more detail these terms, as well as the role of the trustee for refugees at the local level in the refugee protection system. In accordance with regulations, temporary accommodation and aid in food to refugees may be provided by organizing **collective accommodation** (collective centres). If an individual cannot adapt to collective accommodation owing to his psychophysical condition (elderly persons and persons with disabilities, children, etc.), the Commissariat for Refugees provides to this person accommodation in **social welfare institutions**.

In accordance with regulations, refugees are occasionally provided in-kind assistance in the form of food, clothing, footwear, cosmetics, and in exceptional circumstances in the form of money and monetary coupons. The Law contains provisions according to which health care is guaranteed, as well as the housing of refugees.

In addition to regulations, two Strategies have been adopted so far defining strategic objectives for the improvement and the protection of the status of refugees in the Republic of Serbia. The first strategy was adopted in 2002. **The National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons for the period 2011-2014**[104] was adopted by the Government in March 2011, replacing the former Strategy.

The Strategy represents two parallel directions of action- return or reintegration of refugees, and refugees themselves choose what solution is adequate for them. In case of return, the state is obliged to improve necessary conditions for safe and dignified return of refugees into Bosnia and Herzegovina and Croatia, as well as the establishment of the institutional mechanisms for complete and efficient exercise of acquired rights in the states of origin. In case of reintegration, the state is obliged to create conditions for refugees having decided to live in Serbia thanks to which they can resolve on equal terms with all other citizens basic life problems and integrate into the local community. This primarily refers to the most vulnerable categories of refugees.

The Strategy also encompasses internally displaced persons, bearing in mind the similar status of these people, as well as the problems they face with regard to safe return and reintegration in the Republic of Serbia.

5. INTERNALLY DISPLACED PERSONS

Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, owing to some reasons, and who have not crossed an internationally recognized state border. Owing to the fact that those were citizens of one country, there was not an initiative for the adoption of the Convention that would regulate their status at an international level. It was considered that their status had already been defined well by the existing legal framework and that these persons enjoyed the same rights as the other citizens of a country. However, the burdensome situation of these people as well as the increase in their number in the last two decades, have resulted in the adoption of the first international document in this field.

[103] *Official Gazette of RS*, Nos. 20/92, 70/93, 105/93, 8/94, 22/94, 34/95 and 36/04.
[104] *Official Gazette of RS*, No. 17/11.

The Guiding Principles on Internal Displacement were published in 1999 by the special representative of the Secretary-General on Internally Displaced Persons. Therefore, it is not an international convention, but the document of the special representative of the UN. This is an indicator of the manner according to which the first capacious document dealing with the improvement of the status and the protection of internally displaced persons was adopted. These principles, based upon international humanitarian and human rights law, serve as a direction for the activities of the representative of the Secretary- General on internally displaced persons, as well as the functioning of the states, state bodies, groups of persons, NGOs and international humanitarian and developing organizations when providing assistance and protection to internally displaced persons.

The task of the document is to provide guidelines to Governments with regard to providing safety and welfare to internally displaced persons and the observance of their human rights, in accordance with well-established principles of international law. The document provides protection against arbitrary displacement, offers a basis for protection and assistance during displacement, and sets forth guarantees for safe return, resettlement and reintegration. Bearing in mind that it reflects already existing principles, it should be emphasized that it is obligatory for all the Member States of the international community, and thus for the Republic of Serbia as well.

This document defines internally displaced persons as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border."

5.1. General principles of displacement

The Guiding Principles on Internal Displacement establish several general principles of displacement that countries have to comply with.

The first and fundamental principle is the **principle of the equality of displaced persons** with all other persons in their country. It implies that internally displaced persons enjoy, in full equality, the same rights and freedoms under international and domestic law enjoyed by other persons in their country. However, these Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Secondly, **principles on internal displacement have to be** respected by all authorities, groups and persons irrespective of their legal status and inclusive of the right of persons to seek and enjoy asylum in other countries. These Principles cannot be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law.

Thirdly, national authorities have the primary duty and responsibility **to provide protection and humanitarian aid to internally displaced persons within their jurisdiction and not to persecute or punish people** for making request for humanitarian aid.

Finally, prohibition of discrimination of any kind has to be observed, such as discrimination on the basis of race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, characteristics, birth or any other similar criteria, as well as the principle of special protection, especially of children, pregnant women, mothers with small children, single mothers, persons with disabilities and elderly persons.

5.2. Principles relating to protection against displacement

Every state is obliged to do its best so as to prevent displacement of persons from their homes. All authorities and international actors are obliged to respect and ensure **respect for their obligations under international law so as to prevent and avoid conditions that might lead to displacement of persons**. Every human being has the **right to be protected against arbitrary displacement** from his or her home or place of habitual residence especially if it is caused by ethnic cleansing policy or similar practices aimed at alteration of the ethnic, religious or racial composition of the affected population; in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand; in cases of unjustified development projects; in cases of natural disasters, unless the safety and health of those affected requires their evacuation; and when it is used as a collective punishment.

Prior to any decision requiring the displacement of persons, the authorities concerned have to **ensure that all feasible alternatives are explored** in order to avoid displacement altogether. Where no alternatives exist, all **measures have to be taken to minimize displacement and its adverse effects** (have to provide accommodation, nutrition, health and hygiene, guarantee safety and that members of the same family are not separated). **The decision on displacement has to be taken by the state authority in accordance with the law**, in the situations when the displacement is not the result of an armed conflict or natural disaster, and the state authority has to:

- Provide all the information on the reasons and mechanisms of displacement;
- Ask for voluntary consent of a person;
- Endeavour to involve those affected, particularly women, in the planning and management of their relocation; and
- Guarantee the right to an effective legal remedy, including the review of such decisions by appropriate judicial authorities.

Displacement cannot be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected. States are under a particular obligation to **protect against the displacement indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands**.

5.3. Principles during displacement

Even though all principles are equally important, it is especially important to pay attention to and observe principles that apply during displacement of the population. Thus, **every human being has the inherent right to life**. Internally displaced persons are protected in particular against genocide, murder, summary or arbitrary executions, enforced disappearances, abduction or unacknowledged detention, other acts of violence, starvation, their use to shield military objectives from attack, attacks against their camps or settlements and the use of anti-personnel land mines.

Every human being has the right to dignity and physical, mental and moral integrity. Internally displaced persons are protected in particular against rape, mutilation, and other types of degrading treatment or punishment, outrages upon personal dignity (such as acts of gender-specific violence, forced prostitution), slavery or any contemporary form of slavery, and acts of violence intended to spread terror among internally displaced persons.

Every human being has the right to liberty and security of person. Internally displaced persons have to be protected from being confined to a camp, discriminatorily

arrested and detained, or being taken hostage.

In no circumstances may displaced children be recruited, required or permitted to take part in hostilities, whereas internally displaced adults have to be protected against discriminatory and forced practices of recruitment. Every internally displaced person has the **right to liberty of movement and freedom to choose his or her residence,** especially in and out of camps or other settlements.

Internally displaced persons have the right to **seek a safe refuge in another part of the country, the right to leave their country, the right to seek asylum in another country and the right to be protected against forcible return to or resettlement** in any place where their life, safety, liberty or health would be at risk.

All internally displaced persons **have the right to know the fate and whereabouts of their missing relatives**. The competent authorities are obliged to do their best so as to determine the facts on the fate and whereabouts of internally displaced persons reported missing, and inform the next of kin on the progress of the investigation and notify them of any result, as well as enable the return of mortal remains of those deceased to the family. Internally displaced persons should have the right of access to the grave sites of their deceased relatives. Grave sites of internally displaced persons should be protected and respected.

Every human being has the **right to respect of his or her family life**, i.e. the right not to be separated and to be reunited as a family as quickly as possible. This right especially refers to internally displaced persons.

All internally displaced persons **have the right to an adequate standard of living** and safe access to essential food and potable water, basic shelter and housing, appropriate clothing and essential medical services and sanitation. The states are obliged to **provide medical care** to wounded and sick internally displaced persons, as well as those with disabilities, including psycho-social assistance. Special attention should be paid to the health needs of women, such as reproductive health care, and appropriate counseling for victims of sexual abuse and other abuses.

Every human being **has the right to recognition everywhere as a person before the law**. The state has to provide all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. The authorities have to facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions.

Every person has the **right to property**. The property of internally displaced persons has to be protected against arbitrary and unlawful seizing, especially relating to pillage, attacks or other acts of violence, being used to shield military operations or objectives, being made the object of reprisal and being destroyed or appropriated as a form of collective punishment.

Internally displaced persons **cannot be discriminated against** as a result of their displacement in the enjoyment of the following rights:

- The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- The right to seek freely opportunities for employment and to participate in economic activities;
- The right to associate freely and participate equally in community affairs;
- The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
- The right to communicate in a language they understand.

Every human being has **the right to education**. State authorities have to ensure that internally displaced persons receive education that is free and compulsory, taking into consideration their cultural identity, language and religion, full and equal

participation of women and girls in educational programmes, as well as the availability of educational facilities.

5.4. Principles relating to humanitarian aid

The state is obliged to provide necessary humanitarian aid to internally displaced persons as soon as possible. **It had to be provided in accordance with the principles of humanity and impartiality and without discrimination**. Humanitarian aid to internally displaced persons cannot be diverted, in particular for political or military reasons.

The primary duty and responsibility for providing humanitarian aid to internally displaced persons lies with national authorities. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer cannot be regarded as an unfriendly act or interference in a state's internal affairs. The state will not arbitrarily withhold this assistance, particularly when authorities concerned are unable or unwilling to provide the required humanitarian aid.

Persons engaged in the distribution of humanitarian aid, **their transport and their supplies** should be **respected and protected**. They should not be the **object of attack or other acts of violence.**

International humanitarian organizations and other relevant actors should give due regard to the protection and respect of human rights of internally displaced persons when providing assistance. In doing so, these organizations and actors should respect relevant international standards.

5.5. Principles in case of return, resettlement and reintegration

During internal displacement, the state has to do its best to enable its citizens return to their homes, and if this is not possible, resettlement and reintegration. **Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means,** which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country cannot be discriminated against owing to the fact that they were displaced. They **have the right to participate equally in public affairs**. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions. When recovery of such property and possessions is not possible, competent authorities will provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

All authorities concerned are obliged to grant and enable **rapid and unimpeded access to internally displaced persons** by international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, with the aim of providing assistance in their return or resettlement and reintegration.

5.6. Relevant strategies relating to internally displaced persons

Owing to the lack of regulations relating to internally displaced persons, strategic documents defining the status of these persons and indicating special problems they face, as well as suggesting measures for their resolving, are especially important. Even though internally displaced persons are rather heterogeneous group, as well as all other groups in

the Republic of Serbia, they are joined by general characteristics determining their specific vulnerability and exposure to social exclusion. Those characteristics demand the adoption of special measures aiming at the improvement of their status by acknowledging their specific vulnerability. Amongst internally displaced person there are seriously vulnerable groups demanding a special attention, such as children, elderly, sick and especially dislocated Roma.

The Government of the Republic of Serbia adopted the **Strategy on Sustainable Subsistence and Return to Kosovo and Metohija**[105] in April 2010. The Strategy is set forth for the period 2009-2015. The Strategy sets out guidelines for sustainable subsistence of Serbs and members of national majorities and return of internally displaced persons to Kosovo and Metohija. The Strategy is aimed at activating all development potentials in Kosovo and Metohija, targeting poverty reduction and improvement of social and economic situation of the population, overcoming underdevelopment and encouraging employment. The fundamental objective of the Strategy is sustainable subsistence and return to Kosovo and Metohija, through the realisation of projected general objectives including:

- Exercise, protection and promotion of human rights and fundamental freedoms;
- Economic growth and development;
- Return, protection and improvement of human rights and fundamental freedoms,
- Restitution and protection of property rights and restoration of property;
- Protection, preservation and rehabilitation of cultural and religious identity;
- Return of internally displaced persons and refugees;
- Consolidation of capacities of local administration;
- Environmental protection; and
- Providing security to Serbs and members of national minorities.

The Government of the Republic of Serbia adopted one more Strategy significant for internally displaced persons in March 2011. **The National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons for the period 2011-2014**[106] points out that the basic commitment of the Republic of Serbia is to provide full support for sustainable return to Kosovo and Metohija. However, owing to the long period of displacement, the Strategy also deals with the need to find adequate solutions for the improvement of living conditions during the displacement. The need for the improvement of living conditions of the most vulnerable categories of internally displaced persons, individuals and groups is emphasized so that they may exercise their access to rights, services and resources, in accordance with the law and resolve their fundamental life problems the way other citizens do.

It has already been mentioned that the group which is the most vulnerable among internally displaced persons are the representatives of Roma. Owing to this, it is important to mention the **Strategy on the Improvement of the Status of Roma in the Republic of Serbia**[107], adopted by the Government of the Republic of Serbia in April 2009. The objective of the Strategy is to improve the status of Roma in the Republic of Serbia, which should decrease the currently existing differences between the status of Roma population and other citizens. The Strategy promotes affirmative action, primarily

[105] *Official Gazette of RS*, No. 32/10.
[106] *Official Gazette of RS*, No. 17/11.
[107] *Official Gazette of RS*, No. 27/09.

in the field of education, health care, employment and housing. It is stated that the housing situation of Roma population is extremely difficult; the most of them are outside the system of employment, they are not legally economically active; the most of them are registered as unemployed and live on the verge of poverty.

These persons often face difficulties during the procurement of personal documents. Not possessing personal documents makes the exercise of some of elementary human rights of dislocated persons more difficult, including the right to education, health care, employment, etc. The Strategy thoroughly deals with the problems of Roma national minority, including the problems of internally displaced persons, as well as the problems of returnees under the readmission agreement, which will be discussed in the following section.

6. RETURNEES UNDER READMISSION AGREEMENTS

A certain number of citizens of one country reside illegally in the territory of other countries (when they do not have residence permit, or it has expired). In time, the states commenced entering into agreements so as to regulate the admission of those persons in their territory. This is how readmission agreements commenced being entered into presenting a significant instrument of the policy related to the return of migrants and asylum seekers from European countries.

The conclusion of the first generation of readmission agreements commenced in the first half of the eighties. Under these agreements, contracting states usually committed to accepting their own citizens. Owing to the fact that the migration policy and asylum policy in the European Union became more restrictive, "the second generation of readmission agreements" were concluded. Under those agreements, the states became obliged to admit persons without citizenship of any of the contracting states, but having entered the territory of one contracting state through another contracting state. Except for the citizenship presenting the reference point of return, the place of the former habitual residence, or domicile, or the territory of the state from which a person entered, either legally or illegally, the territory of another state has also been introduced. At the time, Member States of the EU were signing these agreements independently, until coming into force of the Amsterdam Treaty, when the conclusion of the agreements with the European Community commenced. Until May 2007, the EU signed readmission agreements with the Western Balkans countries: Albania (2005), Macedonia, Montenegro, Serbia and Bosnia and Herzegovina (2007).

Therefore, the readmission procedure is regulated by international treaties. In addition to a number of bilateral agreements Serbia concluded with several states[108], the

[108] Agreement between the Republic of Serbia and the European Community on the Readmission of Persons Residing without Authorization (*Official Gazette of RS – International Treaties*, No. 103/2007); Agreement between the Federal Government of the FRY and the Government of Denmark on Return and Admittance of Persons not Fulfilling Conditions for Entry or Stay in the Territory of Another State (*Official Journal of FRY – International Treaties*, No. 12/2002); Agreement between the Republic of Serbia and Norway on the Readmission of Persons Residing Illegally (*Official Gazette of RS – International Treaties*, No. 19/2010); Agreement between the Republic of Serbia and Swiss Confederation on the Readmission of Persons Residing Illegally, with the Protocol (*Official Gazette of RS – International Treaties*, No. 19/2010); Agreement between the Council of Ministers of Serbia and Montenegro and the Government of Canada on the Return and Admittance of Persons not Fulfilling Conditions for Entry or Stay in the Territory of Another State, with the Protocol (*Official Journal of Serbia and Montenegro – International Treaties*, No. 3/2006); Agreement between the Council of Ministers of Serbia and Montenegro and the Council of Ministers of Bosnia and Herzegovina on the Return and Admittance of Persons not Fulfilling Conditions for Entry or Stay in the Territory of Another State, with the Protocol (*Official Journal of Serbia and Montenegro – International Treaties*, No. 22/2004); Agreement between the Government of the Republic of Serbia and the Government of the Republic of Croatia on Surrender and Admittance of Persons whose Entry or Stay is Illegal, with the Protocol (*Official Gazette of RS – International Treaties*, No. 19/2010); Agreement between the Government of the Republic of Serbia and the Government of the Republic of

most important agreement was signed in the year 2007 with the European Community.

6.1. Readmission Agreement with the EU

The status of returnees in the Republic of Serbia has been regulated under the agreement with the EU, which is the most important for the Republic of Serbia, as well as under bilateral readmission agreements. Under the **Agreement between the Republic of Serbia and the European Community on the Readmission of Persons Residing without Authorization in the territory of the European Community**[109], Republic of Serbia committed to admit its citizens and the citizens of third countries residing in its territory, who do not, or who no longer, fulfill the conditions for residing in the territory of the European Community[110].

Under this Agreement, the "transit" is defined as the passage of a third country national or a stateless person through the territory of the Requested State while traveling from the Requesting State to the country of destination. The Agreement defines when the Republic of Serbia or a Member State of the EU will authorize and refuse the transit, as well as the transit procedure commencing upon the submission of the transit application.

The establishment of the **Joint Readmission Committee** has been planned, composed of the representatives of the European Community and Serbia, with the aim of implementation and application of the Agreement. Its decisions are binding on both contracting parties. Under the Agreement, the Committee will meet where necessary at the request of one of the Contracting Parties.

Upon request of a Member State of the EU or Serbia, Serbia and the Member State will draw up and sign an implementing Protocol which will cover rules on: designation of the competent authorities, border crossing points and exchange of contact points; the modalities for returns under the accelerated procedure, etc. The implementing Protocols will enter into force only after the readmission committee has been notified.

Serbia agrees to apply any provision of an implementing Protocol drawn up with one Member State in its relations with any other Member State upon request of the latter[111].

Macedonia on Surrender and Admittance of Persons whose Entry or Stay is Illegal, with the Protocol (*Official Gazette of RS, – International Treaties*, No. 1/2011); Agreement between the Government of the Republic of Serbia and the Council of Ministers of the Republic of Albania on the Readmission of Persons Residing Illegally (*Official Gazette of RS – International Treaties*, No. 7/2011).

[109] In addition to the basic text, there are seven Annexes to the Agreement, presenting its integral part and regulating the following issues: Annex 1 – Joint list of documents that should be submitted so as to prove the citizenship; Annex 2 – Joint list of documents that should be submitted presenting prima facie evidence of citizenship; Annex 3 – Joint list of documents presenting proof on the existence of conditions for the readmission of the citizens of third countries or stateless persons; Annex 4 – Joint list of documents presenting *prima facie* evidence on the existence of conditions for the readmission of the citizens of third countries or stateless persons; Annex 5 – Joint list of documents presenting evidence or *prima facie* evidence on existence of conditions for the readmission of the citizens of former SFRY; Annex 6 – The Form of the Readmission Application; and Annex – the Form of Transit Application.

[110] Prior to the Conclusion of the said Agreement, Serbia already implemented ratified readmission agreements with some EU Member States. Their implementation ceased upon the adoption of the said Agreement. Denmark is an exception to this, so that the readmission issues between Serbia and Denmark are regulated by bilateral agreement concluded between the FRY and Denmark.

[111] The Law on the Confirmation of Protocol between the Government of the Republic of Serbia and the Italian Government on the Implementation of the Agreement between the Republic of Serbia and the European Community of the Readmission of Persons Residing Illegally was adopted in 2010 (Official *Gazette of RS – International Treaties*, No. 19/2010) and the protocol was ratified between the two countries. In addition to Italy, implementing protocols for the implementation of the Readmission Agreement with the EU were signed with Slovenia (8 June 2009), France (18 November 2009), Hungary (19 December 2009), Great Britain (18 March 2010), Austria (25 June 2010), Malta (2 July 2010), Slovak Republic (18 November 2010), Macedonia (23 March 2011) and Albania (28 July 2011).

6.2. Obligations arising from the Agreement

This Agreement defines obligations of the Republic of Serbia and the European Community in terms of the group of persons subject to readmission, both regarding the readmission of its own citizens and the readmission of nationals of third countries and stateless persons.

The Republic of Serbia committed to readmit, upon application by a Member State and without further formalities other than those provided for in this agreement, any person who does not, or who no longer, fulfils the conditions in force for entry to, presence in, or residence on, the territory of the Requesting Member State provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that such a person is a national of Serbia.

The Republic of Serbia is obliged to readmit:

- Minor unmarried children of the above-mentioned persons, regardless of their place of birth or their nationality, unless they have an independent right of residence in the Requesting Member State;
- Spouses, holding another nationality, of the above-mentioned persons, provided they have the right to enter and stay or receive the right to enter and stay in the territory of Serbia, unless they have an independent right of residence in the Requesting Member State; and
- Persons who have renounced the nationality of Serbia since entering the territory of a Member State, unless such persons have at least been promised naturalization by that Member State.

The Republic of Serbia committed to readmit, upon application by a Member State and without further formalities other than those provided for in this Agreement, all third-country nationals or stateless persons who do not, or who no longer, fulfill the legal conditions in force for entry to, presence in, or residence on, the territory of the Requesting Member State provided that it is proved, or may be validly assumed on the basis of *prima facie* evidence furnished, that such persons:

1. Hold, or at the time of entry held, a valid visa or residence permit issued by Serbia; and
2. Illegally and directly entered the territory of the Member States after having stayed on, or transited through, the territory of the Serbia.

The stated readmission obligation does not apply if:

1. The third country national or stateless person has only been in airside transit via an International Airport of Serbia;
2. The Requesting Member State has issued to the third country national or stateless person a visa or residence permit before or after entering its territory **unless**:

    - That person is in possession of a visa or residence permit, issued by Serbia, which expires later;
    - The visa or residence permit issued by the Requesting Member State has been obtained by using forged or falsified documents, or by making false statements, and the person concerned has stayed on, or transited through, the territory of Serbia, or
    - The person fails to observe any condition attached to the visa and that person has stayed on, or transited through, the territory of Serbia.

The Republic of Serbia is also obliged to readmit former nationals of the Socialist Federal Republic of Yugoslavia who have acquired no other nationality and whose place of birth and place of permanent residence on 27 April 1992, was in the territory of Serbia.

All obligations imposed on the Republic of Serbia, are imposed on any EU Member State in the opposite situation.

6.3. The readmission procedure

The readmission procedure is explained in detail in the Agreement.

The readmission application is submitted to the **competent body** of the Republic of Serbia, or the Member State of the EU (defined by Protocol). The stated readmission application is not required where the person to be readmitted is in possession of a valid travel document, if that person is a third-country national or a stateless person in possession of a valid visa or residence permit of the Requested State.

The readmission application should contain the following information:

1. The particulars of the person to be readmitted;
2. Documents on the basis of which the nationality is proven; and
3. The indication of the means with which *prima facie* evidence of nationality, transit, the conditions for the readmission of third-country nationals and stateless persons and unlawful entry and residence of third-country nationals and stateless persons will be provided; as well as the photograph of the person to be readmitted.

The readmission application also ought to contain the following information: the statement indicating that the person to be transferred may need help or care, any other protection, security measure or information concerning the health of the person, which may be necessary in the individual transfer case.

The Agreement defines the procedure related to proving the citizenship of the persons whose readmission is required. Annexes No. 1 and 2 define what documents are considered proof and what *prima facie* evidence of citizenship. Annexes No. 3 and 4 of the Agreement define what documents are considered proof, and what *prima facie* evidence on the existence of conditions for the readmission of third-country nationals and stateless persons.

The unlawfulness of entry, presence or residence ought to be established by means of the travel documents of the person concerned in which the necessary visa or other residence permit for the territory of the Requesting State are missing. Annex No.5 of the Agreement defines what documents are considered proof or a *prima facie* evidence of the conditions for the readmission of former nationals of the Socialist Federal Republic of Yugoslavia.

The Agreement defines a deadline within which the application for readmission must be submitted (within a maximum of one year after the Requesting State's competent authority has gained knowledge that a third-country national or a stateless person does not, or does no longer, fulfill the conditions in force for entry, presence or residence) as well as the deadline for the reply in writing to the readmission agreement by the Requested State (within 2 working days if the application has been made under the accelerated procedure, or within 10 calendar days in all other cases). If there was no reply within these time limits, the transfer is deemed to have been approved. Reasons have to be given for the refusal of a readmission request.

After agreement has been given or, where appropriate, after expiry of the time limit laid down for the submission of the reply, the person concerned will be transferred within three months. On request of the Requesting State, this time limit may be extended

by the time taken to deal with legal or practical obstacles. Before returning a person, the competent authorities of Serbia and the Member State of the EU make arrangements regarding the transfer date and regarding other information relevant to the transfer. According to the Agreement, the Requesting State takes back any person readmitted by the Requested State if it is established that the readmission was not supposed to happen, or when it is proved that the conditions for the readmission have not been met.

The Agreement points out the importance of the protection of personal data in the readmission procedure. Their personal data can be exchanged between the competent bodies of the Republic of Serbia and member States of the EU.

6.4. Bilateral Readmission Agreements

The Republic of Serbia has concluded a number of bilateral agreements with Denmark (May 2002), Canada (March 2006), Switzerland (June 2009) and Norway (November 2009). Republic of Serbia also concluded several agreements with the countries from the region: Bosnia and Herzegovina, Croatia, Macedonia and Albania. All these agreements are followed by protocols on the implementation of the Agreement. As for the Agreements with Bosnia and Herzegovina, Macedonia and Albania, protocols have been signed at governmental levels, whilst the Agreement with Croatia is followed by the protocol concluded between the Ministries of Interior of the Republic of Serbia and Croatia. The Agreement with Bosnia and Herzegovina was ratified in 2004, Agreement with Croatia in 2010, and Agreements with Macedonia and Albania were ratified in 2011.

Except for smaller differences in the structure, these Agreements offer similar solutions. Apart from the obligation to readmit their own citizens who do not, or who no longer, fulfill the conditions for entry or stay in the territory of another Contracting State, the states are obliged to readmit the nationals of third countries and stateless persons who do not, or who no longer, fulfill the conditions for entry or stay in the territory of another Contracting State bearing in mind that mentioned persons entered the territory of the Requesting State directly from the territory of the requested state, where they have previously resided. As for the Agreement with Croatia and Macedonia, in addition to the obligation to readmit the nationals of third countries and stateless persons having previously resided in the territory of the Requested Contracting State, they are also obliged to readmit the nationals of third countries and stateless persons having entered the Requesting State following the transit over the territory of the requested contracting state. All of these Agreements envisage the possibility of **exclusion from the obligation to readmit** third country nationals and stateless persons, which are more or less identical (for instance, there is no obligation to readmit the nationals of third countries neighboring the Requesting Contracting State). These agreements also deal with the transit of the nationals of third countries or stateless persons through the territory of the requested state, in the situations when another contracting state has provided the admittance for a person in transit in a third state.

The Agreements signed with Bosnia and Herzegovina and Croatia envisage the establishment of the joint body which will follow their implementation (Commission of Experts under Agreement with Bosnia and Herzegovina and Joint Commission under Agreement with Croatia). As for the agreements signed with Albania and Macedonia the formation of such joint body has not been envisaged. However, there is a possibility to appoint meetings of experts with the aim of resolving any issues related to the implementation of the agreement.

6.5. Provision of care to returnees

A returnee is a person possessing a travel certificate issued by a diplomatic-consular office of the Republic of Serbia abroad in the readmission process. A travel

certificate is issued temporarily and used for returning and admission of a person in the readmission process. A travel certificate is valid for a maximum of 90 days and it enables one entry into the Republic of Serbia. If a person loses his travel certificate upon crossing the state border, he is obliged to report to the local police station on the loss according to the place of permanent residence, i.e. according to the territory where the travel document has been lost, with the aim of the issuance of the confirmation on the loss of the travel document.

Travel certificate has a value as a public identity card.

With the aim of establishing mechanisms for emergency support to returnees, **Emergency Reception Centres** have been established in Obrenovac, Bela Palanka, Zajecar and Sabac through the repurposing of parts of collective centres and their adaptation. Returnees are accommodated in these centres based on the Directive issued by the Commissariat for Refugees which is signed by both parties. Families with no possibilities for temporary accommodation, or not having close friends and relatives, are accommodated in these centres. Centres provide basic living conditions, and they cannot stay longer than 14 days. Families which do not want to stay in the Centre, have to sign a statement according to which they are not in need of this accommodation. After 14 days, returnees have to be referred to the place of former permanent residence, former temporary residence, or another place in which they are planning to reside either temporarily or permanently. If they do not have enough money for the ticket, they shall contact centres for social work which shall provide them with a free-of-charge single ticket.

Unemployed persons register with the competent branch of the National Employment Service. In order to obtain the employment records, unemployed persons have to submit an application to the competent municipal service in the territory of the municipality where they have permanent residence.

Returnees are entitled to emergency medical care, providing as a proof travel certificate valid prior to the regulation of the status of the insured, i.e. until the expiry of the validity of the travel certificate. Prior to the regulation of the status of the insured and the member of the family of the insured, and in accordance with Article 162 of the **Law on Health Insurance**[112] the funds related to this assistance are provided within the budget of the Republic of Serbia, that is autonomous province, municipality or city, depending on the fact where the medical help was provided. The assistance is provided without paying the participation fee and implies health care at primary, secondary and tertiary level, inclusive of the necessary medicines and medical supplies needed during the provision of the emergency medical care (for example, placing the patient in the mental institution).

A child returnee is entitled to education and is enrolled in school based on the documents required for the enrollment. In the situation when the parent has all the required documentation, enrollment is performed under Article 90 of the **Law on the Basis of the Education System**[113]**.** If the parents do not possess all or some of the documents, that is public certificates on the acquired education, the child is enrolled conditionally, whereas parents are obliged to acquire the said documents assisted by the Ministry of Foreign Affairs. It implies that the conditional enrollment is temporary lasting until the adoption of the final decision of the validation, i.e. equivalence. The said enrollment is performed under Article 126 of the **Law on Primary Education** and Article 96 of the **Law on Secondary Education**.

Bearing in mind that returnees are facing numerous problems, the **Strategy on the Reintegration of Returnees under Readmission Agreement**[114] was adopted in 2009. This Strategy elaborates in detail the problems returnees are facing. The general objective

[112] *Official Gazette of RS,* No. 107/2005, 109/2005 – corrigendum, 57/11.
[113] *Official Gazette of RS,* No. 72/09, 52/11.
[114] *Official Gazette of RS,* No. 15/09.

of the Strategy is sustainable integration of returnees into the community, with full observance of social and cultural differences.

The Strategy emphasizes that living conditions in Serbia are difficult and worsened by poverty, unemployment and low resources of social services and economic crisis. Owing to that, the return of persons in the readmission process may have an additionally negative impact on the social and economic situation in the country. The social group of returnees is not homogenous with regard to the approach to their rights, structure and dispersion of poverty. The very fact that most of these people are forced to return presents a risk for the protection of human rights of persons in readmission. A vast number of returnees belong to minorities, mostly Roma, Bosniaks, Albanians, Ashkali, Gorani and others which makes them especially vulnerable.

Difficulties related to obtaining of documents and the lack of personal documents have been recognized in the Strategy as some of the basic problems for returnees when exercising their rights. Without a proper residence address the person cannot have the necessary documents and therefore cannot have access to the basic health insurance, education, welfare, employment opportunities. Owing to this, specific objectives are as follows: developed and applied programme of admission of returnees and programme of emergency support as an integral part of sustainable reintegration mechanism, as well as developed and functional reintegration mechanism inclusive of reinforced capacities of the community and returnees for successful reintegration.

7. VICTIMS OF HUMAN TRAFFICKING

Human trafficking is a severe form of exploitation and deprivation of the basic human rights, which unfortunately has not been eradicated to date. On the international level, the **Slavery Convention** was adopted in 1926. It was amended by the Supplementary **Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery** in 1956. All international bodies in the field of human rights protection prohibit slavery and forced labour. The General Assembly adopted in 2000 a package of instruments against various forms of organized crime, among which are the United Nations **Convention against Transnational Organized Crime, and the first global legally binding instrument with an agreed definition on trafficking in persons - the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children** (also referred to as the Trafficking Protocol).[115] By giving a very broad definition in Article 3, Paragraph a), the Protocol points to all of the activities which are considered as human trafficking. The definition states that the human trafficking "shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud or deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." The Protocol prohibits human trafficking and demands that the countries take appropriate preventive and enforcement measures in order to put a stop to and repress this phenomenon. The Republic of Serbia is bound by the provisions of the Protocol which it had ratified on September 6, 2001. The creation and strengthening of the country's institutions in the fight against this severe form of human exploitation have started since that day.

[115] *Official Gazette of FRY* - International Treaties No. 6/01.

7.1. Criminalization of the crime of human trafficking

Human trafficking was for the first time criminalized in the Republic of Serbia in 2003 by Article 111b of the Criminal Code, and was found within the group of offences against human dignity and morality. [116]Nowadays, this offence is criminalized by Article 388 of the Criminal Code adopted in 2005, and is to be found among offences such as crimes against humanity and other cases protected by the international law. [117] The offence is punishable by three to twelve years of imprisonment, with the inclusion of all the severe forms of this crime. If an offence is committed against a child, or if a child sustains a serious injury, the offence is punishable by a stricter sentence.

Human trafficking has been widely defined and it encompasses "recruitment, transportation, transfer, handing over, selling, buying, mediation in purchasing, hiding or harbouring a person by means of force, threat, deluding and keeping in delusion, abuse of authority, trust, the dependent relation, the difficult position somebody is in, retention of identity documents or of the giving or receiving of payments or benefits for the purpose of labour exploitation of that person, forced labour, committing crimes, prostitution or other forms of sexual exploitation, begging, use in pornography, slavery or practices similar to slavery, with the aim of harvesting organs or body parts or with the aim of using in armed conflicts."

The act of committing this offence has been determined alternatively, and it encompasses actions from recruitment to hiding the injured party. It has to be undertaken in one of the following ways:

- By force or threat;
- Deluding or keeping somebody deluded;
- Through abuse of authority, dependent relation, or difficult position;
- Retention of identity documents; or
- Giving or receiving of payments or other benefits.

However, when a **minor** is a victim of this criminal offence, it is not necessary that any of the stated ways of committing this crime be undertaken. **It will suffice if only one of the criminalized actions is committed**.

The last important element of a criminal offence is the **aim** with which some of the actions have been undertaken, and that also has to be one of the alternatively set aims:

- Labour exploitation;
- Forced labour;
- Committing criminal offences;
- Prostitution or some other forms of sexual exploitation;
- Begging;
- Use in pornography;
- Establishment of slavery or similar relationship;
- With the aim of removal of organs or body parts; or
- With the aim of the use in armed conflicts.

[116] *Official Gazette of FRY*, Nos. 26/77, 28/77 – corrigendum 43/77 – corrigendum 20/79, 24/84, 39/86, 51/87, 6/89, 42/89 and 21/90 and *Official Gazette of RS*, No. 16/90, 26/91 – the decision of CCFRY No. 197/87, 75/91 – the decision of CCRS No. 58/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/02, 11/02 – corrigendum 80/2002 – other law, 39/03 and 67/03.

[117] *Official Gazette of RS*, Nos. 85/2005, 88/2005 – corrigendum 107/2005 – corrigendum 72/2009 and 111/2009.

Amendments to the Criminal Code through which certain innovations were introduced into this criminal offence were adopted in August 2009. [118] The innovations are related to the length of a prescribed sentence: the sentence for the basic type of this crime varies from three to twelve years of imprisonment, while the minimal sentence for child trafficking is five years of imprisonment instead of the previous three years of imprisonment. The length of a sentence has been prolonged in case a crime is committed by a criminal organization, while a sentence for the users of services was introduced in case they had known or could have know that the victims of human trafficking were in question.

7.2. Assisting victims of human trafficking

The police and other state bodies have to work actively to combat human trafficking, identify the victims and provide the much needed help. On a strategic level, several bodies have been formed with the aim of repressing human trafficking. They include: Council for Combating Human Trafficking, National Coordinator for Combating Human Trafficking, National Team for Combating Human Trafficking and the Advisory Body of the National Team for Combating Human Trafficking. However, operational bodies are of greater significance when it comes to identifying and protecting victims, as well as punishing the responsible for this crime. Legal Aid Office for the Coordination of Protection of Victims of Human Trafficking was formed in December 2003 as part of the Institution for Education of Children and Adolescents in Belgrade. The Office was integrated into the social protection system under the auspices of the Ministry of Labour and Social Policies on June 2005. The Office represents the central part of the National Referral Mechanism for the coordination centre in the process of providing and organizing activities aimed at identifying, assisting and protecting human trafficking victims. The Office's assignment is to give information on available accommodation capacities, various legal, medical and psycho-social services which are essential in the process of assisting human trafficking victims. The duty of the Office is defined by the **Rulebook on systematization of tasks and assignments of the Institution for Education of Children and Adolescents in Belgrade**, which states that tasks of the Office are:

- Identification of a victim after the police reports the case;

- Conversation with the victim and getting him acquainted with the aid programme and his rights;

- Reaching a decision with the victim on what should the next steps of protection be;

- Organization of transport to shelters or town where the victim lives;

- Establishment of cooperation with the competent centre for social work;

- Establishment of cooperation with the police and asking for an estimate of the victim's safety and information whether criminal charges will be pressed against the perpetrator;

- Starting cooperation with the judicial bodies from which it receives information during the proceedings and organizing the victim's transport to the court;

- It is under obligation to provide legal aid to the victim, as well as in the form of legal

[118] *Official Gazette of RS*, No. 72/09.

representation during the proceedings;

- Issuing a document which states that a person is a victim of human trafficking so that the person could exercise his right to health care services in primary care facilities, or with a recommendation of a doctor in other health care providers;[119]

- Cooperation with embassies when a foreign national without documents is in question;

- Establishing cooperation with educational institutions when the victim wishes to continue schooling;

- Establishing special cooperation with international and non-governmental organizations through which it provides the necessary help in the form of translation, legal representatives, psychologists, psychiatrists, gynecologists, financial aid, funds for education, accommodation to a shelter, etc;

- Coordination of work of all mentioned institutions and organizations;

- Making a plan for individual reintegration of every victim in line with his needs and in accordance with available resources and programmes;

- Establishing communication between a victim and his family if there is need;

- Gathering documentation needed in order to apply for a temporary stay permit for foreigners, travel document and visa;

- Escorting the victim to airport or border when needed and waiting for and collecting the victim at airport or border; and

- Keeping an electronic database and official record for every victim.

Looking at the tasks that the Office performs, it is evident that, besides the Office, the police, judiciary, international and non-governmental organizations - among which particularly stand out Shelters for victims of human trafficking, Counseling against family violence, Astra, Atina, Beosupport and Victimology Society of Serbia - are also part of the operational level.

When a victim is identified, he is given a set of legal, social, medical and other forms of help. After taking legal action against the perpetrator of the crime, the state has to provide mechanisms so as to avoid further victimization of the victim. However, if a victim is a foreign national, he first needs to be given a temporary stay permit. The Ministry of Interior issued in September 2004 the **Instruction on the conditions for approving temporary residence to foreign nationals – victims of human trafficking**[120], which stated that due to humanitarian reasons a temporary stay would be granted to all of the persons who in the Service's opinion need help and protection as victims of human trafficking. Article 28 of the **Law on Foreigners** allows granting of temporary stay to "a foreigner who is the victim of human trafficking if it is in the interest of a court procedure regarding the criminal act of human trafficking and when following conditions have not been met: having enough financial means to sustain himself/herself,

[119] Article 241, Paragraph 6 of the Law on Health Insurance envisages that the health care facilities will receive a refund from the budget to cover the cost of provided health care services to foreign natives who are victims of human trafficking.

[120] The Ministry of Interior, Border Police Directorate for Foreigners and Administrative Tasks, 03/1, No. 26-1658/04, September 20, 2004.

having health insurance and justification of the temporary stay application." The stay will be declined for the reasons of safeguarding public order or security of the Republic of Serbia and its citizens, or if there is a reasonable doubt that the person will not use the stay for the intended purpose.

The victim of human trafficking, who was granted a temporary stay, will be provided with appropriate accommodation, food and living conditions if he does not have enough financial means to sustain himself/herself during the temporary stay. The victims are accommodated in shelters for victims of human trafficking (the shelters can be under the jurisdiction of government services, as well as under the jurisdiction of non-governmental organizations), or at some other hidden location if the foreign national victim of human trafficking does not wish to be held in the shelter during the whole stay in the Republic of Serbia. The fist private home that was given for use to the coordination of the victims of human trafficking in late November, enables providing urgent care and accommodation for the victims. This type of facility already exists in Novi Sad and Nis, while the other cities and local governments should also start providing accommodation in this manner because the services available to victims do not meet their needs in the local communities.

EXAMPLE

The first Shelter for women victims of trafficking was opened in Novi Sad on October 4, 2011 as part of a project dubbed "Protection and Integration of Victims of Trafficking in the Autonomous Province of Vojvodina." It was carried out jointly by the Novi Sad Humanitarian Centre and the Novi Sad Centre for Social Work. The opening of the shelter in the fight against human trafficking was supported by the Joint Programme of the United Nations High Commissioner for Refugees (UNCHR), the United Nations Office on Drugs and Crime (UNODC) and the International Organization for Migration (IOM). The project came into existence under the auspices of the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT). It was funded by UN.GIFT and the governments of Belgium and Switzerland.

The National Anti-Trafficking Strategy[121] was adopted in December 2006, while the adoption of the new Strategy is currently underway. It consists of series of measures and activities which should be undertaken with the aim of making a timely and comprehensive response to the problem of human trafficking in the Republic of Serbia, with a special emphasis on protection of victims' human rights. The Strategy helped establish the national mechanism for coordination of activities and creation of a policy for the fight against human trafficking, which has already been discussed. The National mechanism for identification, help and protection of victims has also been established, and through it all persons who could come into contact with the victims, that is potential victims of trafficking, can be identified. The system for providing necessary help which

[121] *Official Gazette of RS*, No. 111/06.

encompasses medical, psycho-social and legal aid has also been established. Special police teams for the fight against human trafficking have been formed within the Ministry of Interior, while specialised units have been set up within the Criminal Police Directorate and Border Police Directorate. Strategic goals of the Republic of Serbia in the fight against human trafficking are grouped into five areas: institutional framework, prevention, assistance, protection and reintegration of the victims, international cooperation and monitoring and evaluation of the results. The country is also combating human trafficking in a special way through criminal legislature and sanctioning of human trafficking in all its basic forms.

7.3. Protection measures in criminal proceedings

After a victim is identified and legal action against the perpetrator of this crime undertaken, the state has to provide mechanisms so as to avoid further victimisation of victims. Appearing as an injured party during the proceedings represents yet another traumatic experience for the victim. This is why the victim's testimony demands a strong support reflected in his protection not only in the form of preparation for the testimony but also during the mere act of testifying. The country's laws prescribe several measures for protection of trafficking victims.

When it comes to minors, the hearing is conducted without the presence of the public and other participants in the proceedings. There is also a possibility to carry out the hearing with the use of technical devices for transmitting images. In the case of legal adults, the witness can be questioned under special protection measures or with concealing his identity if a protected witness is in question.[122] The special measures of protection include keeping the public excluded from the trial, concealing the witness' identity and holding a testimony in a special room with witness' voice, or looks being altered with the help of technical devices for transmitting sound and image. Certain measures of protection existed in the Criminal Code adopted in 2006, but they ceased to exist after the introduction of amendments to this Code in 2009. There is no possibility of mandatory appointment of a legal representative to the injured party, except in the case of minors.

If a victim is being intimidated, what is frequently the case, his legal representative can request the status of a protected witness. Through cooperation with the prosecutor the legal representative can make it possible for the victim to wait in a different room during the trial, he can also provide escort for the victim in agreement with non-governmental organizations, ask for the public to be excluded from the proceedings, ask for the defendant's temporary removal from the courtroom during the victim's testimony, or similar measures. However, these measures are not explicitly prescribed by the law and depend on the good will of the authority conducting the proceedings.

The new **Criminal Procedure Code** adopted in 2011 introduces some significant novelties when it comes to protection of a witness and the injured party in the proceedings[123]. In this respect, Article 102 stipulates that the duty of the authority conducting proceedings is to protect the injured party or the witness from any insult, threat and any other kind of assault. The term of **especially vulnerable witness** is introduced in Article 103. This term of "especially vulnerable witness" includes, among other things, the witness who is vulnerable when the manner or the consequences of the criminal offence committed, or other circumstances are taken into account. This status is designated on official responsibility either at the request of parties or the witness himself, through the authority conducting proceedings. The ruling determining a status of an especially vulnerable witness is issued by the public prosecutor, president of the panel or

[122] See the Law on the Protection Programme for Participants in the Criminal Proceedings, *Official Gazette*, No. 85/2005.
[123] *Official Gazette of RS*, No. 72/11.

individual judge. If it deems necessary for the purpose of protecting the interests of an especially vulnerable witness, the authority conducting proceedings will issue a ruling appointing a legal representative for the witness, and the public prosecutor or the president of the court will appoint a legal representative according to the order on the roster of attorneys submitted to the court by the bar association competent for designating court appointed defense counsels (Article 76). Article 104 introduces the rules for examining the especially vulnerable witness, what is of huge importance for victims of human trafficking. An especially vulnerable witness may be examined only through the authority conducting the proceedings, who will treat the witness with particular care, endeavoring to avoid possible detrimental consequences of the criminal proceedings to the personality, physical and mental state of the witness. Examination may be conducted with the assistance of a psychologist, social worker or other professional, which will be decided by the authority conducting proceedings. If the authority conducting proceedings decides to examine an especially vulnerable witness using technical devices for transmitting images and sound, the examination is conducted without the presence of the parties and other participants in the proceedings in the room where the witness is located. The law envisages that an especially vulnerable witness may also be examined in his dwelling or other premises or in an authorized institution professionally qualified for examining especially vulnerable persons. What is important is that an especially vulnerable witness may not be confronted with the defendant, unless the defendant himself requests this and the authority conducting proceedings grants the request, taking into account the level of the witness's vulnerability and rights of defense. These innovations should significantly ameliorate the status of victims of human trafficking in criminal proceedings.

PART TWO

V. ROLE OF STATE AND LOCAL AUTHORITIES IN THE PROMOTION AND PROTECTION OF MIGRANTS' RIGHTS

1. RELEVANT GOVERNMENT BODIES AND THEIR ROLE IN THE PROTECTION OF MIGRANTS' RIGHTS

The field of migration management is multi-sectoral by nature. Therefore, the competences in the said field have been divided among several state authorities. Institutional framework in this area has been defined in accordance with competences of some state authorities in the field of migration in accordance with the Law on Ministries[124], Law on Asylum, Law on Foreigners, Law on Refugees and relevant Strategies of the Government of the Republic of Serbia.

Owing to the complexity of the matter and the existence of various groups of migrants, several Ministries deal with different segments related to migrations, status of migrants, procedure and the exercise of rights.

The Ministry of Interior is responsible for:

- Safeguarding the state border and controlling state border crossings and movement and stay within the zone of a border crossing point;
- The stay of foreigners;
- Citizenship;
- Permanent and temporary residence of citizens;
- Identity cards and travel documents;
- International assistance and other forms of international cooperation in the area of internal affairs, readmission including;
- Irregular migrations;
- Asylum; and
- Administrative decisions in the second-instance procedures in accordance with regulations on refugees.

The Ministry of Foreign Affairs is responsible for:

- Protection of rights and interests of the Republic of Serbia, its citizens and legal entities abroad;
- Issuance of visas through the diplomatic-consular network, having the consent of the Ministry of Interior;
- Keeping records of issued visas in the form of electronic databases, i.e. the records of rejected requests for the issuance of visas; and
- Issuance of travel documents free of charge to Serbian citizens - victims of trafficking who have been rescued abroad.

The Ministry of Human and Minority Rights, State Administration and the Local Self-government, i.e. the Directorate for Human and Minority Rights is responsible for:

[124] *Official Gazette of RS*, No. 16/11

- Keeping records, selection, status and exercise of competences of the National Councils of national minorities;
- Drawing up regulations on human and minority rights;
- Monitoring harmonization of domestic regulations with international treaties and other international instruments on human and minority rights;
- The status and the exercise of competences of the Committee for Establishing Accountability regarding the Violation of Human Rights;
- The status of members of the national minorities living in the territory of the Republic of Serbia and the exercise of minority rights;
- Establishing ties between members of national minorities and their states of origin;
- Antidiscrimination policy; and
- Harmonizing the activities of state authorities in the field of protection of human rights.

The Ministry of Economy and Regional Development is responsible for:

- Employment in the country and abroad and referring unemployed citizens to work abroad;
- Monitoring the status and trends in the labour market in the country and abroad;
- Keeping records in the area of employment;
- Proposing and monitoring the implementation of strategies in the field of migration in the labour market;
- Participating in the preparation, conclusion and implementation of international social security agreements;
- Conclusion of employment contracts with foreign employers, and other contracts related to employment;
- Harmonization with European legislation and standards in the field of employment and monitoring the implementation of international conventions.

The Ministry of Religion and Diaspora is responsible for:

- Position of citizens of the Republic of Serbia living outside of the Republic of Serbia;
- Improvement of conditions for the exercise of electoral rights of citizens of the Republic of Serbia living abroad;
- Improving the connection of emigrants, citizens of the Republic of Serbia, who live abroad and their organizations with the Republic of Serbia;
- Informing emigrants, citizens of the Republic of Serbia abroad, on the course of policies of the Republic of Serbia;
- Creating the conditions for the inclusion of emigrants, persons of Serbian origin and citizens of the Republic of Serbia living abroad in the political, economic and cultural life of the Republic of Serbia and their return to the Republic of Serbia.

The Ministry of Education and Science is responsible for:

- Complementary education of children of Serbian citizens abroad; and
- Validation and the equivalence of official documents obtained abroad.

The Ministry of Health is responsible for:

- Participating in the preparation and implementation of international treaties on mandatory social insurance; and
- Health care of foreigners.

The Ministry of Labour and Social Policy is responsible for:

- Exercise of employment rights of workers temporarily employed abroad;
- Protection of citizens working abroad;
- Conclusion of agreements on referring employees to work abroad and the referral of employees for temporary work abroad;
- Implementation of antidiscrimination policy;
- Ensuring the work of social security system;
- Exercise of the rights and integration of refugees and displaced persons, returnees under the readmission agreements, the Roma population and other socially vulnerable groups; and
- Participating in the preparation, conclusion and implementation of international treaties on social insurance.

The Ministry for Kosovo and Metohija is responsible for:

- Cooperation with the Commissariat for Refugees in those sectors concerning internally displaced persons from Kosovo and Metohija;
- Sustainable return and stay of internally displaced persons in Kosovo and Metohija; and
- Exercise and protection of the rights of returnees in Kosovo and Metohija.

In addition to the competent ministries, the **Commissariat for Refugees** is especially significant and it is responsible for:

- Conducting professional and other duties related to care, return and integration of persons being granted a refugee status based on the Law on Refuges;
- Determining the status of refugees and keeping records of refugees and internally displaced persons (IDPs);
- The care for refugees;
- Harmonizing assistance efforts by other authorities and organizations in the country and abroad;
- Providing accommodation, i.e. relocation of refugees to the areas of local self-government units;
- Providing assistance to refugees in the process of return and reintegration;
- Resolving housing issues of refugees in accordance with the Law on Refugees;
- The provision of accommodation to asylum seekers in the centre(s) for asylum as well as the management of the centre(s);
- Providing primary accommodation in redesigned collective centres for returnees under the readmission agreements;
- The care of internally displaced persons and the protection of their rights;
- Conducting professional, operational and administrative-technical matters for the Coordination Body for the Monitoring and Managing Migration.

Certain bodies established upon the decisions of the Government of the Republic of Serbia also have competences in the field of migration management.

The Council for Integration of Returnees on the Basis of the Readmission Agreement is responsible for:

- Consideration and proposing of measures and activities for the realization of the admittance, care and integration of returnees;
- Providing support in determining and implementing measures for the assistance to returnees at the level of local administration, in accordance with the possibilities and the needs of local communities; and
- Proposals for the establishment of the framework in which the dialogue takes place between countries on the issues related to the protection and exercise of rights of migrants and the problem of irregular migration with the aim of strengthening regional cooperation significant for returnees.

The Council for Combating Human Trafficking is responsible for:

- Coordination of national and regional activities in combating human trafficking;
- Reviewing reports from relevant bodies of the international community on human trafficking;
- Taking stands and proposing measures for the implementation of recommendations given by international bodies related to combating human trafficking.

The Council for Combating Irregular Migrations has been formed as a common and professional body composed of the experts in certain areas. The Coordinator for Combating Irregular Migrations coordinating all the activities and managing the activities of the Council has been appointed. The task of the Council is to coordinate the entities implementing the Strategy for Combating Irregular Migrations for the period 2009-2014, report to the Government on its implementation and prospective problems, and propose the measures for its revision to the Government.

In 2009 the Government established the **Coordination Body for the Monitoring and Managing Migration**. It should, through its activities, ensure common policy and harmonization of the activities of competent ministries in the area of migrations, through directing the activities of the ministries and independent organizations. Professional, operational and administrative-technical matters for the Coordination Body for the Monitoring and Managing Migration have been performed by the Commissariat for Refugees.

The Government established the **Commission for Monitoring Visa-free Travel to the EU** in March 2011. It is responsible for reviewing issues related to the increase in the number of false asylum seekers in the EU Member States coming from the territory of the Republic of Serbia and proposing to the Government consideration and determination of decisions regarding the measures aimed at reducing the number of false asylum applications.

All of the stated ministries and established bodies have impact on the improvement of certain categories of migrants, or the exercise of their rights in certain areas of life, such as employment, social welfare etc. However, state and local authorities should act in an adequate manner so that the migrants could really avail of their guaranteed rights. This matter is going to be discussed in the following section.

1.1. Principles of work of public authorities

The exercise of a number of rights of different categories of migrants as well as their trust in state institutions depend largely on the way civil servants execute their

duties. Owing to this, it is extremely important to determine the way civil servants have to act so that the rights of migrants are exercised and they get necessary answers and get informed on their rights.

Under Articles 7-11 of the **Law on Public Administration**[125] the principles of work of public authorities are defined. Those are: independence and legality, expertise, impartiality, political neutrality, efficiency in the exercise of the rights of clients, proportionality, observance of the rights of clients and transparency.

The Law on Civil Servants[126] defines rules significant for high-quality work of state administration. These are: legality, impartiality and political neutrality of civil servants, their responsibility for their own work and equal availability of all work places (Articles 5-11).

Bearing in mind that most of the procedures relating to taking decisions on the status of migrants are related to the general administrative procedure, and that the police plays a big role in the safeguarding of borders and movements of migrants, the Law on General Administrative Procedure and the Law on Police are important for the subject of this handbook. The **Law on General Administrative Procedure**[127] contains similar principles of work for authorities acting in administrative matters. Those principles are as follows: administrative authorities acting in administrative matters have to act in accordance with the principles of legality, protection of the rights of citizens, protection of public interest, in accordance with the principles of efficiency, truth, hearing of the parties, submission of evidence, independence in taking decisions, efficiency of the procedure and providing assistance to clients (Articles 5-16). Under Article 11 paragraph 2 of the **Law on Police**[128], law enforcement functions are performed according to the principles of professionalism, cooperation, legality and proportionality in the use of police powers and force, as well as on the principle of subsidiarity and acting with least harm.

Under Article 164 paragraph 2 of the Law on Civil Servants, the **Code of Conduct of Civil Servants**[129] was adopted in 2008. Civil servants from state administration authorities, Government services and support services of administrative districts are obliged to act in accordance with the Code of Conduct. Conduct of a civil servant contrary to the provisions of this Code constitutes a minor breach of duty, and shall entail certain sanctions. The Code of Conduct regulates the issues of legality and impartiality in the work of civil servants, protection of public interest, prevention of the conflict of interest, handling gifts, entrusted resources and information, protection of privacy, treating clients, superiors and other civil servants etc.

A similar Code should be adopted for local administration as well. The Ombudsman has drafted the **Good Governance Code** which was submitted to the National Assembly for the adoption in the form of a draft on 2 June 2010. However, it has not been adopted yet. This proposal represents the general framework for proper adequate administrative conduct relating to public authorities and public service employees, containing "professional standards and ethical codes of conduct for performance of official duties and achieving communication with the citizens". The Good Governance Code expressly specifies that citizens are individuals and legal entities, regardless of their citizenship and seat, as well as groups of persons. "Selected, appointed and designated persons, civil servants, general service employees and other entities executing the duties within the competence of a state authority, other body or organization, enterprises and institutions entrusted with public powers" have to act in accordance with the Good Governance Code (second rule). Therefore, this includes local officials as well. The

[125] *Official Gazette of RS*, Nos. 79/2005, 101/2007.
[126] *Official Gazette of RS*, Nos. 79/2005, 81/2005, 64/2007, 67/2007, 116/2008, 104/2009.
[127] *Official Gazette of RS*, Nos. 33/97, 31/01, 30/10.
[128] *Official Gazette of RS*, No. 101/2005.
[129] *Official Gazette of RS*, No. 29/2008.

proposal of the Good Governance Code contains rather significant principles: lawful acting of public authorities and public service employees, prohibition of all forms of discrimination, proportionality and purposefulness when taking decisions and actions, the prohibition of abuse and overuse of powers, impartiality and independence, objectivity, consistency and observance of justified expectations, justness and politeness of public service employees, correction of flaws in their work, providing answers and conducting procedure in the language and alphabet a citizen understands, confirmation of the receipt and information on the competent public service employee, forwarding and correction of the submission, the right of the citizen to be heard and to give statements, observance of the reasonable deadline when taking decisions (which have to contain explanation and legal remedy), submission of the decision, protection of personal data, providing information on the procedure, access to the data having the public significance and keeping adequate records (Rule 3-24).

The Good Governance Code is a significant document owing to the fact that it contains the rules dealing with the way how to treat clients. These rules are extremely important to determine the way public servants treat different categories of migrants. Therefore, the adoption of this document in the near future ought to be supported. Public servants are obliged to act in accordance with the Constitution, laws and other regulations, as well as with the rules of the international law applied directly into the Serbian legal system. If some rules are not strictly defined by Law, an employee should interpret the existing provisions in favour of the client, especially if human rights guaranteed by the Constitution of the Republic of Serbia are exercised in that manner. It is important that public servants act in a decent, kind and professional way, showing interest and patience, especially if the client is not educated. The public servant in those situations has to speak in an understandable manner, which implies giving information in a language the client understands. The public servant cannot act in a discriminatory way, and cannot be under the influence of others, which may have impact on his legal and impartial judgment when performing his duties. If he does not act as usual, he has to justify his decision by giving objective and relevant reasons for that. He has to pay attention not to impose unnecessary expenses on the client. This implies the expenses that are not reasonably related to the legal objective of the procedure or the undertaken action. He cannot demand access to information that he does not require for performing his duties, and has to use the available data in the defined manner, taking into account the secrecy of data.

EXAMPLE

In his regular report for 2010, the Ombudsman points out that citizens are entitled to expect that public authorities conduct every proceedings related to obligations, rights and lawful interests of citizens in a formally correct and just manner, rationally, impartially, transparently, efficiently, professionally, quickly and politely, observing the dignity of citizens. The Ombudsman also emphasizes that every second complaint submitted to him deals with silence of administration, dawdle, lack of harmonization of procedures, obviously wrong implementation of the law and other violations of the principles of good governance[130].

An interesting fact is that based on a large number of complaints, it may be concluded that most citizens find that public administration is “a privileged group of drones”, “sinecure” for deserving political party members, cousins and friends,

[130] Regular Report of the Ombudsman for 2010, p. 20.

"incredibly corrupted service". On the other hand, public servants find that citizens have "perhaps legally justified, but unrealistic demands" in their unjustifiably numerous complaints and cases[131].

Until the Good Governance Code is adopted, local authorities should observe these principles presenting the sources of "soft" law, except for those parts that are already obligatory for the work of local services and the acting of local administration based on the Law on Local Self-government and other relevant laws.

1.2. Provision of proper and reliable information to migrants

The state has to ensure the provision of proper and reliable information on the enjoyment of guaranteed rights and procedures to every foreigner who does not speak its language and is not acquainted with its legal system. Numerous data indicate that the level of education of citizens has significantly dropped, resulting in the increase of "functionally illiterate" citizens. They do not know how to exercise their rights, which makes them rather frustrated, they do not trust state institutions and cannot realistically estimate their situation. This problem is even more manifested with regard to persons who come from other countries, different cultural surroundings, who are afraid for their destiny and have gone through a dificult situation in the state of origin. Or those may be migrant workers who arrived in the country in order to improve their economic status. Even though migrant workers often conclude employment contracts prior to the arrival to the country, they are usually not acquainted with their social and economic rights. They can often become the victims of forced labour and modern form of slavery, or human trafficking. Therefore, it is extremely important that each civil servant and local official provides correct and reliable information to migrants. They are obliged not to assess on their own whether information should be given. For instance, if a migrant is a returnee under the readmission agreement, a civil servant cannot estimate individually whether he should provide information on the provision of care, as it seems to him that he deals with the "false migrant". Every civil servant is obliged to provide all the relevant information, whereas the body taking the decision on the status of the person will estimate based on the circumstances, whether this person will enjoy a certain right or not.

Also, civil servants must not abuse their powers and always have to work in the interest of the client. This means that even uneducated clients are entitled to obtain information on the importance of their action. Under Article 10 paragraph 1 of the **Law on Asylum**, a foreigner who has expressed his intention to seek asylum in the Republic of Serbia is entitled to be informed about his rights and obligations in the course of the entire asylum procedure. This right, which is defined by law, has to be implemented in practice as well. Most asylum seekers in 2010 expressed their intention to seek asylum in police departments (403), reception centre for foreigners (67) and asylum centres (47).[132] However, the fact that only three persons decided to seek asylum at the border crossings, does not imply that officers working at the border crossings should not be instructed on the ways how to observe and exercise the rights of asylum seekers.[133]

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[131] *Ibid*, p. 21.
[132] Migration Profile, p. 41.
[133] The case was taken from: *Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Social Protection*, Praxis, 2011, p. 29.

EXAMPLE

Hatidza, a Roma woman living in Belgrade, mother of six and an internally displaced person, has submitted application for the exercise of the right to obtain social assistance to the competent Centre for Social Work. On that occasion, she was supposed to sign a clause, according to which, she "renounces" the right to obtain the data in an official way, as she can obtain the data sooner and more easily then the Centre for Social Work. She is illiterate, therefore she cannot complete the application for the issuance of required documents, and she cannot afford to pay administrative fees for their issuance. On the said occasion, she also was not provided the information regarding where she can acquire required documents. She was only told that "it was her documentation and she should deal with it for her own sake."

The state may also carry out this obligation by the means of the media, printing leaflets, brochures and other material that will be appropriately labeled and available, i.e. distributed in the areas where migrants are present. However, in spite of the existence of this material, civil servants always have to be ready to additionally explain its content, if the party so requests.

1.3. Provision of free legal aid

Considering that different categories of migrants need legal aid in resolving their legal status and enjoyment of specific rights, it is very important to grant them the right to free legal aid. The aid shall include provision of legal advice, writing of submissions and representation in court, when necessary.

The Constitution of the Republic of Serbia prescribes in Article 67 that everyone shall, under specific conditions, have the right to legal aid which shall be provided by legal professionals and legal aid offices established in local self-government units. The law should also stipulate conditions for providing free legal aid. The Republic of Serbia has not yet established a free legal aid system, however, in October 2010 **the Strategy for Free Legal Aid System Development** was adopted[134]. The Strategy states that obtaining the right to free legal aid shall mean equal access to justice for everyone, and that members of vulnerable and marginalised groups, including refugees and internally displaced persons, children, elderly and Roma people, are in a particularly difficult situation.

The Law on Local Self-government stipulates in Article 20 that primary competencies of a municipality shall also include establishment of an office for providing legal aid to citizens[135]. Additionally, **the Law on Legal Profession** stipulates in Article 66 that the Serbian Bar Association and bar associations in its constitution shall organise provision of free legal aid[136]. **The Law on Asylum** is the only law that currently prescribes the obligation of provision of free legal aid to asylum seekers. Article 10, paragraph 2 of the Law stipulates that an asylum seeker shall have the right to free legal aid and representation. Such legal aid shall be provided by the UN High Commissioner for Refugees (UNHCR) and NGOs whose objectives and activities are aimed at providing legal aid to refugees. In practice, this means that a non-governmental organization (Asylum Protection Centre (APC) until 1 January 2012, and Belgrade Centre for Human Rights from 1 January 2012) provides free legal aid in the form of advice, writing of

[134] *Official Gazette of RS*, No. 74/10.
[135] *Official Gazette of RS*, No. 129/07.
[136] *Official Gazette of RS*, No. 31/11.

submissions and representation before competent authorities conducting asylum proceedings, whereas UNHCR provides financial assistance. However, this form of provision of legal aid is insufficient because it is fragmentary and this is not a permanent solution.

Despite the lack of legal grounds, there are about fifteen non-governmental organizations, legal clinics at some faculties of law and legal aid offices in local self-government units in the Republic of Serbia that provide free legal aid. According to the latest survey, there are 145 local self-government units in the Republic of Serbia (174 including Kosovo and Metohija) and only 44 of them have a legal aid office. In Belgrade, all 17 municipalities have an established legal aid office. The 2008 Statute of the City of Belgrade envisages that city municipalities shall through their bodies, in accordance with the Law and Statute, provide legal aid to the citizens in exercising their rights (Article 77 paragraph1 item 22 of the Statute). In Niš, all 5 municipalities have the legal aid office as well as the municipalities of Bački Petrovac, Kikinda, Kula, Novi Sad, Pančevo, Sombor, Ćuprija, Paraćin, Požarevac, Smederevo, Zaječar, Bosilegrad, Leskovac, Pirot, Vranje, Čačak, Kragujevac, Kraljevo, Kruševac, Novi Pazar, Tutin and Užice. Some municipalities organise free legal aid in cooperation with a bar association and there are some municipalities which cooperate with non-governmental organizations in the provision of legal aid.

EXAMPLE

The Zvezdara municipality has a legal aid office which is open daily for work with parties and engages two legal practitioners with years of experience and a passed bar exam. Most citizens qualify for free legal aid which is provided in the form of information, legal advice and writing of submissions and contracts. In 2010, two legal practitioners were hired for representation purposes on the basis of an agreement with the Bar Association of Belgrade, who on a weekly basis visited rural parts of the municipality (Mali and Veliki Mokri Lug) where they provided free legal advice to the citizens. In addition to these forms of aid to the citizens, the municipality also has offices that operate on a voluntary basis and engage experts. The one that stands out is the Office for free legal advice and psychosocial assistance to victims of domestic violence, where assistance is provided by women legal practitioners, psychologists and social workers. They give advice and draft contracts, mostly gift and life-long support contracts. The Office was established at the initiative of the Commission for Gender Equality of the Mayor of Zvezdara municipality and is open for work with parties three times a week. The Office for refugees, displaced persons and persons from the territory of former Yugoslavia was also established at the initiative of the Mayor of Zvezdara municipality. The Office provides free legal aid in the form of advice and aid is provided by legal practitioners of the NGO “Serbian Democratic Forum”. The Office is open for work with parties once a week and issues occurring in practice mostly relate to the regulation of pensions, marital property, housing issues, status issues and extension of a refugee identity document.

Since municipalities are closest to the citizens and can help them exercise any right or obtain aid, it is necessary that all municipalities establish a legal aid office as soon as possible. The example of the Zvezdara municipality has also shown that specific categories of marginalised groups require establishment of additional services and aid offices. In this manner, many people in need would obtain their rights fast, easily and free of charge.

However, in terms of representation in court, the situation is slightly different. According to Article 85 of the **Civil Procedure Law** from September 2011, representation in court may be conducted exclusively by lawyers[137]. Before the adoption of this Law, representation was allowed to be conducted by any natural person capable of doing business, except for a pettifogger. With the latest amendment, all other qualified persons (Bachelors of Law, Masters of Law, Doctors of Law, lawyers who passed bar exam), who had been allowed to represent in court, may not do that anymore. In addition, this right can no longer be exercised by relatives of the party involved in the proceedings, and this measure shall particularly affect persons with disabilities who are not able to be physically present in the proceedings. Such a provision shall considerably increase expenses of the whole future free legal aid system, and until it is established, it shall hamper or disable the poorest to exercise any of their rights in court (which shall particularly have implications for different groups of migrants). The coalition of several NGOs has filed an initiative to the Constitutional Court to assess the constitutionality of Article 85 of the Civil Procedure Law, and the Trustee for Protection of Equality also announced her opinion on negative effects of this provision on the equality of citizens[138].

EXAMPLE

In her opinion on Art. 85 of the Civil Procedure Law, the Trustee for Protection of Equality pointed out that access to court constitutes "one of the key elements of the right to a fair trial, considering that other procedural rights, which together make the right to a fair trial, may be exercised only when legal entity access the court and seek judicial protection". According to the Trustee, conditions from the Article, "viewed from the aspect of caused consequences, having in mind the real social and legal context, are undoubtedly leading to the violation of the principle of equality in exercising the right to a fair trial in civil and legal matters of all those who are not capable to self-sufficiently undertake procedural actions and who are financially unable to pay for legal services". The Trustee also points out that the provision shall particularly negatively affect the groups of people who are in a particularly difficult situation and those are "members of vulnerable and marginalised social groups (refugees and internally displaced persons, persons receiving social assistance, children, youth, persons with disabilities, Roma people, single parents, elderly, etc)".

[137] *Official Gazette of RS*, No. 72/11.
[138] Trustee for Protection of Equality, Opinion on Article 84 of the Civil Procedure Law, file No. 1038/2011, 27 September 2011.

1.4. Prohibition of discrimination

The first and foremost obligation of any authority is to take a series of actions to prevent discrimination of different minority groups residing in its territory which may often be exposed to racial, religious and any other form of intolerance. A number of international instruments related to human rights protection unambiguously point out in their provisions to the obligation of a state to prevent all forms of discrimination with appropriate legal mechanisms. **The Constitution of the Republic of Serbia** proclaims in several provisions the principle of equality and non-discrimination and acknowledges the principle of preferential treatment. Article 21 of the Constitution proclaims that everyone is equal before the law and everyone shall have the right to equal legal protection without any discrimination. Activities of political parties which are aimed at violation of guaranteed human and minority rights or incitement of racial, national and religious hatred (Article 5 of the Constitution) shall be particularly prohibited. Article 14 of the Constitution also proclaims protection of national minorities for the purpose of exercising full equality and preserving their identity. **The Law on Asylum** prescribes in Article 7 that any discrimination on any grounds in the procedure of granting asylum in the Republic of Serbia shall be prohibited.

The 2009 **Law on Prohibition of Discrimination** provides a basis for creating an effective and comprehensive system for the protection against discrimination in the Republic of Serbia.[139] The Law regulates general prohibition of discrimination, forms and cases of discrimination and determines means of legal protection against discrimination. The Law has also established the institution of the Trustee for Protection of Equality.

According to the Law, the term "discrimination" shall mean "any unwarranted discrimination or unequal treatment, that is to say, omission (exclusion, limitation or preferential treatment) in relation to individuals or groups, as well as members of their families or persons close to them, be it overt or covert, on the grounds of race, skin colour, ancestors, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, sex, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership in political, trade union and other organizations and other real or presumed personal characteristics."

Furthermore, the Law defines different forms of discrimination, out of which indirect discrimination is the most dangerous. Indirect discrimination implies placement of a group of individuals in a less favourable position on account of their personal characteristics, by an act, action or omission that is based on the principle of equality and prohibition of discrimination. This form of discrimination is very subtle and requires extensive consideration and awareness. Discrimination in front of public authorities is particularly prohibited, and the objective of this is to clearly indicate that this is an entity which must not make discrimination The Law, thus, first elaborates on equal access to and equal protection before courts and other authorities, and then specifies in what situations discriminatory behaviour is recognised and sanctioned.

It is particularly important to sanction "hate speech" which represents a more severe form of discrimination and means "expressing of ideas, information and opinion that incite discrimination, hatred or violence against individuals or groups of persons on account of their personal characteristics, in public media and other publications, in gatherings and places accessible to the public, by writing out and displaying messages or symbols, and in other ways". Forums, newspapers and other media in the Republic of Serbia may often contain negative messages about foreigners, and we have also seen

[139] *Official Gazette of RS*, No. 22/09.

sporadic acts of violence expressing xenophobia and accusing specific countries and their citizens for the difficult situation in Serbia in the last twenty years.

EXAMPLE

In its Report on Serbia adopted in March 2011, the European Commission against Racism and Intolerance (ECRI) stated that internally displaced Roma, Ashkali and Egyptians, who make about 10% of the total number of displaced population, are a particularly discriminated group.[140] ECRI emphasised that many of them do not have the possibility to obtain identity documents and that they have limited access to housing, education and employment. Living conditions of these people are poor and local municipalities are mostly reluctant to receive them, which is why they often stay in unrecognised collective centres and improvised huts in unauthorised settlements in the vicinity of major cities. These Roma people constantly face the danger of being evicted, even during the winter, and any adequate alternative solution by the government has not been found yet. However, even those Roma people who reside in legal settlements live in poor material conditions without water, electricity and sewerage system, and with no address, which is why they cannot exercise many of their rights. The authorities have been asked to grant these people all guaranteed rights by providing them personal identity documents. To a large extent they have limited access to employment – they often work in the "grey zone" and do the most difficult jobs without basic rights to access to the labour market and social rights of workers. They also have limited access to education, partly because they are prevented from enrolling a school and partly due to being exposed to discrimination, prejudice and verbal abuse and violence, which is why they leave schools. The level of discrimination may be seen in an event in the Jabuka municipality when a Roma settlement was attacked by non-Roma because one boy of Roma nationality was suspected of a murder of a young man of Serbian nationality. State authorities at first did not respond at all to this racially motivated violence, which was accompanied by various racist statements. Likewise, the educational system in schools does not support multiculturalism nor does it have a positive approach to the use of the Romani language, which reduces the possibility for integration of these people. ECRI is particularly concerned about the fact that school authorities have increased discrimination by segregating Roma, Ashkali and Egyptians from their peers and by sending these children to schools for children with special needs. Such behaviour has already been condemned several times by the European Court of Human Rights in other states (Czech Republic, Greece, Croatia).

[140] ECRI, Report on Serbia (fourth monitoring cycle), CRI (2011) 21, 31 May 2011, p. 26, 28, 29. Wording of the Report may be found at http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/serbia/SRB-CbC-IV-2011-021-SRB.pdf.

1.5. Fair and individual examination of applications

Fair and individual examination of applications predominantly refers to asylum seekers and also to all those categories of migrants which do not obtain their status automatically but through the examination of their application. First, it is always necessary to examine an application individually and not through incomplete documents that lack clear facts and description of a situation which every specific person is in. However, it is not sufficient to personally interview a person. Specific conditions should also be met which shall lead to fair examination of an application. Since the examination also affects the person in terms of whether he shall obtain a required status or not, the examination method should be appropriate. This means that civil servants must develop a communication skill and interview techniques. This is particularly important because most migrants have little education and are not able to easily and quickly articulate their legal situation, which is additionally aggravated by difficult circumstances in which a person left his country, which is the case with refugees. This is why all civil servants need to receive appropriate training and education which shall not be related only to the field of exercising the rights of specific categories of migrants, but shall also be focused on developing sensitisation towards the problems typical for their specific groups.

An interviewer shall have to posses the following skills:

- Understanding of respondent's verbal and non-verbal messages;
- Listening skills; and
- The skill of establishing a relationship of trust with the client and creating an atmosphere of honesty and confidentiality.

A good professional shall pay attention to many elements such as parlance, non-verbal signals e.g. handshake, dressing style, facial expression and emotional excitement during the interview. The professional shall also actively listen to the respondent and he will do this with understanding and empathy. While doing this, the civil servant shall not judge the respondent for some of respondent's actions, he shall not ask accusing questions or talk about his own problems or "lecture", which is often connected to prejudice and stereotypes that every person has. If all these elements are present, the civil servant and the respondent shall establish a relationship of trust which shall ensure provision of correct information and a fair decision on the basis of the respondent's application.

EXAMPLE

The first interview in a police station in Belgrade was an unpleasant experience for a victim of human trafficking. Although she mentioned that she talked to several policemen on the same day, including police women, Anita was interrogated by a male inspector. She felt particularly uncomfortable when she talked about being raped, because reminding herself of and talking about the experience was very difficult for her. Nevertheless, she told everything: "Instead of being asked if something happened to me, was I all right, they asked me if I had taken drugs as they noticed bags under my eyes and rags I was wearing (which I received in a home in Italy). I think they did not treat me with respect. I had eye bags because I had not been sleeping for days. Nevertheless, I answered all the questions, but retortly".[141]

[141] Taken from: Magnus Lindgren, Vesna Nikolić-Ristanović, *Victims of Crime – International Context and Situation in Serbia*, OSCE, Belgrade, 2011, p. 111.

1.6. Provision of clear and fair procedures in handling migrants

Whether the rights related to a status shall be exercised depends on the procedure for granting the status. This primarily refers to the fact that the procedure should be clear and based on predetermined rules and principles which must be equal for everyone. In addition, both state and local authorities should strive to simplify procedures which shall be comprehensible to any average person. If there is a practical problem with exercising an important right, authorities should find alternative ways for exercising it, without much delay. Similarly, they should not complicate procedures in order to exercise some of their own rights and they must act efficiently in order to make initiation of a procedure effective in practice.

In view of the already described situation of most migrants, it is particularly important that the procedure is clear and that civil servants do not abuse their position by failing to receive applications or by easily rejecting them. Silence of administration is a particular problem, as well as the receiving of verbal applications which ends at that, without further helping and referring the party. Parties should always be informed about the method of conducting proceedings and about the consequences they have for them, and every civil servant should act in the interest of a migrant, resolving a case in foreseeable future with due consideration of migrant's rights and consequences of non-exercising those rights.

It is important that a migrant has in every situation the right of appeal to the competent authority which is independent and which may assess the merits of his appeal. This means that there has to be a sufficient number of employees. This is particularly important for asylum proceedings in the Republic of Serbia. For example, it has already been mentioned that the Asylum Office was not established until February 2011, and that applications lodged to the first instance authority had been decided upon by the Asylum Department which employs two civil servants. In 2010, 63 hearings of applicants for asylum were conducted before the first instance authority and only in one case the application was accepted (in 47 cases applications were rejected and proceedings were suspended in as much as 309 cases).[142] These civil servants are not independent experts in the field of migration, therefore, it is necessary to ensure their constant education, especially in terms of relevant international standards.

EXAMPLE

Olivera is a Romani woman and a returnee under the readmission agreement, and has no income. She has two children, one of whom is registered in the registries in Serbia and the other child, born in Germany, is registered in the registries in Germany and now needs to be registered in Serbia on the basis of a foreign document. She addressed the competent centre for social work where she was verbally rejected several times. They did not give her an acknowledgement of receipt of the application or a negative decision, which prevented her from exercising the right of appeal. Civil servants orally considered the merits of her application, estimating that she probably did not meet conditions for social assistance and advising her to file an application after she has registered the other child in the registries. Civil servants did not think at that time about the difficult financial situation Olivera was in with her two children and about the uncertainty of the duration of the procedure of registration in the registries.[143]

[142] Migration Profile, p.43.
[143] Migration Profile, p. 43.

2. PROTECTION OF MIGRANTS

2.1 Prohibition of returning persons to unsafe countries

Article 33 of the 1951 **Convention relating to the Status of Refugees** prescribes prohibition of expulsion and forced return to a place where a person's life or freedom would be threatened, until his final status has been determined. This obligation results from Article 3 of the **Convention against Torture** which states that "no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". This obligation also results from the practice of the Committee for Human Rights and jurisprudence of the European Court of Human Rights.

EXAMPLE

One of the leading cases addressing this issue before the European Court is *Cruz Varas v. Sweden.*[144] In this case, two Chileans were threatened to be expelled from Sweden because the two persons, according to the assessment of Swedish authorities, did not provide strong enough political reasons for granting asylum. However, they claimed that expulsion to Chile at the time when Pinochet was still in power would have exposed them to a serious risk of abuse as well as to an additional trauma caused by being returned to the state where they had already been tortured. Sweden argued that it was aware of a significant improvement of human rights in Chile, with what the European Court agreed, however, it pointed to a report which documented that wrongdoings were still committed toward citizens. The Court, therefore, established the following risk assessment principles:

1. A condition has to be evaluated on the basis of all available facts;
2. Whether there is a risk shall be assessed on the basis of facts which were familiar, or must have been familiar at the time of expulsion and on the basis of information received afterwards; and
3. There have to be "valid" grounds for believing that a person may be at risk of being abused.

In further cases the European Court confirmed that this principle applies even if a person is a threat to national security, including terrorism.

The Constitution of the Republic of Serbia guarantees the right to asylum, but it does not introduce as a constitutional category the prohibition of expulsion or deportation of a person to a state if he has justified fear that he will be subjected to torture or some other form of abuse. This obligation stems from other constitutional principles and it has also obtained its legal basis. Thus, the **Law on Asylum** prescribes in Article 6, paragraph 1 that no person shall be expelled or returned against his will to a territory where his life or freedom would be threatened on account of his race, sex, language, religion, nationality, membership of a particular social group or political opinions, unless the

[144] *Cruz Varas and Others v. Sweden*, complaint No. 15576/89, 1991.

person constitutes a threat to national security or has been convicted of a serious crime by a final court judgment, for which reason he constitutes a danger to public order (Article 6, paragraph 2). However, the Law goes a bit further and prescribes in Article 6, paragraph 3 that no person shall be expelled or returned to a territory where there is a risk of him being subjected to torture, inhuman or degrading treatment or punishment. In this manner, the Law has consistently introduced an international obligation resulting from the Convention relating to the Status of Refugees and the European Convention on Human Rights, even though the question remains whether the standard also applies to degrading treatment and punishment as the mildest form of abuse. On the other hand, the Law does not apply this guarantee when a person's life is threatened, which should definitely be interpreted in the same manner as the provision set out in Article 6, paragraph 3 of the Law.

However, direct return of a person to a state where he has a fear of being persecuted is not the only way to violate this obligation. This is often done indirectly, by returning a person to a third country which later expels the person to another country, which creates chain expulsion and forced return of a person.

2.2 Prohibition of abuse of the "safe third country" concept

In order for refugees to be able to exercise their right to act in accordance with the 1951 Convention relating to the Status of Refugees and other relevant international instruments, they must have enabled physical access to the territory of a country in which they seek asylum as well as to the procedure for assessing the merits of their application. The "safe third country" concept is often inconsistent with this principle. This concept has been introduced in the last ten years in most Western European countries for purpose of returning asylum seekers to the countries in which they spent a certain amount of time, or had only been in transit on their way to West Europe. In this manner, an attempt was made to bring order to the migration of asylum seekers in the territory of Europe. The second reason for introducing the concept is based on the agreement on the division of responsibilities among countries concerning receipt and examination of asylum applications. The countries of Central, East and South-East Europe adopted the concept and introduced it to their legislation and practice, which further influenced weakening of the guarantee in terms of protection of asylum seekers. However, this concept often casts doubt on whether every person shall be protected from expulsion and forced return and have a possibility to exercise his right and obtain asylum. This is best illustrated in the countries in which the very fact that there is a "safe third country" constitutes sufficient grounds for rejecting an asylum application as irregular or manifestly unfounded. One of these countries is the Republic of Serbia.

The Law on Asylum defines a safe third country as a country "from the list created by the Government, which observes international principles pertaining to the protection of refugees contained in the 1951 Convention related to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees, where an asylum seeker had resided or through which he had passed immediately before he arrived to the territory of the Republic of Serbia and where he had an opportunity to submit an asylum application, where he would not be subjected to persecution, torture, inhuman or degrading treatment, or sent back to a country where his life, safety or freedom would be threatened". Article 33 of the Law envisages that one of the reasons for rejecting an asylum application is arrival of a person from a safe third country, unless he can prove that the country is not safe for him. Finally, transitional provisions of the Law set out that the Government shall determine a list of safe third countries within six months from the moment of adoption of the Law.

On 19 August 2009, the Government of the Republic of Serbia adopted a decision on determining the list of safe third countries, where 42 countries were listed without any explanation.[145] Additionally, the Government did not determine, nor does this obligation result from the Law on Asylum, that the list will be revised after a specific period of time, given the current situation. Legal regulations should be amended in such a manner that an obligation of regular quarterly revision of the list is introduced with an option of urgent revision if required by circumstances. Until the proposed amendment is introduced, that the Asylum Department and Commission for Asylum should during assessment of the merits of an asylum application observe international standards, it should be determined in every individual case whether the country stated on the list is still considered to be a safe third country.

EXAMPLE

Greece is on the list of safe third countries of the Government of the Republic of Serbia. However, the European Court of Human Rights found that Greece may not be considered a "safe third country". The judgement *M.S.S. v. Belgium and Greece*[146] of 21 January 2011 refers to an Afghan who worked as an interpreter for international air forces in Kabul and who sought asylum in Belgium in February 2009. He entered Europe through Greece, therefore, Belgium authorities returned him to this country applying the "safe third country" concept. However, the European Court in this case found the violation of Article 3 of the European Convention which prohibits any form of abuse. Namely, it was determined that Greece is facing the problem of an extensive number of migrants; they do not obtain required information about the possibilities of exercising their rights; they do not have provided accommodation which is why they often sleep in the streets; asylum seekers often do not receive interpreting services; they do not have the right to an effective legal remedy, i.e. to appeal against negative first instance decisions; the possibility of lodging an appeal does not automatically lead to a delay of execution of the decision; detention conditions are poor; people are often returned to Afghanistan; legal aid in procedures is limited and provided only in exceptional cases, and even when it is provided, due to low fees, in most cases it is not provided by Greek lawyers, who are best familiar with the system. Due to all of the stated reasons, the European Court found that Greece cannot be considered a safe third country.

On 22 December 2010, the Asylum Department rejected an asylum application lodged by five Iraqis who from Iraq went to Turkey, then to Greece and Macedonia, and from there to the Republic of Serbia.[147] The application was rejected because the persons resided in Greece for eight months and because they did not prove that the stated countries were unsafe for them. The persons were instructed to leave Serbia within three days from the date of validity of the decision. Since they lodged an appeal to this decision, the Commission for Asylum rejected the appeal as unfounded, explaining that the first instance authority properly

[145] *Official Gazette of RS*, No. 67/09.
[146] *M.S.S. v. Belgium and Greece*, complaint No. 30696/09.
[147] Decision 03/9-26-1108/10 adopted at the session on 20 December 2010.

determined the circumstance that asylum seekers passed through the countries which are on the list of safe third countries in which they could have lodged an asylum application. The Commission pointed out that the Government of the Republic of Serbia created the list of safe third countries which the contains countries which the asylum seeker passed through, for which reason Article 22, paragraph 1, item 6 of the Law on Asylum was properly applied.[148] The Commission rejected the asylum seekers' claim that they had not had possibilities to address the authorities and lodge an asylum application during their stay in the safe third countries where they, according to the Commission, resided long enough. However, the time factor cannot be the only decisive factor for this claim.

Acting in compliance with international standards, an asylum seeker may return to a third country only if the country meets appropriate international standards for human rights relevant for asylum,[149] if there is no risk of being expelled and if the person concerned has certain family, cultural and other relations with that other country. These international principles are above domestic law and as such have to be respected and applied in practice.

2.3 Obligation of family reunification

The Constitution of the Republic of Serbia does not guarantee the right to family life, however, Article 66, paragraph 1 states that a family shall enjoy special protection, in accordance with the Law. Protection of family as the original cell of social life refers to the protection of its integrity. In order to ensure such protection, it is necessary to start from the definition of the term "family" and determine what relations fall under family relations. The Constitution of the Republic of Serbia defines marriage as free consent of a man and a woman before the state authority, whereas the 2005 **Family Law** particularly proclaims protection of a family and the right of every person to respect for family life.[150] The Law further states in Article 3, paragraph 1 that marriage shall be a legally regulated union between a woman and a man. The Law equalises a marital union with a non-marital union, which is defined as a more durable union between a woman and a man, and states who is considered to be a family member for the purposes of the Law.[151] However, **the Law on Asylum** provides a more restrictive definition of family members and lists who is implied by this: minors, adopted children or stepchildren that are not married, spouses, provided that marriage was concluded before their arrival to the Republic of Serbia, as well as parents and adoptive parents legally obliged to support the person concerned. The status of a family member may also be granted to other persons in exceptional cases, when the fact of whether they were supported by a person who had been granted asylum or subsidiary protection will be taken into account.

The European Convention on Human Rights guarantees the right to respect for a family life. According to the jurisprudence of the European Court, the right to a family

[148] Decision Až-01/11 adopted at the session on 16 February 2011.
[149] See: Recommendation of the Committee of Ministries No. R (97) 22 containing Guidelines on the application of the safe third country concept, 1997.
[150] *Official Gazette of RS*, Nos. 18/05, 72/11.
[151] Family members are: spouses or ex-spouses; children, parents and other blood relatives, also in-laws or adoption-related persons, i.e. persons connected through foster care; persons who live or lived in the same family household; non-marital partners or ex partners from a non-marital relationship; and persons who were mutually or are still in emotional or sexual relationship i.e. persons who have a child together or a child is to be born, although they have never lived in the same family household.

life shall mean the right of family members to cohabitation and development of mutual relations. As mentioned by the European Court several times, enjoyment of mutual company between parents and children shall constitute the basic element of a family life.[152] However, this does not mean that cohabitation is a necessary condition for the existence of a family life, because it may exist even between family members living separately. Accordingly, the Court shall consider "family" to be an autonomous term, separate from the definition provided by the domestic law of the states parties to the European Convention. The European Court considers that family life consists of spouses and their minor children, including extramarital and adopted children. Protection shall also be provided to an unmarried couple living together and to their minor children. Relations between siblings are also included in the protection under Article 8 of the European Convention, and family relations may also exist between a grandmother and a grandfather and a grandson, and in exceptional cases even between an uncle and a nephew. Nevertheless, in principle, advantage is given to "vertical family relations" (minor children, parents, grandfathers and grandmothers) over "horizontal family relations" (siblings, aunts, uncles, nephews or cousins). In the large number of cases which the European Court decided upon in terms of Article 8 of the European Convention, the question was raised about whether deportation of a person from the territory of a contracting state would constitute a violation of the right to a family life. Considering that every state has the right to control its borders and freely enforce the immigration policy, Article 8 of the European Convention does not impose a general obligation on states to respect the choice of spouses in terms of the state in which their marriage was concluded, or a family reunion in the territory under their jurisdiction.[154]

EXAMPLES

In the case of *Gul v. Switzerland*, the person lodging the complaint left Turkey and sought asylum in Switzerland.[153] After a short time, he was accompanied by his wife who came to Switzerland primarily to receive appropriate medical treatment, which was unavailable to her in Turkey. Although the asylum application was rejected, he and his wife were allowed to stay in the country for humanitarian reasons. In the meantime, their six year old son was rejected in his intention to join his parents, which was interpreted as violation of Article 8 of the European Convention. The European Court, however, emphasised that by going to Switzerland Mr. Gul voluntarily separated from his son and that he was allowed to return to Turkey at any moment and re-establish his family life.

On the other hand, in the case of *Radovanović v. Austria*, the person lodging the complaint was born in Austria but lived with his grandmother and grandfather in Serbia until he was ten, while his parents continued to live in Austria.[154] After his grandmother and grandfather's death, he joined his parents in Austria where he graduated from secondary school and received vocational education. In the meantime, he was convicted of aggravated larceny and the measure of prohibition of residence in Austria for an indefinite period of time was imposed against him. Investigating facts of the case, the European Court took into account that

[152] *W. v. the United Kingdom*, complaint No. 9749/82, 1987, paragraph 59; *Margaret and Roger Anderson v. Sweden*, complaint No. 12963/87, 1992, paragraph 72.
[153] *Gul v. Switzeland*, complaint No. 23218/94, 1996.
[154] *Radovanović v. Austria*, complaint No. 42703/98, 2004.

Radovanović committed the crime as a minor, that he had no prior criminal record, therefore, his behaviour did not cause a serious threat to public peace and order, which would justify such a vague measure. The Court also took into consideration that the person was born in Austria where his parents still lived legally and that he had no closer relatives in Serbia after his grandmother and grandfather's death. The person, thus, had stronger family and social connections in Austria than in Serbia and therefore imposition of the measure of prohibition of residence for an indefinite period of time certainly led to the violation of Article 8 of the European Convention.

In the Republic of Serbia, **the Law on Asylum** envisages in Article 9, paragraph 2 that persons granted asylum shall be entitled to family reunion, in accordance with the Law. Article 48 of the Law prescribes that a person whose right to refuge in the Republic of Serbia has been recognised shall have the right to reunite with his family members. At the request of the person who has been granted asylum, the Asylum Department shall also grant the right to refuge to his family members who are outside the territory of the Republic of Serbia, unless there are statutory reasons to deny them this status. A person who was granted subsidiary protection shall have the right to family reunion in accordance with the regulations governing the movement and stay of foreigners, on the basis of Article 49 of the Law. Exceptionally, the competent authority may in justified cases allow family reunion and grant temporary protection to family members of the person who was granted temporary protection in the Republic of Serbia.[155]

In addition, **the Law on Foreigners** prescribes that a temporary residence permit may be granted to a person for the purpose of family reunion. In such a case, an application shall be submitted by a foreigner – member of the immediate family of a citizen of the Republic of Serbia or of a foreigner who was granted a temporary or permanent residence permit. Immediate family, pursuant to the Law on Foreigners, implies: spouses, their minor children born in or out of wedlock, minor adopted children and minor stepchildren. Exceptionally, other cousin may be considered member of an immediate family if there are exceptionally important personal or humanitarian reasons for the family reunion in the Republic of Serbia. **The Rulebook on the fulfilment of conditions for granting a temporary residence permit to a foreigner for the purpose of family reunion** defines that other cousin may be a direct-line cousin who is directly related to the guarantor, i.e. his spouse, who is dependent on them and has no adequate family care in the country of origin, or who is an adult child of the guarantor or his spouse who is not married, and who is not capable of taking care of his needs due to his health. The Rulebook envisages that an application should be supported by the evidence confirming kinship or status of an immediate family member. This form of a temporary residence permit may be extended to a period of three years, or until conditions for issuing a permanent residence permit have been met.

2.4 Protection of children and minors

It has already been mentioned that the Constitution of the Republic of Serbia in Article 66 guarantees special protection to family and children. However, the Constitution of the Republic of Serbia for the first time explicitly guarantees the rights of a child by proclaiming in Article 64 that children shall enjoy human rights suitable to their age and mental maturity. Every child shall have the right to a personal name, entry in the birth

[155] *Radovanović v. Austria*, complaint No. 42703/98, 2004.

registry, the right to learn about his ancestry, and the right to preserve his own identity. Children shall be protected from psychological, physical, economic and any other form of exploitation or abuse.

In 2010, minors accounted for 5.8% of the total number of emigrants in the Republic of Serbia.[156] It should be pointed out that a small number of minors are foreigners with a permanent residence permit (2.7% in total).[157] Significant data is that in 2010 about a quarter of asylum applications (22.1%) were lodged for minors, whereas 14.6% of underage returnees were returned (of the total of 4,434 returnees).[158] Consequently, the issue of protection of children and minors in the Republic of Serbia is becoming more topical.

The most important catalogue of children rights is contained in **the UN Convention on the Rights of the Child** accepted by the Republic of Serbia on 4 October 2001.[159] The Convention constitutes a catalogue of human rights granted to persons under the age of eighteen. The Convention obliges states to respect and ensure rights to every child within their jurisdiction without discrimination of any kind, irrespective of race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property and other status. States shall be obliged to provide a child with protection and care necessary for the welfare of children. The Convention envisages the following rules: achieving the highest possible level of health and preventive health and medical care, the right to free primary education, the right to rest, free time, play and participation in cultural and artistic events, the right to be informed, free expression of child's opinion and the right to be heard, the right to live with his parents and to have contact with both parents if they are separated. Children with disabilities shall have the right to special support and development as well as to active participation in social life. The contracting states assumed a responsibility to take all appropriate legal, administrative, social and educational measures to protect children from all forms of physical or mental violence, injuries or abuse, neglect or negligent treatment, harassment or exploitation, including sexual abuse. The Convention, *inter alia*, in Article 22 explicitly envisages that states shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with the applicable international or domestic law and procedure shall, whether unaccompanied or accompanied by his parents or by any other person, receive appropriate protection and humanitarian aid in exercising the right set forth in the Convention. If a child is unaccompanied, states shall be obliged to ensure cooperation with the international and non-governmental organizations which cooperate with UN in order to protect the child, help him to find his parents and other family members, and to obtain information necessary for their reunification. If they cannot be found, the child shall receive the same protection as any other child who is permanently or temporarily deprived of family environment for any reason.

The Republic of Serbia has no comprehensive Law on Children, which is currently being drafted, but there are rather about eighty different laws which directly or indirectly refer to children. The Family Law certainly constitutes the framework for the rights of a child, and in terms of importance, the Law on the Fundamentals of the Education System as well as the Law on Juvenile Criminal Offenders and Criminal Justice Protection of Underage Persons stand out. **The Law on Asylum** prescribes in Article 15 the principle of special care of persons with special needs who seek asylum, including minors. The Law recognises the category of unaccompanied minors, which

[156] Migration Profile, p. 13.
[157] Migration Profile, p. 19.
[158] Migration Profile, p. 42, 43.
[159] *Official Journal of SFRY – International Treaties*, No. 15/90 and *Official Journal of FRY – International Treaties*, No. 2/97.

implies foreigners under the age of eighteen who are during the entry to the Republic of Serbia unaccompanied by parents or a custodian, or who are left unaccompanied after entering the state. Article 16 prescribes that a guardian shall be appointed to an unaccompanied minor by the guardianship authority before the submission of the asylum application, in conformity with the law. A guardian shall have to attend hearings of an unaccompanied minor.

EXAMPLE

Since April 2009, the reception of underage asylum seekers in the Republic of Serbia has been conducted in the Centre for Accommodation of Underage Foreigners Unaccompanied by Parents or Custodians, one of the units within the Institution for Education of Children and Adolescents (the "Vasa Stajić" Centre) in Belgrade.[160] The Centre has the accommodation capacity to receive maximum twelve underage persons. The first underage person was received on 8 April 2009, and until 1 April 2011, the Centre received 174 minors. It is important to mention that the accommodation in the Centre is officially provided only to male underage foreigners between the age of seven and eighteen since there is no separate section for female underage foreigners. Until now, the Centre has received only one female person who spent the nights in the premises of the Reception Unit. The Institution for Education of Children and Adolescents in Niš is being renovated and it will have the unit for accommodation of underage foreigners, however, the accommodation capacity of the facility will be only for ten people.

Despite the small accommodation capacity, there have been 5,212 recorded overnight stays in the Centre. This information points to the alarming condition in terms of receiving underage asylum seekers and necessity to urgently increase the accommodation capacity, particularly for underage female persons.[161]

The Committee on the Right of the Child, which monitors the implementation of obligations assumed by contracting states, addressed in its sixth general comment the issue of treatment of children who are unaccompanied and who are outside the borders of their own country. There are numerous reasons why a child may be unaccompanied: persecution of a child or his parents, an international conflict or civil war, various forms of trafficking of children, including sale by parents, as well as the search for better economic and living conditions. The Committee adopted this general comment because, by considering states' reports, it made a conclusion that unaccompanied children are exposed to a high risk of being abused and ill-treated. Such children are often exposed to forced labour, discrimination or gender-based violence and have limited access to food, housing, health services and education. They often do not even have appropriate documents, which further aggravates their position. In a large number of states they are routinely not allowed to cross the border or they are retained at the border, and in some situations they are deprived of access to the asylum granting procedure. Even when they

[160] The Centre was founded according to the Decision of the Government of the Republic of Serbia on the Network of Social Protection Institutions (*Official Gazette of RS*, No. 51/08).
[161] Data taken from: Miroslava Jelačić, Mirjana Zorić, Rastko Brajković, Marko Savković, *Underage Asylum Seekers in Serbia: At the Verge of Dignity*, Group 484, Belgrade, 2011, p. 4-5.

have access, very often they are only granted a temporary status which almost always ceases to exist once they turn eighteen.

The Committee on the Right of the Child states in the comment the following principles to be followed by states:

- States' obligations resulting from the Convention on the Rights of the Child shall apply to every child in the territory of a state and to all the children within its jurisdiction, and they have to be applied without discrimination of any kind;
- The obligations shall apply to all the authorities (legislative, executive and judicial);
- All the obligations from the Convention must be incorporated into domestic laws;
- The best interest of every child must be taken into account in the proceedings;
- These children shall exercise the right to life, survival and development;
- These children shall have the right to express their views freely;
- A child may not be expelled to a state where there is a risk that he will be subjected to torture or any other form of abuse;
- States must ensure confidentiality of information received in relation to the child concerned;
- A child must be registered as soon as possible and his condition and circumstances in which he entered a state, i.e. his needs, must be assessed without delay;
- A child must be provided with a legal representative and a guardian;
- A child must receive adequate care and accommodation, access to education, the right to an adequate standard of living, and access to health services;
- A child must be protected from human trafficking and sexual and other forms of exploitation, violence and abuse; and
- A child must be protected from detention and if this occurs, he must receive proper treatment.

In terms of access to the asylum granting procedure, the Committee has adopted several principles which states must adhere to. Firstly, every child must have ensured access to the procedure by respecting specific guarantees. Thus, a child has to be accompanied by an adult who is familiar with his situation and competent to represent his interests. If necessary, a child shall be provided with free representation. Such a case is a priority, and a decision must be made promptly and fairly. The procedure must be conducted by a qualified person in the presence of an interpreter, if required. A child shall have the right of appeal. Civil servants conducting the procedure must be trained in the field of international law and must be sensitive to the child's age, cultural difference and gender. If a child receives complementary protection, as is the case with subsidiary protection, the child shall still have the rights resulting from the Convention on the Rights of the Child and national laws. A child shall not be returned to a state where there is a risk

that he will be subjected to torture. In principle, he shall be returned to the country of origin only if this is in his best interest, by estimating the following conditions:

- Safety and social and economic conditions in the state upon return of a child;
- Availability of institutions for foster and care;
- Child's opinion;
- Level of integration achieved by the child in the state and period of absence from the country of origin;
- The right of the child to preserve his identity, including citizenship, name and family relations; and
- Keeping the continuity in child's upbringing and his ethical, cultural and language origin.

If it is estimated that return of a child is not in his best interest, a state shall have to take measures for achieving the child's integration. In such a case, the child shall have to obtain residential status and exercise all the rights set out in the Convention on the Rights of the Child. If a decision is made that a child should stay, authorities shall have to assess the child's situation and make appropriate arrangements with the local community and take other measures necessary for the child's integration. In any case, institutional care of a child should be the last option. A child should particularly be granted the right to education, training, employment and health care, but special measures such as organising language courses should also be taken.

2.5 Protection of women against domestic violence

Poor economic situation, lack of education and tension always lead to a higher level of violence in the society. This is predominantly reflected in domestic violence because it is most difficult to detect and sanction it there, as well as because of the closeness of a partner who is understanding and justifies this form of violence for a long time. The goal of domestic violence is to gain control over family members who have less power and who are economically dependent on the abuser. This is particularly true for women-migrants who are in most cases economically dependent and often unemployed and do housework.

According to numerous studies, women in Serbia are largely exposed to violence by their husbands or ex-husbands and this form of violence is lasting and widely spread, there are social stereotypes that accuse a victim and there is no responsibility of the offender or institutions due to their inefficiency in detecting such a phenomenon.[162] Serbia, however, lacks uniform database on cases of violence that would be kept by the Ministry of Interior, health institutions and centres for social work, and such a database should be created as soon as possible.

The UN Convention on the Elimination of All Forms of Discrimination against Women, accepted by the Republic of Serbia on 12 March 2011, requires in Article 5 from states to take all adequate measures to modify social and cultural patterns of conduct of men and women, with a view to eliminate prejudices and customary and all other practices based on the idea of the inferiority or the superiority of either of the sexes

[162] See: Protector of Citizens, Special report on the situation in domestic violence against women, Belgrade, June 2011.

or on a traditional role of men and women.[163] The Convention points out in Article 1 that discrimination against women shall also mean gender-based violence, i.e. violence against a woman only because she is a woman, or violence that disproportionately affects women.

The Committee on the Elimination of Discrimination against Women, the competent body established by the Convention, adopted a general recommendation No. 19 which requires from states to eliminate traditional roles of women and stereotyped roles leading to widespread violence or coercion, such as domestic violence and abuse. The Committee also referred to Article 1 of the Convention in which the term "discrimination" also means gender-based violence. This form of violence refers to any action causing physical, mental or sexual harm or suffering, and other forms of restriction of freedom. A state shall have to take all the measures to suppress these phenomena and adequately punish offenders. The issue of prejudices is very important, particularly against extremely discriminated groups like Roma in Serbia. A study conducted in the Roma Women's Centre "Bibija" in 2010 showed that all female respondents (150 of them who predominantly live in four informal Roma settlements in the territory of Belgrade and Kruševac) had been exposed to a form of domestic violence: physical, psychological, economic and sexual, the witness of which were often children. These prejudices affect the failure to take appropriate actions, thus, a large number of cases of discrimination was documented against Roma women who are victims of domestic violence where discrimination was committed by civil servants employed with the authorities and services competent for the protection of these women. The issue of misunderstanding and inadequate response to domestic violence against women coming from different migrant groups has also been recorded in other states.

EXAMPLE

In the case of *Fatma Yildirim v. Austria* from 2005, the complaint was lodged by three relatives on behalf of deceased Fatma who were represented by the Vienna Intervention Centre against Domestic Violence and Association for Women's Access to Justice.[164] She was a Turkish citizen residing in Austria and married to a Turkish citizen with whom she had three children. Fatma wanted to divorce, but since July 2003, her husband threatened to kill her and the children if she did it. In August 2003, she moved to her eldest daughter together with the youngest daughter who was five at the time. Two days later she went back to collect her things thinking that her husband was at work, but she found him at home and barely avoided strong harassment. She reported violence and threats over the phone to the police. The police issued a restraining order to stay away from the apartment and informed relevant services about the harassment. They also informed the Public Prosecutor who decided not to respond. After two days, Fatma's husband appeared at her workplace and continued to harass her. The police interfered but did not write a report about this incident. Harassment continued and the Public Prosecutor was still not responding, so the abuser remained at large. In the meantime, Fatma filed for divorce and several days later her husband attacked her with a knife in the street and she died from sustained injuries. The husband was arrested several days later when attempting to enter Bulgaria. He was tried and received a sentence of life

[163] *Official Journal of SFRY – International Treaties*, No. 11/1981.
[164] *Fatma Yildirim v. Austria*, complaint No. 6/2005, 2007.

imprisonment. The applicants of the complaint claimed that the Austrian criminal justice system was unfavourable for women because, in terms of domestic violence, offenders are prosecuted or adequately punished only in the small number of cases. Insufficient amount of relevant data about these situations also indicates to the lack of seriousness when it comes to violence against women.

The Committee on the Elimination of Discrimination against Women concluded that Austria created a comprehensive model against domestic violence which refers to the relevant legislation, criminal and civil proceedings, raising awareness, education and training, safe houses, counselling of victims and work with abusers. However, in order for a female victim of violence to experience practical implementation of the equality principle and exercise her basic rights, political will has to be supported by state actors. The Committee recommended to Austria to improve the implementation and monitoring of the Federal Domestic Violence Law and relevant criminal law; to adequately and timely prosecute offenders so that, *inter alia*, it may be seen that the society condemns violence; to ensure coordination between all relevant services; and to strengthen training programmes for judges, lawyers and other civil servants. The Committee concluded that the same measures shall have to be applied to all persons in the territory of Austria, including women migrants.

The 2005 **Family Law** in Article 198 for the first time introduces different forms of protection against domestic violence. This Article is aimed against a family member who commits an act of violence and in this situation the court may decide on one or more protection measures against domestic violence whose aim would be to temporarily prohibit or limit personal relations with the other family member (Article 198, paragraph 1).

The court may determine the following measures in such a situation:

- Issuance of an order to move out of a family apartment or house, regardless of the ownership right or lease of the property;
- Issuance of an order to move into a family apartment or house, regardless of the ownership right or lease of the property;
- Issuance of a restraining order to stay a certain distance away from a family member;
- Issuance of a restraining order to stay away from the space around the place of residence or workplace of a family member; and
- Issuance of a harassment restraining order to prevent further harassment of a family member.

Imposed measures may be valid up to one year and may cease to be valid before the expiry of this period if the reasons why a measure was imposed cease to exist. However, if reasons for imposing a measure persist, the period may be prolonged until the

reasons cease to exist. If an offender is detained or arrested due to a committed crime, or offense, the period spent in prison shall be included in the duration of the measure against domestic violence.

The Criminal Code defines a criminal act of domestic violence as an act that may be committed by anyone who by use of violence, threat of attack against life or body, insolent or ruthless behaviour endangers the tranquillity, physical integrity or mental condition of a member of his family. Unlike the Family Law, the Criminal Code provides a more specific definition of family members which implies: spouses, their children, spouse's ancestors in the direct line of blood relatives, non-marital partners and their children, adoptive parent and adopted children, siblings, their spouses and children, ex-spouses and their children and parents of ex-spouses, if they live in the common household. Consequently, the Criminal Code does not recognise as family members persons who have a child together or their child is to be born if the persons did not live in the same family household.

However, provisions of the two laws do not mean much if the police, courts, prosecutor's offices, centres for social work and health institutions do not receive clear and precise treatment instructions in the cases of domestic violence and if they do not receive different trainings. Trainings should ensure them better understanding of the situation a victim is going through and of the circumstances that caused a person to bear violence, as well as knowledge on how to properly respond to violence. The government should conduct extensive research on domestic violence which would have to contain a separate segment on the research on the existence of violence against migrant women.

2.6 Provision of human rights during deportation

Any person who unlawfully resides in the territory of the Republic of Serbia, or his legal grounds no longer exist, shall have to leave the state as soon as possible. Unlawful residence shall mean residence of a person in the state without a visa, approved residence or any other legal grounds. The person shall have the possibility to leave the territory of the Republic of Serbia immediately or within the deadline determined by the decision of the competent authority. The deadline shall depend on the assessment of the competent authority in what period a foreigner can leave the territory of the Republic of Serbia, but in any case, the deadline may not exceed thirty days from the day of passing the decision. A foreigner may be ordered to cross a specific border crossing point with an obligation to report to a police officer at that border crossing point. It shall be considered that the foreigner left the state once he has entered another state where he was approved an entrance. The Decision referred to in Article 43, paragraph 2 of **the Law on Foreigners** is problematic, given that the appeal against the Decision does not delay the execution of the Decision, therefore, it does not have a suspensive effect.

To a foreigner who, for justified reasons, did not leave the state, the competent authority may set a new deadline to leave the state. However, if a foreigner does not want to leave the state voluntarily and does not do it within the set deadline, he will be forcibly removed from the state. It has already been mentioned that the Law on Foreigners prescribes when a person shall be deported and when and for how long he may be sent to the Immigration Detention Centre, and when the measure of compulsory residence in a particular place may be imposed on him.

The Law on Foreigners does not clearly regulate the procedure for forced removal of a foreigner and such a measure is rarely enforced in practice. Nevertheless, this issue should be clearly regulated and a manner in which a foreigner should be forcibly removed should be prescribed, respecting his human rights. The European Committee for the Prevention of Torture (hereinafter referred to as: the European Committee) addressed

these issues and determined some standards that states should adhere to during the deportation of foreigners. First of all, if persons are coercively detained, they shall have to stay in a place that meets all the standards related to furnishing, daylight, heating and minimum space per person. The European Committee considers that taking a foreigner to prison is unacceptable as this is not an appropriate place, considering that a foreigner is not charged with or convicted of a crime. In this situation, a person is deprived of liberty, therefore, he shall have all the rights as any other person deprived of liberty, first and foremost, the right to information in the language he understands about the reasons for imprisonment and place where the person is, as well as about the procedures at his disposal; the person shall have the right to call a close person and inform him/her about his whereabouts, the right to an attorney and the right to a physician check-up. The person shall have the right to consular assistance which shall be provided to him only at his request. This obligation results from the 1963 **Vienna Convention on Consular Relations**, which prescribes in Article 36 that the state's competent authority shall without delay notify a consular representative of the state whose citizen has been arrested at his request, and that it shall inform the foreigner about this right.[165] The consular representative shall have the right to visit the foreigner, to communicate with him and to provide him with legal assistance.

The measure of deprivation of liberty should last for the shortest possible period of time and the state shall be obliged to document any action taken in relation to this person. If family members have been deprived of liberty, a state shall do everything to keep them together. Persons must be familiar with the rules of conduct as well as with the reasons for taking disciplinary sanctions, and they must be provided with a possibility to lodge an appeal to an independent body against such a decision.

The European Committee received disturbing data in several European states about the use of coercive means during removal of a foreigner, particularly in the form of beating and use of tranquilizers against the foreigner's will. The Committee insists that any decision on the use of drugs must be permitted by a health care professional and made in accordance with medical ethics. Although it is hard to remove a foreigner who does not want to leave the territory of a state, civil servants applying the measure of removal may use force only when it is reasonably necessary, according to the situation.

In its 13th General Report from 2003, the European Committee adopted the rules applying to the removal of a foreigner by plane.[166] The European Committee particularly addressed the issue of the cause of death of a deported person, the scope of the means of coercion used, as well as allegations of abuse in the large number of cases of forced departure from the territory by plane. The European Committee addressed the issue of preparing a foreigner for returning to his country of origin, and it also addressed measures taken for the purpose of selecting and training escort personnel, internal and external systems for the monitoring of behaviour of the personnel engaged in deportation, measures taken after unsuccessful attempt of deportation, and similar measures. The European Committee concluded that there are often recorded cases of inhuman or degrading treatment of a foreigner on a deportation flight such as the use of diapers so that the person would not use a toilet. Any physical assault as a form of persuasion of a person to board a plane or a punishment for not doing what he was instructed is entirely unacceptable. The European Committee prohibits all techniques which may lead to suffocation or chest compression such as placing an adhesive tape over the nose or mouth, putting a cushion on the face, pushing the face against the back of the seat in front, and similar actions. The use of cuffs is permitted only when this is strictly

[165] *Official Journal of SFRY – International Treaties*, No. 2/1983, amendment No. 2/64.
[166] CPT, 13th General Report on the CPT's Activities, Strasbourg, 10 September 2003.

necessary and only when there are reasons for their use. The European Committee is also against the use of masks during deportation as wearing masks would make it difficult to ascertain who is responsible in the event of allegations of abuse.

A person who is the subject of unsuccessful deportation must undergo a medical check-up for the purpose of examining the person's health and eliminating doubt about the irregularity of a procedure and responsibility of officers. Prior to deportation, it is necessary to timely inform a foreigner that he has to leave the territory of a state and about the deadline, in order to leave him enough time to organise his return and avoid anxiety due to uncertainty of the time of deportation. It is desirable that a state engages psychologists and sociologists who can adequately prepare foreigners for deportation through a constant dialogue, making contact with the family in the country of destination, and through other similar actions. It is particularly important that deportation is carefully documented, particularly if there has been an incident and if the operation has been suspended. Finally, in addition to internal evaluation, it is necessary to conduct external evaluation by courts and international bodies which shall monitor coercive deportation in order to protect the rights of deported persons.

EXAMPLE

The Committee last visited Serbia in February 2011, however, it still has not published a report on the findings on the situation in Serbia related to torture and other forms of abuse of persons deprived of liberty. During the previous visit in 2007, the European Committee spoke with a number of foreign detainees who complained that they had not been provided with an interpreter during police interrogation and that they had to sign documents they did not understand as they were in Serbian. Consequently, the European Committee requested from the Republic of Serbia to promptly provide an interpreter to all the foreigners deprived of liberty and not to require from them to sign documents whose contents they are not familiar with.[167]

3. TREATMENT OF MIGRANTS AT THE LOCAL LEVEL

Apart from the conduct of state authorities, the conduct of local authorities is also important for a migrant to be able to exercise his rights, and some of the topics that have already been mentioned here refer to the behaviour of civil servants at the local level. Although provision of rights to migrants is primarily a responsibility of national authorities, it is necessary to connect the authorities at the national and local levels and encourage them to coordinate their activities and ensure better integration and reintegration of migrants using a harmonised approach.

There are many areas within the competence of the local self-government that are important for the exercise of rights of migrants, and in order for those rights to be respected it is necessary to establish continuous cooperation between the national and local authorities. Migrants must be sufficiently and adequately informed and actively

[167] CPT, Report on the Government of Serbia on the visit from 19 to 29 November 2007, CPT/Inf 2009(2), paragraph. 30.

involved in the processes of integration and promotion of their rights in the Republic of Serbia. Many migrants remained isolated from the local community for several reasons: due to the lack of information, depression and passivity, language barrier, indifference of the local authorities to help specific categories of migrants, or due to the animosity of the locals who express prejudice against these groups as they see migrants as unwanted competition for a small number of workplaces. Tension also exists in the majority population, due to the aid granted to refugees and displaced persons, as it sees itself as an equally threatened category of population. For these reasons, all the activities of support to local integration of refugees and displaced persons should be carefully designed and introduced in appropriate local action plans and the threatened local population should not be neglected either. Only with the establishment of an effective system and capacity building at all levels of authorities shall it be possible to achieve good results and establish an effective system of protection for those who need such protection most.

3.1 Relevant local level authorities

The position of local self-government is defined by **the Law on Local Self-government**.[168] According to Article 2 of the Law, local self-government shall mean the following:

1. The right of citizens to manage public affairs of immediate, common and general interest for the local population, directly and through freely elected representatives, as well as

2. The right and ability of local self-government authorities to regulate activities and manage public affairs under their jurisdiction, which are of interest for the local population and within the limits determined by the law

Local self-government units shall be competent for the affairs of immediate, common or general interest for the local population. Local self-government may perform **assigned** and **delegated** tasks when the Republic of Serbia delegates tasks from its jurisdiction and provides means for their accomplishment. According to the Constitution of the Republic of Serbia, assigned tasks of local self-government shall imply, *inter alia*, fulfilling citizens' needs in the field of education, culture, health care and social protection, child protection, sport and physical education.

The task of the municipality is also to ensure the exercise, protection and promotion of human and minority rights, as well as public information in the municipality. In addition to its regular bodies, i.e. the municipal assembly, the Mayor of the municipality, the municipal council and the municipal administration, each municipality shall form bodies necessary for conducting special tasks. The Trustee for Refugees and councils for migrations stand out in the field of protection of migrants.

3.1.1. Trustee for Refugees

There is a network of **trustees for refugees** at the local level which is formed in a way that competent authorities in the autonomous province and local self-government units, upon obtaining an opinion of the Commissariat for Refugees, appoint a person for keeping communication with the Commissariat and for performing specific tasks for the Commissariat. Tasks of the Trustee for Refugees shall vary from one municipality to another, however, these will be important tasks, predominantly consisting of the following:

[168] *Official Gazette of RS*, No. 129/07.

- Resolving issues related to care for and meeting general needs of refugees and displaced persons or establishing cooperation with competent authorities for the purpose of providing housing conditions and food for refugees and displaced persons and establishing cooperation with schools in a municipal territory for the purpose of providing conditions for education of refugees and displaced persons;
- Assisting refugees and displaced persons in obtaining social protection and health care;
- Conducting activities related to determining the status of refugees and displaced persons;
- Keeping records prescribed by the Law on Refugees;
- Registration of refugees and displaced persons;
- Timely provision of assistance provided by other authorities and organizations in the country and abroad;
- Working on the provision of conditions for the return of refugees and displaced persons to the areas they had left and to other areas, according to the Commissariat's decision;
- Preparing documentation and adopting recommendations for decisions on recognising the status of a refugee or displaced person in terms of infants, and recommendations for decisions on suspending the status of a refugee or displaced person;
- Approving the change of place of residence;
- Verifying lists of property and assets upon return of refugees and displaced persons to the previous places of residence or to another place, in accordance with the provisions of the Law on Refugees;
- Reimbursement of costs of a funeral for a family member of refugees and displaced persons; and
- Conducting other activities aimed at improving and protecting the status of refugees and displaced persons.

3.1.2. Migration Councils

In 2008, the Commissariat for Refugees of the Republic of Serbia initiated implementation of a project for the development of action plans for municipalities and cities in cooperation with the International Organization for Migration and local self-governments. The objective of adopting strategic documents and action plans was to create necessary conditions for the integration of refugees and internally displaced persons and to improve their living conditions. **The Councils for Migration** were established at the level of local self-governments for the purpose of achieving this objective. They consist of relevant partners from local institutions for the support of integration and improvement of living conditions for refugees and displaced persons.[169]

[169] In 2011 and 2012, the Commissariat and International Organization for Migration have been working on revision of local action plans of the councils as part of the project „Capacity Building of Institutions Involved in Migration Management and Reintegration of Returnees in the Republic of Serbia" (CBMM), for the purpose of integrating beneficiaries from the returnee population.

Their task is to draft and adopt **the Local Action Plan for Improving the Status of Refugees and Internally Displaced Persons (LAP)**, as the result of planning of specific activities. This is a document that contains objectives, i.e. changes that the local government intends to make in its local environment in a projected period of time. The main LAP objective is to identify priority groups among refugees and displaced persons and to identify their needs (mostly related to the provision of housing and economic empowerment). In this manner, the local community shall have "ownership" over the issues of integration and improvement of living conditions, and it shall take responsibility for the provision of assistance to this population, i.e. possibilities for improvement of their economic and social situation and decent life in the community.

The process is based on identifying maximum engagement of resources of all social actors in the community and on planning and implementation of the designed plan. However, in order for an action plan to be applicable and accomplish intended objectives, municipal authorities need to collect data on the number of refugees and displaced persons, as well as on their situation. Such an analysis is an important step in the development and implementation of the LAP. The data may be obtained in different manners: by surveying refugees and displaced persons, from centres for social work, from the National Employment Service, the Commissariat for Refugees, the Red Cross, a health centre, a gerontology centre, local non-governmental organizations, etc. Only after a detailed assessment of the situation may the local action plan be drafted and implemented.

The LAP is a planning document and local Council for Migration shall be responsible for its implementation. Accordingly, the LAP shall contain a description of Council's tasks which shall include:

- Providing necessary data on the situation of refugees and displaced persons in the territory of a municipality;
- Exchanging information and attending meetings relevant for the planning process;
- Defining objectives, directions of development and establishing cooperation with different relevant national and local partners;
- Planning of monitoring and assessing success of implementation of the local action plan;
- Drafting the final document;
- Initiating public debates on the draft document; and
- Supporting the final version of the action plan to be proposed for adoption by the municipal assembly.

A local community has different resources for dealing with improvement of the situation of refugees and displaced persons such as human resources, development documents and strategic access to municipal development, institutionalised organizational units in the municipal administration (e.g. Development Agency) and different mechanisms for encouraging development (local funds, public tenders, etc.). All these mechanisms should be connected in order to accomplish the objective, i.e. to improve the situation of these categories of persons, and it should particularly be borne in mind that refugees and displaced persons are a rather heterogeneous group with different needs. The severity of the problem faced by this population requires a planned and phased approach to its resolution, particularly regarding the housing issue, which requires significant resources. Therefore, there has to be full compliance between the programme and

financial aspects of the plan by using local resources and planning the method of raising additional funds by participating in projects or by attracting donor and creditor projects.

Most LAPs contain projected objectives in the field of employment and resolving the housing issue which is understandable considering their success in providing improved living conditions for refugees and displaced persons. However, it is important to point out that LAPs should be catalysts and other forms of aid, particularly that which implies engagement of several institutions (social entrepreneurship, integrated provision of local services, etc.). More familiar models are projects for providing social protection services which engage beneficiaries from the population of refugees and internally displaced persons (home assistance, field visits, etc.).

3.2 Provision of appropriate funds

The set objectives shall not be accomplished if the local authority does not possess sufficient funds for their implementation. Local plans are developed on the basis of the projection of financial possibilities which determine whether measures envisaged in a local plan shall be extensive or small. However, limited funds require prioritising and gradual resolving of problems. Therefore, the largest number of measures is directed towards providing housing and taking active measures in terms of employment. However, this is insufficient due to the interdependence of the rights identified as a priority, particularly in terms of migrants. Although first impression is that economic independence is the most important priority in terms of finding an adequate job, without ensuring access to education and obtaining adequate education a person shall not have the opportunity to position himself/herself well on the market. The same applies to other prioritised areas which condition the exercise of fundamental rights of migrants. The problem is that the largest number of migrants lives in poor municipalities, which further complicates financing of the activities aimed at improving the migrants' situation.

A budget should, *inter alia*, also be created according to identified migrants' needs in a specific local community. To accomplish this, it is necessary to organise trainings for employees in municipal bodies, for councillors in the municipal assembly and for other employees in the municipal administration.

In 2010, Serbia received about EUR 800 million of foreign investments through EU projects, mostly in developed municipalities, as not every municipality is able to meet investors' rigorous requirements. Municipalities receive funds from a separate budget and from earmarked transfers. In the last ten years, most donations in Serbia have come from Germany, USA, Norway, Japan and Austria. Until 2013, the EU shall be the largest donor in Serbia as the plan is to provide a grant of EUR 1.4 billion, and Serbia shall have at its disposal about EUR 180 million per year from this amount. However, in the following period local self-governments shall be able to attract the largest amount of funds from IPA (Instrument for Pre-Accession Assistance) funds of the European Union, yet, to apply for these funds, it is necessary to have knowledge and funds to participate. There are still some municipal administrations in Serbia that do not have computers, and filling-out of the project form which requires expertise and knowledge of English is also a great obstacle.

Serbia is one of rare countries where local communities do not have their own property. The property was nationalised by the 1996 **Law on Assets Owned by the Republic of Serbia**.[170] The Law on Public Property has been drafted for years and it is a condition for decentralisation as well as the constitutional obligation of Serbia. **The Law on Public Property** was adopted on 26 September 2011 and it regulates the right to

[170] *Official Gazette of RS*, No. 53/95, 3/96 – amendment 54/96, 32/97 and 101/2005 – amended by other law

public property and some other property rights of the Republic of Serbia, autonomous province and local self-government units.[171] On the basis of the Law, cities and municipalities, and public companies and institutions shall be able to dispose with the property they use now, as well as to maintain and regulate it. As property owners, municipalities shall be in a position to establish partnerships with the private sector and foreign investors, to take loans and issue bonds and, thus, generate revenues. This means that municipalities may be expected to gain additional revenues which they will be able to direct to increasing their own resources for exercising and improving migrants' rights.

EXAMPLE

About one thousand people participate in the discussion on the budget in the Indjija municipality, including 500-600 people who send their comments via the Internet. A discussion on the budget is also organised in rural parts of the municipality on a biannual basis where citizens at the meeting comment on budget items. Apart from municipal representatives, these discussions are also attended by representatives of public companies, in which manner a dialogue with the citizens is established and their opinion on spending and allocation of funds is heard.

Citizens' participation in the discussion on the budget would definitely contribute to the strengthening of activism among citizens and directing funds to their actual needs, including different groups of migrants.

3.3 The importance of integration and the role of local authorities

Although there are different definitions of inclusion, the term basically means including specific groups in the normal course of events in a society. Integration is a process that imposes tasks and challenges on the local population, but also on migrants. Its objective is to lead to substantive equality and enable achievement of equal opportunities for everyone. Therefore, to create integration, it is not sufficient that members of a specific group only exist in the territory of a state. They need to be involved in all spheres of social life, to work, to educate themselves, and not feel their difference as a problem and to feel accepted by the rest of the population. The 2002 **National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons** defines integration as helping refugees achieve self-sufficiency, a financially and socially equal position as that of the other citizens by resolving housing problems, employment, improvement of their property and legal status and by closing collective centres. **The National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons for the period 2011-2014** determines as one of its strategic objectives the creation of required conditions for these persons "to equally with all other citizens resolve their basic life issues and integrate in the local community".[172] The Strategy states that integration is a complex process which requires support to refugees in resolving the issues of their status, housing, employment, exercising the rights to pension, health insurance, social security, etc. The objective of the Strategy is also to resolve the issues of refugees in the following fields: citizenship, employment and the right to work, education, health care, social protection and housing.

[171] *Official Gazette of RS*, No. 72/11.
[172] *Official Gazette of RS*, No. 17/11, p.13.

The process of integration may be hampered by political motives, but also by non-acceptance by the society which sometimes sees refugees and displaced persons as main culprits for their existential issues. This problem of the lack of understanding and stereotyping is particularly evident in relation to asylum seekers. However, reasons for this should be looked for also in the frequent apathy of migrants, their depression due to the difficult situation they are in, fear of the unknown, of starting their life all over again, lack of understanding of the culture and customs of the majority population, etc.

Every social environment should be adjusted to the variety of human needs. Acceptance of diversity should be taught from an early age, and such acceptance and support shall lead to social welfare and promotion of tolerance, empathy and assistance to those in need.

Integration is not only a good idea, it is also an obligation for a state towards international instruments which oblige it to facilitate and accelerate the procedure for admission to citizenship of the Republic of Serbia, as well as to reduce fees and costs of the procedure for obtaining citizenship. This is to the large extent done by the Law on Citizenship. Additionally, **the Law on Refugees** determines an obligation of a state to provide assistance in housing and employment in a particular place to refugees whose permanent return to the areas from which they fled is not possible. **The Law on Amendments to the Law on Refugees** prescribes in Article 3 that assistance in integration and housing shall be provided by the competent authorities in the Republic of Serbia, autonomous province and a local self-government unit. The competent authority in a local self-government unit shall conduct professional activities related to housing, return and integration of refugees.

Integration of migrants is not a simple process as it requires engagement at all levels of power, particularly of local authorities which may in different manners facilitate and improve the process of integration. First of all, it is necessary to provide appropriate housing for families. Refugees and displaced persons were predominantly accommodated in collective centres, away from the urban environment, and this very fact isolated them from the local community. It has already been mentioned that the process of closing down the collective centres has commenced and that the Commissariat for Refugees, together with local communities, has taken different actions to support the building and renovation of residential facilities. The second measure is aimed at increasing the number of employed migrants. To achieve this, it is necessary to have an estimated number of unemployed persons, as well as a description of occupations in deficit. After the assessment kept by the National Employment service, local authorities may organise training courses for the purpose of developing individual knowledge and skills and increasing employment opportunities. These may be language, computer, typing and all other courses which may develop required skills. Local authorities may print specific information bulletins and brochures or organise public discussions and group counselling for migrants. Education is particularly important for inclusion. Children of migrants not only have an equal right to education, but moreover, additional measures need to be taken so that they could exercise this right. For example, it is necessary to organise additional language courses for children who do not speak Serbian and provide pedagogical assistance when necessary. Their parents should be advised to send their children to different extracurricular activities which will enable them to more easily and quickly find their place at school. Additionally, local self-governments should by means of earmarked transfers establish different support services which shall meet the needs of the local community. However, a pre-condition for exercising all other rights is provision of necessary documents to these persons which shall help them exercise their rights to education, social and health care. Therefore, it is particularly important that the issue of “legally invisible persons”, who are mostly Roma people that fled from Kosovo and

Metohija, is resolved as soon as possible, *inter alia*, by positive actions of local authorities.

4. THE ROLE OF LOCAL AUTHORITIES IN THE EXERCISE OF PARTICULAR MIGRANTS' RIGHTS

4.1 Employment

Economic empowerment of migrants, above all refugees and displaced persons, is the first step in achieving equality with the local population. Although this primarily refers to the activities aimed at permanent resolution of the housing issue, the issue of employment is equally important.

The unemployment rate in the Republic of Serbia is rather high, which is one of the main reasons for leaving the country.[173] On the other hand, this has resulted in the fact that the country is not particularly appealing for foreign migrant workers. A reform is necessary in this field and one of the first steps is to adopt a new law on the employment of foreigners, which could in a more modern way regulate this issue. The reform should predominantly consist of rapid and inexpensive employment of foreign workers, which shall not deteriorate working conditions of local workers. It is particularly important that work permits can be renewed and that there is a possibility to obtain a permanent residence permit after a certain period of time. Also, it is necessary to make an assessment of the situation of family members of a migrant worker, who are for the most part inactive in looking for a job as they are engaged in household work, or they cannot find one. This, on the other hand, requires examination of the living conditions of migrant workers and assessment of the risk of poverty and social exclusion. Employment incentive measures should also refer to foreigners residing in the Republic of Serbia on the basis of marriage with a domestic citizen. Their number among the unemployed is evident and, in the end of 2010, records of the National Employment Service counted 731 foreign citizens out of which as much as 84.4% were women, mostly from Romania, Macedonia and the Russian Federation, who married Serbian citizens.[174] An important data is that the largest number of these persons is uneducated or has only elementary education, which is only partially a consequence of non-recognition or validation of a diploma.[175]

The National Strategy for Resolving the Problems of Refugees and the **Poverty Reduction Strategy** ascribe great importance to the employment of refugees as one of the mechanisms for their integration. In order to obtain employment, refugees and displaced persons must have a refugee or displaced person identity card, an employment booklet and information about their work experience. Local authorities should take a series of actions to improve employment conditions for these categories of persons. However, in practice, there are municipalities which with their activities disable refugees and displaced persons to find a job. Some municipalities, thus, ask for meaningless data which refugees have a hard time obtaining. Likewise, some municipalities, instead of keeping uniform records of unemployed persons, keep additional records of refugees and displaced persons, which they interpret as a different employment status of these persons.

[173] According to the data of the Statistical Office of the Republic of Serbia from April 2011, the unemployment rate was 22%.
[174] Migration Profile, p.21.
[175] Migration Profile, p.22.

Municipalities should conduct special programmes aimed at stimulating self-sufficient economic activities of refugees and displaced persons who do not have their own funds to start their own business, in the form of microloans, loans and vocational and additional training (vocational retraining or additional training programmes). In other words, assistance may be provided in the form of implementation of programmes for agricultural development in truck farming, farming and animal husbandry and in starting one's own business in these fields. Secondly, vocational retraining or additional training programmes should be introduced for the purpose of increasing employment opportunities. For example, these measures were projected in the local action plan of the Srbobran municipality. Furthermore, measures envisaging tax reliefs for employers hiring refugees and displaced persons, as well as public works in which they would participate should be executed.

Finally, it should be borne in mind that some refugees and displaced persons do not have their employment booklets without which they cannot regulate pension provision, get a new job or apply for unemployment benefits. A large number of persons, particularly among the Roma population, work in the grey economy or the low income sector without adequate working conditions and without social protection benefits. Therefore, it is necessary to support the establishment of local councils for employment which would deal with this issue at the local level and which would identify particularly vulnerable groups whose employment should be supported with the introduction of additional measures. Here it should be mentioned that local councils for migration include a representative of the National Employment Service (who is also a member of the local council for employment), who could, according to the nature of his position, represent the rights and needs of migrant groups in the employment councils and in this manner create a connection among several local bodies, strengthen their cooperation and save time and resources.

On the other hand, special attention should be paid to the returnees who were for the first time identified as an economically disadvantaged group in **the National Employment Strategy for the period 2011-2020**. The Strategy underlines the necessity to create special programmes and active employment policy measures for returnees. The only listed employment measure for returnees is promotion of social entrepreneurship, but the measure has not been further elaborated, which should be done. It should be taken into consideration that the largest number of the returnee population are Roma people who sometimes do not speak Serbian, have little education and require special economic empowerment in the form of adopting measures which shall be adjusted to their specific situation. They often do not have employment booklets because they do not have any other necessary documents, and if they arrive from Kosovo, they have a problem with obtaining their employment booklet, because an application is submitted to the section for general administration of the municipality according to the place of permanent residence or employment. In practice, some municipalities issue employment booklets to persons who have registered temporary residence in the territory of these municipalities, which is the right way to deal with this issue, therefore, this example should be followed by the competent authorities in other municipalities in Serbia.

EXAMPLE

The Agreement on the cooperation in the building of new residential units in the City of Belgrade was signed on 24 January 2012 between the representative of the City of Belgrade, Commissariat for Refugees, Centre for Social Work of the City of Belgrade and the UN High Commissioner for Refugees (UNHCR). The Agreement envisages building of forty residential units for social housing in supportive environment intended for refugees and internally displaced persons accommodated in three remaining collective centres in Belgrade. The works are envisaged to be completed by 30 September 2012, and funds for the implementation of the project were provided by EU on the basis of pre-accession funds. The City of Belgrade provides support to the project in the form of a construction site with infrastructure and appropriate financial contribution.

4.2 Addressing the housing issue

In 1996, there were about 700 collective centres in the Republic of Serbia. In the last three years, the number of collective centres in Serbia has been reduced by one third, and the number of people accommodated in the centres has been reduced by half. According to the data of the Commissariat for Refugees, there are still about 2,993 people living in 29 collective centres (the data do not include Kosovo and Metohija where about 525 persons live in 13 collective centres). Accommodation in collective centres has been provided since 1991, and implementation of the programme for a durable solution for refugees commenced later on. Owing to foreign donors, housing programmes for refugees in Serbia have been implemented since 1997, and durable housing solutions have been sought for the persons still living in collective centres through the implementation of projects funded by international and bilateral donors.

Since 2002, the following programmes have been implemented on the basis of **The National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons:**

- Complete building of residential units, partial building and self-build;
- Purchase of rural houses with gardens;
- Allocation of prefabricated houses;
- Assistance in the form of building material packages for the completion of commenced building of a residential facility; and
- Building of facilities for social housing in supportive environment.

The 2011 National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons envisages that the improvement of the system for resolving housing issues of refugees, particularly for the most vulnerable categories, shall be a special strategic objective which shall be based on clearly defined needs, criteria and priorities and a coordinated cooperation among national, local and international entities. Since the most vulnerable category of refugees is the one living in collective centres, the National Strategy envisages assistance in the form of building material, purchase of

households with gardens, allocation of prefabricated houses, social housing, stimulation of the building of inexpensive residential units and enabling purchase at favourable credit terms. On the other hand, the National Strategy envisages that the projects for resolving housing issues of internally displaced persons shall include purchase of rural households, assistance in the form of building material and allocation of prefabricated houses.

Amendments to **the Law on Refugees** established a legal framework for resolving housing issues of refugees. Housing needs of refugees and former refugees who acquired citizenship of the Republic of Serbia and initiated a procedure for permanent residence registration may be addressed by:

1. Granting the use of real estate owned by the state for a definite period of time;
2. Leasing real estate owned by the state for a definite period of time, with a purchase option;
3. Granting funds for improving housing conditions;
4. Purchasing building material for the commenced building of a property; and
5. Purchasing a rural house with a garden.

The method and specific issues concerning the procedure for resolving the housing needs of refugees and former refugees who acquired citizenship of the Republic of Serbia and initiated the procedure for residence registration, are elaborated in the Law, and since the housing needs of refugees may also be resolved with specific purpose foreign loans and donor programmes, the Law envisages that, in such a case, conditions, procedure and other issues relevant for resolving housing needs of refugees shall be determined in agreements and donor programmes. The Commissariat for Refugees shall also take other measures such as renovation and reallocation of collective centre facilities to facilities for the accommodation of elderly people, as well as renovation and expansion of capacities of social care facilities.

As a result of the SIRP – Settlement and Integration of Refugees Programme in Serbia (UN HABITAT and the Government of Italy) and the Poverty Reduction Strategy, i.e. provision of housing for refugees and internally displaced persons, the system for social housing, i.e. the non-profitable housing sector was created for the first time in Serbia. In early March 2005, after representatives of municipalities and UN-HABITAT signed the Memorandum of Understanding, seven municipalities initiated the implementation of the Programme (the Kragujevac, Niš, Čačak, Kraljevo, Valjevo, Stara Pazova and Pančevo municipalities). Within the Programme, the municipalities developed local housing strategies and action plans which also include local vulnerable groups.

All local action plans also include activities concerning resolution of housing issues of refugees and displaced persons. However, it is particularly important to point out that integration of refugees largely depends on the will of municipal authorities. There are examples of municipalities whose municipal authorities could not adopt a decision on the allocation of land for these purposes. Municipalities have more interest in investing in schools, kindergartens and other institutions, which speaks about their insensitivity to the problems of refugees and displaced persons. There was a problem of unclear criteria for selection of beneficiaries of housing projects, which in practice resulted in exclusion of vulnerable refugees from these programs. This problem was resolved with the adoption of the Regulation on detailed conditions and measures for determining the order of priority in resolving housing issues of refugees of 5 August 2011. The Regulation

prescribes that the housing issues of refugees shall be resolved by granting the use of a real estate owned by the state, leasing real estate with a purchase option, granting funds for improving housing conditions, purchase of building material for commenced building and purchase of rural houses with gardens. Separate public tenders shall be announced for each of these methods, and the criteria for allocation shall be the number of household members, number of underage children, financial position of a household, reduced work ability, etc. If several applicants have the same number of points, advantage shall be given to families with more underage children, more family household members, to households with pregnant women, families which reside longer in the place where the tender was announced and to families with lower incomes per household member. A special committee shall create a draft list based on received applications, against which an appeal may be lodged within fifteen days from the day of its publication. Refugees who own real estate which they obtained by themselves, but which does not meet basic living conditions, shall be able to apply for the programme for granting funds for improving living conditions. In this case, assistance shall be provided on the basis of free allocation of building material. Refugees who commenced with the building of a real estate for which they have a building permit or for which they submitted an application for legalisation and obtained a confirmation that the real estate may be legalised, shall be able to apply for the programme for purchasing building material.

Existence of collective centres for the most vulnerable groups is still significant, even though they were originally conceived as a temporary solution. Therefore, it is important that municipal authorities, on whose territory these collective centres are located, take a series of actions to improve the financial position of refugees and displaced persons living in these centres even prior to the provision of permanent housing. Also, in the case of secondary displacement, it is important to inform persons well about the new environment and establish connection with the environment, and local authorities should have a key role in this. Furthermore, local authorities should also pay attention to informal collective centres and informal settlements where living conditions are poor, and provide refugees and displaced persons with financial support and include them in suitable alternative accommodation measures.

Finally, successful and sustainable integration of returnees also implies meeting their housing needs. Most returnees face the problem of inadequate housing because this is the reason why they left Serbia, or they sold property they owned to start a new life abroad. Apart from temporary housing in the centres for emergency reception of returnees in Obrenovac, Šabac, Zaječar and Bela Palanka, and apart from the housing of minors, the state does not apply any other measures. Therefore, it is necessary to expand and build accommodation capacities in the form of these reception centres and shelters for minors, but also to establish other measures which would help this population. One of them is certainly to establish bodies which would be responsible for the integration of returnees at the local level and to empower them to resolve numerous problems of the returnee population.

4.3 Education

Education is one of the priority areas for the improvement of the position of migrants, because a quality education will ensure them a better position on the labour market. Foreigners have the right to education under the same conditions and in the manner that is prescribed for the citizens of the Republic of Serbia. This provision also refers to the education of children of migrant workers. If they want, parents who are EU citizens may enrol their child in a private or foreign school, or an institution founded by the Republic of Serbia, autonomous province or local self-government unit, by covering education costs.

Many data indicate to the fact that education of refugee and displaced families is threatened, mostly for economic reasons. This is most evident in higher education, and many talented children do not enrol university precisely because of the lack of funds. To overcome this problem, municipalities should grant scholarships to talented students or loans to continue with their education.

Among the most vulnerable groups of migrants which do not exercise or partially exercise the right to education are certainly Roma, particularly internally displaced persons or returnees. Roma are also recognised as a vulnerable group in the Decade of Roma Inclusion 2005-2015, when Serbia committed to improve the quality of education of Roma children by various measures, as well as to support reduction of the number of children sent to special schools, provide support to Roma families and pedagogical support to children for attending regular schools, strengthen the role of teachers, introduce measures for combating discrimination, and similar measures.

The Law on the Basis of the Education System, in addition to a series of measures for the achievement of full inclusion of children from vulnerable groups, also introduces the possibility of enrolling these children without all documents (a birth register, registered permanent or temporary residence in the territory of the municipality where the school is located). However, in practice, there are schools that refuse to act in accordance with this legal provision and the Ministry of Education and competent local authorities have to take appropriate measures to resolve the problem.

EXAMPLE

The Srbobran municipality adopted the Local Plan on Education of Roma for the period 2010-2013, and the Working Group for the development of the Local Plan consisted of representatives of elementary schools, preschool institution, centre for social work, a Roma non-governmental organization and local self-government. A general objective of the document is improvement of the educational status of Roma in the municipality by 2013. For the purpose of achieving objectives set forth in the Local Plan, an analysis of the situation of Roma in the Srborban municipality was conducted before the Local Plan was adopted, on the basis of data collected from several sources: questionnaire; focus groups with representatives of governmental institutions and non-governmental organizations; focus groups with representatives of Roma associations; and focus groups with Roma children and parents.

Collected data were used for determining the number of Roma children at all levels of education. Educational problems of Roma children are resolved by applying the following methods: an individual approach in work, additional classes, increased corrective measures and counselling of students and parents, as well as vocational orientation and motivation of Roma children to continue with their education.

Individual measures conducted by the municipality for the purpose of improving the quality of education of Roma children are as follows: covering travel expenses for the students of Roma nationality who attend secondary school, granting scholarships to students of Roma nationality, organization of pilot programmes for preschool children for the prevention of early social and educational neglect, and adequate preparations for the elementary school education.

The necessity of early involvement of Roma children in preschool education exists due to the low financial, social and educational status of parents who adversely affect children's cognitive stimulation in the early development and, thus cause the children to lag behind the children in the general population. To achieve this objective, municipalities may determine activities ranging from covering accommodation costs for Roma children in preschool institutions (meals, teaching materials, hygiene parcels) and informing parents about the importance and necessity of preschool education, to increasing activities related to introducing Roma teaching assistants, informing and additional training of teachers working with Roma children, etc. Elementary education may envisage measures such as introduction of assistants for the support of Roma children in education, support to extended stay of Roma children, assistance in studying, implementation of special programmes for the support in education of Roma girls, preparation for enrolment in secondary schools, etc. Secondary school programmes may envisage activities such as development and implementation of a special programme for the preparation of Roma children for enrolment in a secondary school, provision of information about scholarships and other possibilities of financial support, informing parents about the importance of education, and similar activities.

A special problem occurs with children of returnees, as sometimes there is a long procedure for obtaining school documents as proof of completed grades, which are often expensive for this population because they need to pay a fee to the Ministry of Foreign Affairs for obtaining the documents, to the Ministry of Education for the validation procedure and, finally, to the court interpreter for translation. However, a greater problem is the language barrier with the children of returnees, therefore, it is necessary to introduce adequate programmes to schools and the local community which would enable the children to understand lectures and avoid referral to special schools.

4.4 Social and health care

Social rights in the form of the right to health care and social welfare, together with education, represent the basis for social integration of individuals. Migrants generally have the right to access to these rights provided that they have relevant documents. Migrants are poorly informed and unaware of the rights they are entitled to, and complex requests in terms of documents and registration are a serious obstacle in access to health care services and social rights.

The Roma population is in a far worse situation because the majority does not have documents or information about social and health care services and the problem is additionally complicated by a language and cultural barrier in communication with social and health care workers.

In a place where returnees stay, the centre for social work may only advise them, inform or in exceptional cases mediate in the provision of documents, a free one-way ticket to the place of future temporary or permanent residence, one-time financial assistance, and temporary accommodation in a shelter. To exercise other rights in the field of social protection, returnees must have registered permanent residence. This is particularly a problem for Roma people who reside in informal settlements where they lack basic living conditions. There is also a problem for the returnees displaced from Kosovo who did not re-register in birth registers, as well as for their children born abroad, who were also not registered in birth registers. Additionally, most centres for social work do not collect evidence ex officio, but merely provide a list of required documents to a party who is often uneducated and does not understand Serbian well.

In terms of health care, returnees only have ensured access to emergency medical aid with an emergency travel document, which shall be valid until the status of an insured person has been regulated or until the expiry of the emergency travel document. If returnees do not obtain an identity card or a birth certificate for their child during the validity of their emergency travel document, they will not be included in the health care system. Only in exceptional situations do some branches of the Republic Institute for Health Insurance issue a health insurance card to the persons without identity documents, and assign a temporary personal identity number. A problem also arises with returnees who received appropriate health care treatment abroad, but who cannot continue with it, particularly if they cannot obtain adequate documents about the treatment they were receiving. Other groups of migrants have access to basic health services, but the problem in exercising their right occurs in case of required hospitalization or examination by a specialist. This occurs not only because of the barriers to the access to treatment, but also because some parts of Serbia (particularly in East and South Serbia) do not have all specialist departments and the transfer of patients to other parts of Serbia is a significant economic burden.[176] This practically disables access to specialist treatment by the poorest beneficiaries, who are often migrants. Local self-government should also address these issues.

It is particularly important to ensure health care to victims of trafficking in persons because they often suffer several types of abuse: sexual exploitation, rape, physical and psychological harassment and intimidation. Because of this, they suffer from psychological trauma, have sexually transmitted diseases, physical injuries and other forms of disregard of health, and suffer from severe depression. Some forms of medical care are provided in shelters, but this is not enough, and the state allocates insufficient funds for this purpose. Most of the aid is provided by the non-governmental organization ASTRA, in the form of psychological aid and emergency medical care, which is provided from donations. Involvement of local self-government should be more extensive in this field.

5. THE ROLE OF THE NON-GOVERNMENTAL SECTOR

Non-governmental organizations are a specific form of organization of citizens in which they participate as volunteers for the purpose of promoting common interests. These interests may vary, but most often they relate to the achievement of dignity and promotion of protection of human rights.

National non-governmental organizations contribute to the democratic development of the society and implementation of different legal, economical and social reforms. Their activities are versatile and consist of organising summer schools, workshops, seminars and conferences where they discuss the most pressing social problems and recruit and encourage scientific community to address these problems. Conferences are usually held in the form of a forum where different actors exchange their opinions, point to the situation in human rights and propose measures necessary to be taken to consistently observe international standards.

One of the manners of introducing the public to the situation in human rights is to constantly publish different handbooks, brochures and information bulletins in which the citizens may find specific information about the work of non-governmental organizations, an analysis and overview, and which point to the necessity of a reform in a specific area.

[176] See: *Access to Rights and Integration of Returnees on the Basis of the Readmission Agreement*, Praxis, Belgrade, August 2011, p. 21-24.

A task of non-governmental organizations is to encourage the state to conduct necessary reforms and improve the situation in human rights by writing so called shadow reports which they submit to contracting bodies when they discuss reports submitted by states. Those reports are, as a rule, written by a coalition of non-governmental organizations and the task of such a report is to provide a real insight into the situation in a specific society, considering that all states aim to present their situation better than it actually is. On the basis of the report, members of the committee (of contracting bodies) establish a better dialogue with the representatives of the government and, consequently, recommendations of the committee are more useful and appropriate. There is a range of other activities which NGOs may perform (campaigns, trial monitoring, etc.), among which, by its significance, stands out submission of an initiative to the Constitutional Court for the assessment of the constitutionality of a specific regulation (on January 2012, the NGO coalition for access to justice submitted this initiative for several Articles of the new Civil Procedure Code; the most important is a review of Article 85 of the Code, which considerably limits the freedom of choice of a plenipotentiary, since now this has to be a lawyer, which brings the parties in a poor financial situation into an unfavourable position). It is important to mention that in any developed society NGOs are honest and steady state partners, which is often achieved by signing a Memorandum of Cooperation and Support in those areas which the state has insufficient capacities and resources to deal with.

Since the issue of refugees and displaced persons in the Republic of Serbia is expected to be resolved in the near future, the main activity of the non-governmental sector in the following period should be directed to the integration of returnees under readmission agreements and to the protection of the situation of asylum seekers. In recent years, the number of asylum applications has been growing. This fact is best illustrated with the data that in 2008, only 52 persons sought asylum in Serbia, in 2009, this number increased to 275 persons, and in 2010, it doubled to 552 persons.[177] In addition, the structure of asylum seekers has considerably changed, and there is an increasing number of underage asylum seekers who have specific needs because they are a particularly vulnerable group. Considering that Serbia does not have much experience in dealing with asylum seekers, non-governmental organizations should undertake a systemic control of the conduct of state and local authorities towards different groups of migrants, particularly asylum seekers. Asylum seekers in Serbia refer for legal aid to UNHCR and non-governmental organizations, primarily the Asylum Protection Centre, whose role in this area should be strengthened. Also, Serbian state authorities rarely take into consideration practice, views and reports of relevant international bodies for the protection of human rights, which may result in the violation of international obligations assumed by Serbia, therefore, the role of non-governmental organizations in the area of interpretation, presentation and reminding of the public authorities of these standards should be even more important.

A systemic civilian control of the treatment of foreigners, above all, irregular migrants and asylum seekers, shall also imply that representatives of the non-governmental sector shall have enabled access to reception centres for foreigners, asylum centres and other places where these people are staying, where they can talk to them and obtain information about exercising their rights. As this control is not possible without consent of the competent ministry, most often it is obtained in the form of a Memorandum of Cooperation signed between the ministry and the NGO which shall conduct the control. This document specifies cooperation conditions. Such control should primarily refer to the possibility to initiate a procedure for granting asylum, to the control

[177] Data provided from the publication *About Asylum*, Asylum Protection Centre, Belgrade, 2011.

of forced removal of a person from the territory of the Republic of Serbia, as well as to the control of the implementation of readmission agreements.

There are several non-governmental organizations in the Republic of Serbia that have distinguished themselves with their commitment in the field of protection of migrants' rights in relation to different groups of migrants, including *Group 484, Praxis, Astra, Atina* and Asylum Protection Centre.

EXAMPLE

In April 2005, *Praxis* addressed the Ministry for State Administration and Local Self-government pointing to the irregularities of the administration authorities responsible for keeping registers from the area of Kosovo and Metohija. The Ministry issued a guideline to civil registries on how to issue a certificate excerpt in order to eliminate the irregularities in work identified by the organization. As a result of persistent efforts of non-governmental and international organizations, the Law on Administrative Fees was amended in July 2005 in a manner that refugees and displaced persons are allowed to pay fees reduced by 70%.

VI. RECOMMENDATIONS FOR FURTHER ACTION

A strategically, legally and institutionally regulated field of migration is extremely important for the achievement of free movement of citizens of the Republic of Serbia, but also for the achievement of a higher level of protection of various categories of migrants under its jurisdiction. In addition to accepting relevant international instruments and improving the legal framework, it is also necessary to establish mechanisms for the monitoring of migration flows as soon as possible, which implies regular development and update of the migration profile of the Republic of Serbia. So far, the International Organization for Migration has been developing the migration profile of the Republic of Serbia independently. The fact that the Government of the Republic of Serbia adopted the Migration Profile of the Republic of Serbia for 2010 in a meeting held on 23 February 2012 should be particularly welcomed. Its development was coordinated by the Commissariat for Refugees in the Republic of Serbia within the project "Capacity Building of Institutions Involved in Migration Management and Reintegration of Returnees in the Republic of Serbia" in the presence of representatives of competent state authorities. Furthermore, it is particularly important to adopt **the Law on Migration Management** as soon as possible. The Law has a task to regulate the issue of migration management, to proclaim principles in this filed, to appoint an authority competent for migration management and to provide a basis for establishing a unified system for collecting and exchanging data in this field. The Law in the form of a draft urgently entered the parliamentary procedure on 4 January 2011, and is expected to be adopted soon. Adoption of the Law should be welcomed and hope expressed that the Law shall achieve objectives for which it was adopted – preventing harmful consequences of the arrival of an increased number of migrants to the Republic of Serbia, ensuring a greater measure for exercising the rights of different groups of migrants and information flow, as well as understanding of the problem by the public which is currently lacking knowledge on this issue or understanding of complex problems faced by specific groups of migrants. These objectives point to the complexity of problems and the need to adopt a series of measures for overcoming these problems and establishing a more efficient migration management system.

I. GENERAL RECOMMENDATIONS

General recommendations for actions of the state in the field of migration are as follows:

- *It is necessary to establish a better coordination between the responsible authorities in the field of migration;*
- *Only by engaging all the resources in the state and by connecting local and state institutions may a comprehensive system for the protection of migrants in the Republic of Serbia be established;*
- *All state and local civil service employees must undergo constant education and training in the field of exercising the rights of migrants. The training should include development of communication skills and acting in favour of migrants always and in every situation;*
- *In cooperation with media, the state must work on raising awareness about specific issues in the society, particularly on breaking stereotypes and prejudices, which may often be the cause of a failure to provide adequate protection to migrants;*
- *The state must send a clear message that any form of violence is prohibited and use all of its resources to prevent violence in the society, particularly domestic violence, which is more present in the families that are in a difficult economic situation and on the margins of society;*
- *The state must establish a system of responsibilities at all levels which would imply sanctioning of unacceptable behaviour and strengthening of internal control;*
- *The system for the monitoring and exchange of data must be better established because definition of further measures and improvement of the situation in specific fields depend on these data;*
- *In the absence of relevant data, the state must rely on reports of independent bodies and on reports and practice of relevant international bodies in order to analyse and monitor the situation;*
- *The state must establish a comprehensive system for free legal aid as soon as possible, which shall enable migrants to exercise the right to equal access to court;*
- *Deficiencies in practice have to be removed as soon as possible by amendments to the applicable legal framework (e.g. the Law on Asylum), but also by adoption of new regulations (e.g. the Law on Migration Management).*

2. RECOMMENDATIONS RELATING TO PARTICULAR CATEGORIES OF MIGRANTS

In addition to general recommendations, the state must take a series of measures to improve the situation of every migrant group separately as they are in a specific situation and face specific problems in the Republic of Serbia.

2.1 Recommendations relating to foreigners

The situation of foreigners in the Republic of Serbia is regulated by the Constitution and a set of laws, first of all, with the Law on Foreigners. Although most of regulations have been adopted recently and adjusted to international standards, it is necessary to make some amendments to the existing legal framework.

- *It is necessary to adopt a new Law on the Conditions for the Employment of Foreigners, which is already in the parliamentary procedure, and which shall in a modern way regulate the conditions and procedure for the employment of foreigners in the Republic of Serbia;*
- *It is important to amend Article 47 of the Law on Foreigners, which in relation to Article 39, paragraph 3 of the Constitution more closely defines conditions for the expulsion of foreigners, by introducing a provision which shall prohibit expulsion in case a foreigner is at risk of persecution or serious violation of human rights.*

More recommendations may be provided in relation to the improvement of the situation of foreigners in Serbia:

- *Civil servants performing official actions related to persons with special needs shall also be obliged to act in accordance with international conventions and, above all, in accordance with the standards determined by the European Committee for the Prevention of Torture. To achieve this objective, it is necessary to organise adequate training of civil servants and introduce them to international instruments in the field of human rights.*
- *The state should establish a coherent and comprehensive system for the collection of data about foreigners residing in the territory of the Republic of Serbia;*
- *The state must develop a policy for the provision of equal opportunities for all foreigners, without discrimination;*
- *The state must fight against racism and discrimination with all available means and sanction hate speech and various forms of racist violence against foreigners;*
- *Local self-governments should organise various activities to introduce foreigners to the culture and specificities of Serbia and enable their easier integration by organising language courses, public discussions, cultural programmes, and similar events.*

2.2 Recommendations relating to migrant workers

Migrant workers are a special category of foreigners residing in the territory of the Republic of Serbia in which they exercise the right to work and work-related rights. Despite numerous international conventions which the Republic of Serbia accepted, this was not the case with the key convention relating to migrant workers: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

- *The state should consider the possibility of ratifying the Convention on the Protection of Migrant Workers as soon as possible, and should work on the establishment of conditions for meeting the obligations resulting from this international instrument;*
- *The state should consider the possibility of encouraging migrant workers and members of their families to learn Serbian, as well as the possibility of promoting and enabling the use of the mother language to children of migrant workers.*
- *The National Employment Service should consider the possibility of organising programmes for additional training and vocational retraining of family members of migrant workers. This particularly refers to activities under the contract for performing temporary and occasional activities, which do not require a work permit, all for the purpose of their quick integration and social inclusion;*
- *The state should encourage private pension programmes;*
- *A national database of vacancies should be created.*

2.3 Recommendations relating to asylum seekers

Serbia has ratified a large number of international conventions that are directly or indirectly related to asylum, and in 2007 Serbia adopted the Law on Asylum. Although the Law is a considerable contribution to the promotion of protection of asylum seekers, it contains some solutions that should be adjusted to international standards. The number of asylum seekers in the Republic of Serbia is growing every day. So far, only subsidiary protection has been granted to five persons, i.e. citizens of Iraq, Somalia and Ethiopia. Out of this number, three persons left the territory of the Republic of Serbia, which only illustrates that most asylum seekers intend to reach EU countries, even when they formally seek asylum in Serbia. The state must increase capacities and coordination of work of different state and non-governmental actors and invest additional resources in order to improve the situation of asylum seekers and prevent the problems occurring in practice. However, in order to achieve this, Serbia would have to amend the existing legal framework in some areas.

In this respect, several recommendations for further action of the state in the field of asylum may be singled out.

- *Increase capacities to accommodate all persons seeking asylum in the Republic of Serbia;*
- *Increase accommodation capacities of the unit for the accommodation of underage foreigners unaccompanied by a parent or a custodian, because children enjoy special protection, even when they irregularly reside in the territory of the Republic of Serbia;*
- *Ensure independent work of bodies deciding on asylum applications;*
- *It is necessary to urgently increase the number of persons employed in the Asylum Department;*
- *The legal obligation of establishing the Asylum Office should be fulfilled as soon as possible;*
- *Ensure a high level of expertise in the work of the Asylum Commission through constant education in the field of asylum seekers;*
- *Even though in practice this is most often the case, an appeal to the decision on refusing an asylum application must have a suspensive effect;*
- *Set a deadline for the adoption of a first instance decision on asylum applications for the purpose of introducing greater legal safety and urgency in deciding on these applications;*
- *The list of safe third countries must be created on the basis of clear criteria and it must be periodically reviewed;*
- *Urgently establish jurisdiction of a competent administration authority for the integration of asylum seekers;*
- *Further training and vocational development of members of state authorities in the field of exercising the rights of asylum seekers must be continued;*
- *Practically implement the measure of forced removal of a person whose asylum application was refused exclusively in accordance with applicable international standards in this field;*
- *Local authority must contribute to tolerance building and tension reducing in municipalities that have the Asylum Centre;*
- *Local authority should take measures aimed at developing services for emergency accommodation of foreigners in municipalities that have high inflow of asylum seekers;*
- *The state should take decisive measures for punishing persons who in the media use hate speech and contribute to racial intolerance.*

2.4 Recommendations relating to refugees

It has already been mentioned that the term “refugee” has restrictive interpretation in the Republic of Serbia and that it refers to refugees from the territory of former Yugoslavia who, unfortunately, despite significant reduction in the number, have not changed their status yet. The state makes efforts to resolve this issue and to take care of refugees, and with amendments to the 2010 Law on Refugees, as well as with the 2011 National Strategy for Improving the Position of Refugees, an emphasis was placed on the integration and development of the programme for housing of refugees. Although much has been done in this field, there are some fields where the state should do more in the near future. Therefore:

- *The state should insist more on establishing regional cooperation for the purpose of resolving the housing issue of refugees;*
- *The state should ensure a team of experts which will provide free legal aid to refugees for the purpose of exercising the right to property in the region;*
- *All collective centres in the country should be closed down as soon as possible;*
- *Continue with the implementation of the project for resolving the housing issue for vulnerable refugees in the Republic of Serbia;*
- *Continue with the implementation of the projects which encourage employment of refugees and former refugees in the Republic of Serbia;*
- *Insist on the implementation of a greater number of support services for refugees in local communities for the purpose of their full integration.*

2.5 Recommendations relating to internally displaced persons

The situation of internally displaced persons is particularly difficult due to the absence of an internationally binding convention or applicable legal framework aimed at resolving problems of this category of migrants. Internally displaced persons are considered to be citizens of the Republic of Serbia and they enjoy the same rights as other citizens. However, this population faces specific problems which require taking adequate and additional measures in order to improve its situation and to be able to exercise its constitutionally guaranteed rights. This primarily refers to those persons who due to the lack of documents cannot exercise some of their fundamental rights. Therefore, the state must take a series of decisive steps:

- *The state should continue insisting on the creation of conditions for the safe and sustainable return of displaced persons from Kosovo and Metohija;*
- *Registries and cadastral books must be adjusted and made available as soon as possible;*
- *Continue with the practice of inclusion of internally displaced persons in the programmes for the support in finding employment and resolving housing issues;*
- *As soon as possible amend several laws – the Family Law, the Law on Registries, the Law on Extra-Judicial Proceedings, and similar laws, for the purpose of adequately resolving the issue of subsequent registration in registries;*
- *Enable displaced persons to temporary exercise the rights guaranteed by the Constitution of the Republic of Serbia until they are registered in registries or issued necessary documents;*
- *Ensure more funds for the provision of free legal aid to the organizations which provide field assistance to persons without documents to obtain their documents;*
- *As soon as possible resolve the issue of existing informal settlements and adopt a regulation on eviction which must be in accordance with international standards;*
- *Improve the system for the registration of all projects and all beneficiaries of the programmes for support in employment, self-employment and development of small and micro enterprises, by creating a database which shall contain all the relevant data about grants for the purpose of efficient monitoring, which implies an improved cooperation between the non-governmental sector and all relevant state institutions.*

2.6 Recommendations relating to returnees under readmission agreements

Returnees are members of particularly vulnerable groups exposed to a high risk of poverty. These persons face numerous problems in the Republic of Serbia, ranging from issues related to obtaining documents to lack of understanding by the community, the inability to find a job and housing. The state should make additional efforts to provide adequate care to these persons in the following manner:

- *The right to be informed about the rights must be granted to everyone, regardless of the length of stay abroad;*
- *Establish coordinated cooperation among all levels of authorities for the purpose of assisting returnees;*
- *Local self-governments should as soon as possible extend existing local action plans by including returnees. The largest portion of funds should be allocated to poor municipalities inhabited by a significantly large population of returnees;*
- *Design programmes for support of municipalities where most of the population comes from;*
- *It is necessary to establish cooperation among state and local institutions and civil society organizations which primarily deal with providing assistance to returnees and with monitoring adherence to their human rights during the return process;*
- *Empower local migration councils, as well as the institution of Roma coordinators;*
- *Design programmes for resolving the housing issue of returnees;*
- *Implement programmes which shall facilitate the transition period of learning Serbian in the first year after return and enable learning of the Serbian language before school starts;*
- *Provide additional classes for learning Serbian, for the purpose of enabling continuation of education in Serbia, and simplify the procedure of validation of diplomas;*
- *Provide alternative education for older returnees.*

2.7 Recommendations relating to victims of human trafficking

In the 21st century, victims of human trafficking have been exposed to unconceivable forms of exploitation and violation of fundamental human rights, which take place on a daily basis in the Republic of Serbia as well. Despite the adoption of conventions at the international level which prohibit trafficking in human beings and inclusion of this form of crime in national law, a lot has to be done to combat this phenomenon and punish offenders adequately. The penal policy in the Republic of Serbia is still insufficiently developed, during criminal proceedings victims are exposed to further victimisation, and insufficient resources and prejudices of both state authorities and the community further complicate reintegration of the victim. To overcome these problems, the state needs to take specific steps such as the following:

- *As soon as possible commence with the application of protective measures for witnesses on the basis of the Criminal Procedure Code and use them particularly for the victims of human trafficking;*
- *Continually educate prosecutors, judges and attorneys about traumatic experience of a victim and about the difference between voluntary and forced prostitution, and insist on a more stringent penal policy;*
- *Include more actors in the process of identification and provision of assistance to victims;*
- *Regulate relations between centres for social work and the Office for Coordination of Protection of Victims of Human Trafficking in case of underage victims;*
- *Decisively implement measures against any form of exploitation, particularly protect children from begging on the streets;*
- *Develop further social and psychosocial assistance to the victims of human trafficking;*
- *Allocate more funds to the representation of victims in court, as well as to the Office for Coordination of Protection of Victims of Human Trafficking, and increase its capacities;*
- *Decisively stop further expansion of victimisation of victims;*
- *Form services for the provision of information and control of jobs abroad;*
- *Create programmes for the support of child victims;*
- *Provide programmes for the support and recovery of victims of human trafficking;*
- *Local authorities should provide as many shelters for receiving the victims of human trafficking as possible;*
- *Create databases for organizations which can provide assistance to victims of human trafficking.*

♦ ♦ ♦

Presented recommendations are only part of the activities which the state should conduct for the purpose of improving the situation of migrants in the Republic of Serbia. Only a holistic approach to resolving the issue, which at the same time takes into account specific obstacles occurring in exercising the rights of specific migratory groups, may lead to positive solutions. Only with coordination and support at all levels may the objective be achieved. State authorities have a leading role in this process. However, local authorities also bear a great responsibility and have a major role in this process, particularly the process of integration of migrants. They may substantially improve the status of migrants' rights by identifying their specific needs and by developing services for addressing those needs. This handbook has a task to introduce the authorities to the constitutional, international and legal rights that belong to migrants as well as to the priority fields of actions related to them, and to encourage the authorities to an appropriate activity.

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Protecting the Rights of Migrants in the Republic of Serbia: Handbook for Civil Servants and Local Self-government Officials / Ivana Krstić. -
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Number of copies 2.000 – Comments and bibliographic references added to the text. –
Bibliography: pages 138-139

ISBN 978-86-85003-10-3

a) Migrants – Legal Aid – Serbia – Handbooks
COBISS.SR-ID 189667596