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PAPERS

SERBIA ON THE REFUGEE ROUTE - THE HUMANITARIAN RESPONSE AND LEGAL ADJUSTMENTS

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Serbia on the refugee route - the humanitarian response and legal adjustments

I Introduction

The migrant and refugee crisis by its volume, the challenges it entails, the political consequences, as well as the consequences on the implementation and validity of international standards in the field of human rights, is certainly one of the most important global and regional crises in the world and Europe after the Second World War. The consequences of the conflict in the Middle East can be seen in the destinies of millions of people, many of whom seek refuge in European countries, primarily EU countries.

Besides the huge humanitarian and security challenges regarding the protection and support of migrants and refugees coming to Europe via the Western Balkans, this crisis has created a new challenge of more importance (according to many of its characteristics), as well as a crucial dilemma for the future of the European continent - whether the values on which international law and EU law, created after the Second World War, still remain an essential basis for the protection of human rights, primarily of the most vulnerable, refugees and migrants.

This analysis does not intend to fully answer this question, but points to two key consequences of this crisis. Firstly, that the principle of the protection of human rights of refugees and migrants has become a secondary issue in relation to the issue of border protection and security to such an extent that even the most developed countries of the EU and the most developed regarding traditional democracy, accept and initiate policies that are opposed to the standards of international human rights law. Secondly, that this crisis is a tool for the further strengthening of extreme ideas, which occur even in legal acts.

The consequences of such tendencies are felt in the countries of the Western Balkans, primarily Serbia and Macedonia, which are located on this refugee and migrant route and to the north and the south are surrounded by the EU, i.e. the Schengen area. And while Greece is showing numerous weaknesses controlling the crisis in accordance with international and European standards, even with the support of the international community and the EU, Hungary is raising walls and barbed wire fences, and passing laws contrary to the fundamental principles of international refugee law and human rights law.

When it comes to Serbia, there is no doubt that through the activities of state bodies, civil society and its citizens, a great willingness to respond adequately to this humanitarian challenge was shown. However, this analysis is not about the humanitarian activities of the key actors, which were written and spoken a lot about over the past 15 months, but about the challenges and problems facing the country in status and legal terms when determining this crisis, precisely incorporating and defining its policy in accordance with regional agreements and European ad hoc solutions, which are also subject to criticism in this analysis.

This only shows interdependency and the need for Serbia to be treated as a partner in European affairs and agreements, i.e. dialogue in search of solutions for the refugee and migrant crisis, with the constant reminder of international standards, international refugee law and human rights law.

Precisely this crisis has created a potential situation whereby the region of the Western Balkans, especially Serbia, will become a “landlocked” region/country for refugees and migrants who do not come directly from war-affected areas on its territory, and who do not intend to settle there. The complacency of EU

¹ Vladimir Petronijević is the editor of this paper and author of chapters I, II and V, Miroslava Jelačić is author of chapter III and Brankica Grupković is author of chapter IV.

countries because of the fact that the closure of routes has led to a reduction in the number of refugees and migrants entering the EU points to this possibility.

The current situation, apart from the increased number of refugees and migrants who are arriving in Serbia, is characterized by the risk of ad hoc and de facto readmission of foreign nationals from Hungary. There remains the fear that the direction in which this crisis is heading differs from the 17-point plan,² which forecasts the distribution of the immigrant and refugee burden along the route, without a clear definition of the responsibilities of countries, and calls for the implementation of re-admission agreements with regard to third-country nationals.

In addition, this analysis speaks of the need to harmonise Serbia's policies with EU policies, particularly in the context of negotiation chapters 23 and 24 where reforms regarding the asylum system are yet to follow, as a further contribution to the interdependency of the migration policy of Serbia and the dynamics of the development of European legislation in these areas, but it also indicates the importance of reading the action plans horizontally, the coordination of various policies and the observation of the phenomenon of migration as a complete state response to the challenges that lie ahead.

And the complexity of these challenges can be found in the already dealt with theme of asylum seekers, citizens of the Republic of Serbia in the EU, their readmission and sustainable return. This question became extremely important after visa liberalization, when a significant number of Serbian citizens used the possibility of the visa-free regime to submit requests for asylum in EU countries. Frequent debates and requests for the suspension of the visa-free regime were then replaced by debates on the migrant and refugee crisis, but this problem is far from being solved. It is important to remember that readmission agreements demonstrate the desire of the contracting parties to cooperate in the fight against irregular migration. Based on the principle of reciprocity, these agreements establish rapid and effective procedures for the identification and safe and orderly return of people who do not fulfill or no longer fulfill conditions of entry and sojourn in the territory of the contracting parties. The signatories also commit to respect the provisions of international law, above all those related to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Geneva Convention, when used.

With regard to Serbia, as a contracting party, this means the obligation to accept its citizens, i.e. the acceptance of any person "who does not fulfill or no longer fulfills the conditions for entry, sojourn or residency in the territory of the requested Member State, if it has been proven or if it is possible on the basis of submitted prima facie evidence to credibly assume that the person is a citizen of Serbia". At the same time, Article 3 of the Agreement establishes and accepts the obligations of third country nationals and stateless persons as follows: "any third-country national or a stateless person who does not fulfill or no longer fulfills the conditions for entry, sojourn or residence in the territory of the requested Member State, if it has been proven or if it is possible on the basis of submitted prima facie evidence to credibly assume that the person in question: owns, or owned at the time of entry, a valid visa or residence permit issued by Serbia, or in an unlawful manner directly entered the territory of a Member State, after having resided or was in transit through the territory of Serbia."

This paper will therefore focus on the two main issues regarding the implementation of the Agreement: the achievements and challenges of its implementation with regard to the sustainable return of our citizens, while in the light of the current migrant and refugee crisis questions concerning the admission of foreign nationals, especially in the reform of the relevant legislation in the context of negotiations regarding Serbia's membership of the EU, will be raised.

² Described more thoroughly in the analysis to follow.

II The migrant and refugee crisis, the EU and Serbia

Relevant statistics of the migrant and refugee crisis

Even before the start of the migration crisis in mid-2015, Serbia had seen an increase in the number of people who expressing their intention to seek international protection. Thus, in 2013, it was recorded that 5,065 people expressed their intention to seek asylum, and already in 2014 this number tripled, when 16,500 people expressed the same intention. It was precisely these migration movements that presented the introduction to the refugee and migrant crisis, which is without precedent in the recent history of Europe. In Serbia in 2015 alone, there were 577, 995 people registered who expressed the intention of seeking asylum in the Republic of Serbia. As a result of the “closure of borders”, the number of people who expressed the intention of or expressed an interest in seeking asylum in the Republic of Serbia dropped significantly, and at the closing of June 2016, 4,551 people expressed the intention of seeking international protection in our country. This number should not be underestimated, although when compared with the previous year, it seems very modest. This flow is still characterized by the significant presence of women and children (1,138 women, 93 unaccompanied minors), with the majority of refugees and migrants still wishing to continue their journey to the EU, which results in them being concentrated in areas where it is very difficult to provide adequate conditions of care and humanitarian assistance (the border zone along the Hungarian border, near the border crossings of Horgoš I and Kelebija).

The European Union

Nearly 15 months after the intensification of the migrant and refugee crisis via the so-called Western Balkan route, there remains the unequivocal conclusion that the EU was ill-prepared for this crisis, fragmented, and very slow in addressing this urgent problem, which not only threatened the stability of the Union itself, but opened up questions regarding its nature as a political community based on certain values that are recognized and proclaimed in its founding documents.

That this crisis could have been foreseen is evident in the fact that at the end of 2014 there were nearly 626,000 asylum applications for the EU, the highest number since 1992. At the same time, regular reports on the tragedies in the Mediterranean basin pointed to an intensification of refugees and migrants trying to reach the territories of the EU.³

After one of the greatest tragedies in the Mediterranean, when more than 800 migrants and refugees lost their lives, 20th April 2015, Member States agreed on the *10-point Action Plan*.⁴ This plan envisaged to further financially strengthen the rescue operation in the Mediterranean, as well as to intensify efforts to destroy the vessels used by smugglers, and to consider the possibility of creating a relocation scheme or pilot resettlement programme for people seeking international protection.

In order to better manage migration to the EU, on 13th May 2015, the *European agenda on Migration*⁵ was adopted. This document is based on four pillars: 1. Reducing the incentives for irregular migration, 2. Saving lives and securing the external borders, 3. Strengthening the common asylum policy, 4. Developing a new policy on legal migration.⁶ With regard to direct action by the EU, this document presents the following EU strategies. Firstly, the Commission decided to triple the budget for Frontex joint operations (Triton and Poseidon), which help Member States in saving the lives of migrants and refugees at sea. Some Member

³ The IOM recorded 3,279 deaths in the Mediterranean during 2014. According to the data of this organization, during 2015, 3,771 deaths were recorded. According to the UNHCR, 2,896 people died or disappeared in the Mediterranean during 2016.
<http://www.iom.int/news/iom-counts-3771-migrant-fatalities-mediterranean-2015>
<http://data.unhcr.org/mediterranean/regional.php>

⁴ http://europa.eu/rapid/press-release_IP-15-4813_en.htm

⁵ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

⁶ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/index_en.htm

States also secured ships and aircraft. Furthermore, the Commission presented a draft for a possible security and defense policy operation to deter the criminal actions of smugglers. For the purpose of an emergency response, on 27th May 2015, a decision was made on the temporary relocation of 40,000 people from Italy and Greece and the resettlement of 20,000 people from outside the EU to other Member States.⁷ The EU proposed criteria on which this move was to be based, such as the GDP, population size, unemployment rate and the number of asylum seekers in the past. This document, through cooperation with third countries, further shapes externalization, i.e. a process which entails the use of different methods to transfer the entire management of migration outside the borders of the EU.

In September, two relocation plans were finally adopted, the first one on 14th September 2015 concerning the relocation of 40,000 people in search of international protection, and the second on 22nd/23rd September on an additional 120,000 people, which was opposed by EU Member States from Eastern Europe.⁸ Subsequent decisions by the European Council additionally encouraged the need to further strengthen the protection of external borders, and significant financial resources have been allocated for this purpose.⁹

In the last 6 months of 2015, the European Council held several meetings, and special attention from the European public generated meetings dedicated to the Western Balkan route with the participation of leaders from the Western Balkan countries, as well as meetings dedicated to the establishment of an agreement with Turkey on the migrant and refugee crisis (March 2016).

THE 17-POINT PLAN

At the summit of the European Union and the Western Balkan countries, held on 25th October 2015 in Brussels, the 17- point Plan was adopted with the aim to co-ordinate and effectively respond to the migrant and refugee crisis. The special significance of this plan is the recognition of the need for the continuous exchange of information between countries on the route and to avoid a humanitarian crisis, especially as winter is approaching. Nevertheless, this Plan deserves separate analysis, bearing in mind that this is still the only document that concretely includes the Western Balkan countries in the specific plans of the EU regarding this crisis, and was created with dialogue and the presence of the political leaders of these countries. Firstly, the Plan uses terms that have no clear legal sense, but they get their meaning only by subsequent and current interpretation. Thus, with this Plan, the countries are called to “discourage” the movement of refugees and migrants. Secondly, the Plan only considers agreement between countries with 50,000 people on the route, without clear indications of the specific obligations of the countries. Thirdly, the EU has directed that in order to solve the crisis, countries in the region look for financial support from international financial institutions that generally provide credit support, which means further borrowing for these countries. Fourthly, the Plan logically points to the need for countries along the route to share information on the migration flow, but introduces another stipulation that on request “information on all newly arrived refugees and migrants should be provided”. Serbia is among the countries which registered the largest number of people during 2015 and the eventual exchange of such data could be problematic in the context of the other provisions of this Plan, especially the call from Member States to step up the implementation of “readmission agreements with third countries”, which includes countries in the region.

⁷ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf
http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/relocation_and_resettlement_factsheet_en.pdf

⁸ It is about the decisions 1523-15 and 1601-15. About the inefficiency of this process, evidence of data and observations made by the European Commission itself since 16.03.2016, according to which 937 asylum seekers were reallocated from Greece and Italy, and in the resettlement programme, 4,555 people, mostly Syrians from Jordan, Lebanon and Turkey. It was estimated that this process had to be accelerated and effectively implemented. http://europa.eu/rapid/press-release_IP-16-829_en.htm

⁹ The European Commission said that it was addressing this crisis and had allocated €1.7 billion, of which €17 million was to support Serbia and Macedonia. http://europa.eu/rapid/press-release_IP-15-5729_en.htm

However, Turkey was recognized as the key country in solving the migrant and refugee crisis.

THE AGREEMENT BETWEEN THE EU AND TURKEY

The Agreement between the EU and Turkey on the solution to the migrant and refugee crisis was reached on 18th March 2016, and it is understood that: all irregular migrants who arrive on the Greek islands after 20th March 2016 will be returned to Turkey, for every Syrian who is returned to Turkey, Syrian from Turkey will be resettled in an EU country (programme one for one), Turkey committed to take further measures to prevent the irregular movement of migrants from Turkey to the EU by land and by sea. With the conclusion of the readmission agreements between the two sides, Turkey has been promised that visa liberalization process will be speeded up in accordance with the fulfillment of the conditions on the Roadmap, they will receive substantial financial assistance of €6 billion by the end of 2018, as well as the acceleration of the European integration process. Civil society organizations have expressed particular concern about the conclusion of this Plan. The basic objections were: the potential inability to apply for asylum before eventually being returned to Turkey, the right to legal aid as well as a legal remedy to the return decision, and a procedure which the applicant can understand. It points to the danger of making a distinction between potential asylum seekers according to their ethnicity, because the plan refers to Syrians and not refugees from other countries.

Serbia

In Serbia as well as in other countries along the route, the speed at which the crisis developed was initially a surprise, together with the large number of refugees and migrants who arrived mainly from Macedonia and Bulgaria. It took some time for the coordination of national and local institutions, international organizations and civil society organizations to respond adequately to this humanitarian challenge. It was crucial that the Government of the Republic of Serbia had a positive attitude, with clear messages that migrants and refugees are welcome in Serbia, and that the complete society should organize itself in order to temporarily respond in a humane and caring way.

However, it can be unequivocally concluded that the policy of the Government of the Republic of Serbia was inevitably conditioned by relations and attitudes of the EU, i.e. the policies of individual EU Member States. Therefore, the question of the relationship of Serbia towards the migrant crisis can be divided into 3 phases or 3 periods, directly conditioned by and interdependent on the dynamics from within the EU.

During the first half of 2015 and at the beginning of the crisis, there was still misdemeanor punishment of migrants from countries affected by war conflicts, and the security challenges of Syrians, Afghans and Iraqis. These procedures were typically held without the presence of an interpreter and adequate legal assistance. At the same time, officials quoted data about the collective return of refugees and migrants from the borders of Serbia, although collective expulsion is strictly prohibited under international refugee law and international human rights law.¹⁰ This period was characterized by the uncontrolled crossing of refugees and migrants into Hungary via the so-called “green border”. At the same time, this crisis pointed to the insufficient capacities of state bodies to register these people, both in the newly-established reception centre in Preševo, and in Belgrade, where 1,000 people stay in parks and around bus station every day.¹¹

The closure of the border by the Hungarian authorities and the movement of refugees towards the Croatian border were turning points in the further course of this crisis, and the *second phase* began. Although relations between Croatia and Serbia during this period were very tense, leading even to the interruption of traffic and the transport of goods, cooperation between the two neighboring countries

¹⁰ <http://www.tanjug.rs/multimedia.aspx?izb=v&c&GalID=165926>

¹¹ More: *The annual report of the Ombudsman for 2015*, p.51.

were re-established, and an agreement was reached on the “legal” movement of refugees and migrants to EU countries. What impact the EU and its leading countries had on relations in this region precisely was shown by the example of the position of Germany and Chancellor Angela Merkel on this issue, in the key decision that German borders were open for refugees from the Middle East, but more importantly in the explanation of this decision that the eventual closing of the borders could trigger conflicts even in the Western Balkans, bearing in mind the economic, social and interethnic relations in the region.¹² According to the agreement on the above-mentioned 17-point plan, an especially problematic decision was implemented for the first time, i.e. the possibility only of refugees in transit from Syria, Iraq and Afghanistan to legally pass through the country, derogating the right to international protection,. This was, what will later be concluded, a prelude to the complete closure of the Western Balkan route for the organized and state- helped movement of refugees.

The *third phase* of the migrant and refugee crisis occurred as a result of two regional conferences held in Vienna and Zagreb. In February 2016, the police directors of Austria, Slovenia, Croatia, Serbia and Macedonia agreed on measures to restrict the flow of migration in the Western Balkans. *The joint declaration*¹³ establishes criteria that completely negate the fundamentals of international refugee law and international human rights law. This declaration explicitly states that entry will be allowed primarily to those who have the appropriate documents, visa or residence permits, i.e. the documents which people fleeing from war as a rule do not have, or are not required to have to gain access to the territory in which they are seeking asylum (item 5). Subsequently this statement reaffirms the possibility of the recognition of refugee status according to the nationality of the applicant, which presents absolute discrimination and is contrary to the definition of a refugee under the Convention relating to the Status of Refugees. (Not) belonging to a particular ethnic group cannot be grounds for denial of access to the asylum procedure and the establishment of status. More problematic is that the determination of the nationality of the asylum seeker is left to the interpreters, and they essentially assess who is a refugee and who is not based on their knowledge of the language. This declaration denies the right to family unity which is guaranteed by international and European law (Section 6). At the conference in Vienna on 24th February 2016, representatives of the Ministries of Internal Affairs of Austria, Croatia, Slovenia and the Western Balkan countries, once again confirmed the dominance of security issues, especially border security, through the adoption of the *Declaration on Joint Border Management*.¹⁴

It was precisely these meetings that were the prelude to the eventual closure of the border between Slovenia and Austria, causing a domino effect and the closure of the entire route for the organized and legal movement of refugees and migrants. The decision to close the route led to a reduction in the number of refugees and migrants in the EU, and a smaller presence in the Western Balkans, but it increased human trafficking, a lack of full control over the migration flow and fully opened up the question of the protection of their rights.

This situation continues as the crisis takes on a new form and its epicenter is moving again to the north of Serbia, along the border with Hungary, near the border crossings of Horgoš I and Kelebija.¹⁵ Another problem is the behavior and actions of the Hungarian government. In addition to walls and wire fences, Hungary amended its criminal law and the law governing the asylum procedure. The latest amendments to the legislative framework on asylum and the law on state borders, gave the Hungarian police the automatic right to return to Serbia all irregular migrants found within 8 km of the border zone. This

¹² <http://mondo.rs/a844642/Info/Svet/Angela-Merkel-Moguci-oruzani-sukobi-na-Balkanu-ako-zatvorimo-granicu.html>

¹³ http://www.mup.hr/UserDocsImages/topvijesti/2016/veljaca/migranti_sastanak/joint_statement.pdf

¹⁴ <http://data.consilium.europa.eu/doc/document/ST-6481-2016-INIT/en/pdf>

¹⁵ According to the latest data from 12.07.2016, about 500 migrants and refugees enter Serbia daily. Currently there are around 700 at border crossings. At this moment, 3,126 are registered in Serbia, with an accommodation capacity of about 6,000 places. <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:614690-U-Srbiju-dnevno-ulazi-oko-500-izbeglica>

decision on the side of the Hungarians provoked a sharp reaction from civil society organizations and international organizations dealing with the protection of human rights. Thus, the Hungarian Helsinki Committee stressed that the decision of the Hungarian authorities was in violation of international refugee law and EU law, which guarantees asylum seekers the right to remain in the territory of an EU Member State until their asylum application has been decided upon, and with the changes in the law the possibility of the uncontrolled return of people is created, without the possibility of applying for asylum. This has pointed to weaknesses in the asylum system in Serbia, and to the inability to effectively decide upon applications, but also to the very poor humanitarian and sanitary conditions in no man's land on the Serbian-Hungarian border.¹⁶

According to the UNHCR, only during the first day of the implementation of the new Hungarian legislation there were 120 cases of de facto readmission to Serbia. It is exactly this case which points to the need to reform the asylum system in the Republic of Serbia in the context of the *readmission of third country nationals*.¹⁷ Thus, the European Commission in its annual Serbia 2015 Report regarding progress,¹⁸ states that there is an “urgent need for a comprehensive reform of the rationalization of the asylum system, bringing it into line with European and international standards”. Furthermore, although Serbia is a transit country, it is evident that the asylum and total migration framework is “generally poor” and it has been recommended that special focus is put on “the identification of persons in need of protection”, as well as investing in “making significant effort” to resolve the “phenomenon” of unfounded applications for asylum in EU Member States. Precisely the migrant and refugee crisis points to the need to further strengthen the admission system of third country nationals, the asylum system, and the readmission of those who in Serbia do not realize the right to international protection.

III Reforms in the area of asylum

At this moment, it is necessary to examine the system of asylum and migration in the Republic of Serbia at two levels. The first, humanitarian, which has been actualized with the increased influx of migrants and refugees in Serbia, and the second, which could be characterized as a reform, the establishment of a functioning asylum system and the management of migration that will be in line with the strategic orientation and international commitments of Serbia.

Serbia began to establish an asylum system during the process of fulfilling the Roadmap criteria for inclusion on the list of countries which enjoy a visa-free regime for the European Union. Although certain steps were taken and results achieved, the implementation of reforms in order to build a functional system was very difficult to achieve even before the influx of the large number of migrants, i.e. asylum seekers. The mixed migration flow,¹⁹ the expansion of the smuggling of migrants, the implementation of border control measures by countries in order to deter irregular movement, together with pressures on the asylum system as well as from migrants in search of better economic conditions, brought Serbia to the stage where it was necessary to consider the cause and effect relationship between certain aspects of the migration policy and the asylum system (the so-called *migration-asylum nexus*). The impact produced by the mixed migration flow can be characterized as a factor which affected the functioning of the asylum system in almost an identical manner as the shortcomings identified in the system itself - institutional

¹⁶ <http://www.helsinki.hu/wp-content/uploads/HHC-info-update-push-backs-5-July-2016.pdf>

¹⁷ See section II.

¹⁸ European Commission. 2015. SERBIA 2015 REPORT.

Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf

¹⁹ The term is used to describe the movements caused by various reasons and circumstances which motivate people to move together, whether within or across international borders. Usually attention is given to mixed migratory movements across international borders, and the irregular/unauthorised movement of various categories, such as refugees, asylum seekers, economic migrants, victims of trafficking, smuggled migrants and other vulnerable groups, including women, children and unaccompanied minors, and those with invalid documents or who do not fulfil the conditions to lawfully enter the territory of the country they are moving through.

and infrastructural, as well as the shortcomings in the existing law on asylum, which were identified on the basis of the analysis of practice. The system can be somewhat improved with the harmonization of legislation with EU legislation, i.e. with the horizontal alignment of the normative legislative framework for asylum,²⁰ but the *condition sine qua non* leads to improvement of the capacity and practices, i.e. to the adequate application and interpretation of the regulations which are in force.

Overcoming the identified shortcomings will be an imperative for starting the process of negotiations for membership of the European Union after the opening of Chapter 24, which also deals with the asylum policy. In the process of accession to the EU, Serbia will be required to bring the current applicable regulations in the area of asylum fully in line with EU legal standards, but also to unequivocally demonstrate that the standards imposed by the EU are an integral part of the process of enforcement, and not just declaratively adopted.

2015, according to official announcements and the adopted strategic documents was also seen as a crucial year for reforms, in which activities aimed at fulfilling the criteria set out in Chapter 24 (Justice, Freedom and Security) were supposed to start, with an important role given to policies in the area of asylum and migration. Due to the (un) expected influx of a large number of migrants and refugees, the reform activities were replaced with activities that were aimed at mitigating the effects of the new circumstances - the provision of basic emergency needs for the people in migration and safe passage to their desired country of destination. It is encouraging that the reform process was not stopped, but slowed significantly, which at least at this stage may be a solid basis for the assertion that Serbia has expressed commitment to reform the asylum system and migration management.

A normative framework in the area of asylum and migration

The right to asylum²¹ is guaranteed under the Serbian Constitution²² and national legislation. Serbia has ratified many international treaties that have been directly or indirectly of importance regarding asylum issues. In addition, the legal framework has been completed with a significant number of strategic documents, laws and regulations that in the last ten years have been adopted by the Government of the Republic of Serbia in order to define and manage legal migration as well as combating illegal migration: the Strategy for integrated border management,²³ the Strategy to combat human trafficking, the Strategy to combat illegal migration for the period 2009-2014,²⁴ the Strategy for migration management,²⁵ the Law on state border protection,²⁶ the Law on asylum,²⁷ the Law on foreigners,²⁸ the Law on migration management,²⁹ the Law on the employment of foreigners, the accompanying bylaws, laws that confirm the bilateral and multilateral agreements on readmission³⁰, etc.

²⁰ In the reform of legislation in the area of asylum, primarily it is important to objectively assess and take into account the specificities of Serbia: the constitution and legal order, the institutional and administrative capacities as well as economic and social factors, and thus ensure the effective implementation of the standards. It is crucial that the newly adopted documents are fully harmonized in order to avoid legal gaps or contradictory solutions.

²¹ According to Article 2 of the Law on Asylum, asylum is the right of a foreigner to reside and be protected based on the decision of the relevant authority that has considered his request for asylum in the Republic of Serbia, and the refuge or other form of protection provided according to this law is approved. In the same article, the law defines the concept of refuge as the right of the refugee to reside and be protected on the territory of the Republic of Serbia where the relevant authority finds that the asylum seeker fears persecution in their country of origin. The Constitution of the Republic of Serbia, on the other hand, guarantees the right to asylum only.

²² Official Gazette RS, no. 98/06.

²³ The Strategy for integrated border management, Official Gazette RS, no. 11/06.

²⁴ The Strategy to combat illegal migration in the Republic of Serbia for the period 2009–2014, Official Gazette RS, no. 25/09.

²⁵ The Strategy for migration management, Official Gazette RS, no. 59/09.

²⁶ The law on state border protection, Official Gazette RS, no. 97/2008.

²⁷ Law on asylum, Official Gazette RS, no. 109/07.

²⁸ Law on foreigners, Official Gazette RS, no. 97/2008.

²⁹ Law on migration management, Official Gazette RS, no. 107/12.

³⁰ <http://www.kirs.gov.rs/articles/readsporazumi.php?type1=44&clang=SER&date=0>

Serbia is also bound by the Stabilization and Association Agreement between the EU and its Member States. According to the Agreement, Serbia is obliged to harmonize its legislation in the relevant sectors with EU legislation and implement it effectively.³¹ The establishment of the system of asylum was considered to be one of the most important tasks in all the key documents in the context of European integration by the Government of the Republic of Serbia.

Membership of the European Union presents strategic orientation for the Republic of Serbia, which entails the acceptance of the adopted European values and standards in a number of areas. In order to obtain a precise insight into the scope and monitoring of this process, Serbia has developed a National Programme for the Adoption of the Acquis (NPAA), which is a detailed plan to harmonize legislation and define the human and budgetary resources necessary to fulfill the set tasks. The NPAA covers the period from 2014 to 2018. In the area of asylum, the NPAA has identified most of the key weaknesses of the asylum system and envisages a series of measures to improve the system - the establishment and improvement of the capacity of the first instance authority in line with EU standards, the provision of adequate financial resources for the functioning of the national asylum system, the provision at all levels for adequate administrative capacities which will professionally and punctually perform all the tasks necessary for the smooth running of the national system of asylum, the provision of sufficient accommodation for asylum seekers, which would be of a permanent nature, the implementation of adequate procedures of integration for users of various forms of international protection, etc.

Certainly the most important document which contains the attitude of the Republic of Serbia to the reforms to be undertaken in the area of asylum and migration, and can be seen in a most comprehensive way, is in the *Action Plan for Chapter 24*,³² as noted in the document: “the Action Plan will be given primacy in relation to all strategic documents and action plans in the relevant areas”.³³ The Action Plan received a positive assessment by European officials and the responsible Serbian authorities have already started implementing some of the measures envisaged, even though negotiations on Chapter 24 have not yet started.³⁴ The modification of a large number of regulations, especially laws, are planned mainly in 2016 and 2017, with less important changes in the strategic documents in the area of asylum and migration.

The impression is that the plan is based on dubious grounds, and that consequently some of the measures will have only a limited effect. For example, when describing the current situation it has been stated that the shelter for foreigners, as an institution for foreigners under reinforced police surveillance, has 144 places, and that it is necessary to adjust its capacities with the creation of adequate conditions for vulnerable categories. Therefore it does not foresee the establishment of any other specialized institutions for the detention / restriction of the freedom of movement of migrants. Bearing in mind the characteristics of migration flow, the relevant statistical data and the basis for limiting the freedom of movement laid down in the current regulations in the area of asylum and migration, as well as the provisions of European legislation, it can be concluded that the number of places available is insufficient. Also, there is the question of the cost-effectiveness of the solution, according to which there is only one institution of this type, located in Belgrade, although most of the activities and movements of migrants is most often recorded near the borders of Serbia.

³¹ In Article 82 of the SAA, it is stated that cooperation in the area of asylum will focus especially on the implementation of national legislation to meet the standards of the Convention on the Status of Refugees signed at Geneva on 28th July 1951 and the Protocol on the Status of Refugees, signed in New York on 31st January 1967, in order to ensure the respect of non-refoulement, as well as other rights of asylum seekers and refugees.

³² http://www.mup.gov.rs/wps/wcm/connect/36e98096-9938-4aaf-b36c-e413bfbcac57/Trecna_verzija_AP_27_03_2015.pdf?MOD=AJPERES&CVID=kTXD4Ry

³³ The Action Plan for Chapter 24, page 11.

³⁴ http://www.mup.gov.rs/cms_cir/oglasni.nsf/ap-p24.pdf

Furthermore, some of the planned measures regarding changes in the legislation are not accompanied by the appropriate measures necessary for their full implementation. Therefore, according to the current valid Draft Law on asylum and temporary protection, the possibility of keeping the border procedures is foreseen, while the measures aimed to establish the appropriate infrastructure and the necessary human resource capacity are not provided. Particularly worrying is the fact that the Action Plan's forecasted measures do not sufficiently reflect the interdependence that exists between the different subsystems of the migration management system (for example, one element of the migration policy that Member States will show interest in is the question of the efficient readmission of third country nationals). If readmission agreements begin to be effectively implemented between the countries in the region, and Serbia signs the agreements and begins their implementation with safe countries of origin, it will be necessary to prepare adequate capacities and establish a regime for those who are waiting to be returned/accepted. With 144 places in the immigration detention centre and without adequate and adapted space near the borders, Serbia will not be able to establish an effective system of readmission, and what is particularly worrying is the treatment of migrants who are in the process in accordance with the accepted standards. It would be desirable that the Action Plan for Chapter 24 be revised at a later stage, so that a more realistic and detailed plan can be formulated for the harmonization of legislation, and accompanied by a detailed assessment of the human and financial resources necessary for the implementation of reforms in this area. During the transition period, it would be advisable to also consult non-institutional actors who are directly or indirectly involved in the operation of the asylum system.

The Asylum Act as a systemic law

The current Asylum Act (hereinafter AA) was adopted in 2007 and first implemented in April 2008. In 2008, a whole series of bylaws was adopted. Although amendment to the legislative framework in the field of asylum is one of the main measures in all key strategic documents, from 2008 until today there have been no changes regarding regulations governing this area, even though the implementation of solutions in the current Law have caused a number of problems.

The AA, the most important act in this area, reflects the necessity to strike a “balance” between universal standards and regional European solutions, which should equally be represented in the legislative text.³⁵ It was created on the basis of legal experience and legal solutions of countries of the region and with assistance from representatives of the UNHCR, while maintaining the characteristics of the Serbian administrative procedure. In addition to the provisions contained in the UN Convention relating to the Status of Refugees (hereinafter referred to as the Geneva Convention),³⁶ in the text of the law, norms motivated by other human rights treaties have been introduced. Article 6 of the AA³⁷ which stipulates the prohibition of expulsion or return, draws on Article 33 of the Geneva Convention, but with paragraph 3 aligned with Article 3 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR). Furthermore, in addition to the basics set out in the Geneva Convention (race, religion, nationality, or belonging to a (social) group³⁸ and political convictions), the law recognizes the

³⁵ The directive concerning the procedure is one of the most criticized and the most controversial part of the EU acquis. Because of inconsistencies in the international documents on human rights and EU law, at least 12 provisions need to be repealed (Peers and Rogers, 2006: 410). The provisions of the directive on qualification are not in accordance with the general principles of EU law, including respect for the Refugee Convention of 1951 and the European Convention on Human Rights (ECHR, 2010: 4).

³⁶ The 1951 UN Convention on the Status of Refugees, Official Gazette SFRJ, International Treaties and other agreements, No. 7/60.

³⁷ Article 6, paragraph 1 of the Asylum Act provides that “no person shall be expelled or returned against his will to a territory where their life or freedom is threatened on account of race, sex, language, religion, nationality, membership of a particular social group or political convictions”, while in paragraph 2, “no person shall be expelled or returned against his will to a territory where there is a risk that they will be subjected to torture, inhumane or degrading treatment or punishment.”

³⁸ Although the legislature is taking the grounds for granting asylum from the Refugee Convention, it has not yet fully adopted the terminology of the Convention. According to the text in the Convention, asylum is granted to a person who fears persecution, among other things because they are a member of a social group. However, in the legal order of the Republic of Serbia, membership of some group is foreseen, and in some provisions of the AA, membership of a particular social group is mentioned (Art. 6 AA).

requirements for refugee status based on fear of persecution because of gender, or language.³⁹ In the part of the transitional and final provisions, the AA is required to be interpreted according to the Geneva Convention, the Protocol and the rules of international law (Article 65).⁴⁰ On the other hand, if one takes into account the stage of the accession process at which Serbia was at, as well as the responsibilities that were imposed at this stage, the impact of the *acquis communautaire* in the area of asylum is not negligible..

Although the main intention, because of which the adoption of a new law on asylum was foreseen, was to harmonize the national system with the legislative framework of the European Union - especially with Directive 2011/95 / EU, which provides standards for the qualification of third country nationals or stateless persons to exercise their right to asylum, standards with the aim to achieve the specific status of a refugee or a person eligible for subsidiary protection, as well as standards relating to the content (rights and obligations) of the granted protection, with Directive 2013/32 / EU, which lays down a procedure for the recognition and withdrawal of the right to asylum, with Directive 2013/33 / EU, which provides standards for the reception of persons who have applied for asylum, and with Directive 2001/55 / EC, which regulates the institution of temporary protection - it is positive that in defining the provisions of the current Draft, the authorities have decided on their gradual alignment.

At present, the current version of the *Draft on asylum and temporary protection* (hereinafter: the Draft),⁴¹ presents a significant improvement in relation to the current law, even though some of the methodological and procedural solutions remain controversial. It is especially important to emphasize that in the framework of the constructive dialogue, which took place during public hearings, a significant number of proposals relevant for civil society organizations were adopted.

Key legislative updates

In general, several forms of positive changes contained in the Draft can be singled out: the linguistic and conceptual improvements of the text which eliminate contradiction and inconsistencies and make certain refinements, the introduction of higher standards in terms of the rights and protection of particularly vulnerable categories of asylum seekers, changes in the asylum procedure through the introduction of special procedures, the refinement of deadlines in which certain action in a procedure is taken and changes to the rights available to people who enjoy some form of protection. Also, it is important that the Draft progressively introduces gender dimension in asylum procedures, thus aligning its provisions with the Council of Europe Convention on the prevention of violence against women, which Serbia has committed to respect.⁴² In particular, changes which introduce the guarantee of procedure and acceptance of minors, with special attention given to unaccompanied minors, take up considerable space.

³⁹ In Article 2, paragraph 6 of the Asylum Act, it stipulates that a refugee as “a person who, owing to a well-founded fear of being persecuted for reasons of race, sex, language, religion, nationality or membership of a particular group or because of their political convictions, is not in their country of origin and is unable or owing to such fear, unwilling to avail of the protection of that country, as well as those who have no citizenship and are outside their country of former residence, and who are unable or owing to such fear, are unwilling to return to that country”.

⁴⁰ According to the UNHCR, countries should interpret the Geneva Convention in a manner consistent with its spirit and purpose, UNHCR (1995), UNHCR General Conclusion on International Protection, No. 77 (XLVI), par. 19 (e).

⁴¹ Available on the website of the Ministry of Internal Affairs RS:

[http://www.mup.gov.rs/wps/portal/sr/dokumenti/Regulativa/lut/p/z1/jZFbT4NAEIV_Sw8cywwLsou3TUoXqY3RiqV7MWDWLQmFZgGJ_15qe5Co6Nxm8t7LNzMG1QVZZW-FztqirrJy6HfSf3ZIQcJX4K1I6BL5msbLzSMICfNh-ynAX4ojoyP_474K17wgkK-ahg9znguEVI7hx_vI_gQT50hmjqhZ2renUJXLCI6eJt6f1r1AiCk9Qni8eFi7xhPNN4IcE-T0NFquQuSzCi2DqLOOE8d6CUohB6rL.Ozz_gVe4yDdKoV2WUsTszjPdt2yuLbSw73tb17UulW0aC39y7OumhXQkhIEzns14nf94SJLDPMXiZi7zd7fXfDb7AE-YqSY!/
dz/d5/L0lDUmlTUSEhL3dHa0FKRnNBLzROV3FpQSEhL3NyX1JTXyNMYXRu/](http://www.mup.gov.rs/wps/portal/sr/dokumenti/Regulativa/lut/p/z1/jZFbT4NAEIV_Sw8cywwLsou3TUoXqY3RiqV7MWDWLQmFZgGJ_15qe5Co6Nxm8t7LNzMG1QVZZW-FztqirrJy6HfSf3ZIQcJX4K1I6BL5msbLzSMICfNh-ynAX4ojoyP_474K17wgkK-ahg9znguEVI7hx_vI_gQT50hmjqhZ2renUJXLCI6eJt6f1r1AiCk9Qni8eFi7xhPNN4IcE-T0NFquQuSzCi2DqLOOE8d6CUohB6rL.Ozz_gVe4yDdKoV2WUsTszjPdt2yuLbSw73tb17UulW0aC39y7OumhXQkhIEzns14nf94SJLDPMXiZi7zd7fXfDb7AE-YqSY!/)

⁴² The Council of Europe Convention on preventing and combating violence against women and domestic violence, Official Gazette RS - International Treaties no. 12/2013.

In the framework of Chapter IV, “the asylum procedure”, more positive news concerns the introduction special asylum procedures, specifically the acceleration of procedures (which provides for shorter deadlines for decision-making per request) and procedures at border or transit areas (the so-called border procedures). However, Article 41, which provides for the introduction of border procedures, leaves a huge gap regarding the way it was regulated. Specifically, firstly it is unclear whether the border procedure is performed per se in every situation when a person expresses the intention to seek asylum in the Republic of Serbia at border crossings/or transit areas, or whether it true in some cases (as provided in Directive 2013/32 / E U). Also, in terms of border procedures it raises the question of the existence of adequate supporting infrastructure, and also the question as to which authority is responsible for taking action in the first instance, bearing in mind that the seat of the Asylum Office, as the first instance body, is in Belgrade.

With regard to procedural provisions, the best news in relation to the Draft is the improvement of the safe third country concept. The list of safe countries, in accordance with solutions valid in a significant number of Member States, will not be made, but whether a country can be considered safe or not will be determined as defined in the law. In this regard, each individual case will be determined on whether conditions for the implementation of the safe third country concept have been fulfilled, taking into consideration whether there is a connection between that country and the asylum seeker on the basis of which it can be expected that the requirement for seeking asylum is reasonable. Also it is positive that the Draft contains the standard that if a third country does not agree to consider the request of the person concerned, Serbia is the one who will establish its jurisdiction and decide on the asylum application.

Among the positive solutions in the Draft, it is important to mention equality in terms of the available rights of persons enjoying refugee status to those under subsidiary protection. The equality of guaranteed rights results in a *de facto* uniform status for all persons granted international protection. By adopting the solution, the Republic of Serbia, at least on a declarative level, demonstrates its commitment to respect the instruments of international law which guarantees basic human rights, including even those that prohibit discrimination.⁴³

According to the statements by the authorities in charge, the new law on asylum and temporary protection are expected to be adopted in November this year. It is commendable that the adoption of one of the systemic laws is expected soon, but at the same time one must remember that for a fully functional asylum system it is necessary to adopt and harmonize other regulations significant in the area of migration, primarily the Law on foreigners,⁴⁴ where changes are also expected in the third quarter of 2016.

⁴³ In light of the amended text of the Directive on qualifications 2011/95/EU, which came into force in December 2013, the AA should substantially be amended in the part that lays down the rights guaranteed to refugees and persons who have received subsidiary protection. Currently the law guarantees certain rights exclusively to persons who have been granted sanctuary, but not to those who have been granted subsidiary protection. It is difficult to find objective justification for a situation in which a person who flees from serious injuries can be given fewer rights than refugees fleeing persecution.

⁴⁴ More information: Publication Group 484, available at: http://grupa484.org.rs/publikacije_kategorija/cemi/

IV Implementation of the agreement on readmission

Citizens of Serbia as asylum seekers in EU countries - sustainable return

Large numbers of people are leaving the Western Balkans. At first glance the key reasons are the socio-economic situation and the (in)stability of internal political relations. In addition, all the issues marked as political criteria in the EU integration process are also key, in particular the development of democracy, rule of law, human rights and the protection of minorities. However, migration from the Western Balkans is primarily conditioned by social insecurity and the lack of capacity/political will of these countries in the sphere of social protection, the guarantee of human rights, minority rights, discrimination, etc.

Serbia is building the necessary legislative and policy response to the fight against poverty and social exclusion. However, Eurostat⁴⁵ points out that 43.1% of Serbia's population is at risk of poverty or social exclusion.

From what has been adopted, it is especially necessary to apply in the area of national minorities. All the countries granted visa liberalization in 2009 and 2010, were previously drawn up on the so-called Routemap. Without going into all the details of this process, it is important to mention here that the effective implementation of readmission agreements (mostly technical requirements) was requested, but without the criteria regarding reintegration, i.e. the sustainable return of persons under this agreement. In this process Serbia adopted the strategy for the reintegration of returnees under the readmission agreement, with emphasis on the process of integration "as the most important in the chain of sustainable migration control, and the only way that Serbia can completely fulfill its obligations accepted in the Stabilisation and Association Process".⁴⁶ Since more than 70% of those forced to return are Roma, the strategy includes specific procedures for the Roma because they are a multi-discriminated minority. The EASO analysis shows that applicants seeking unfounded asylum in the EU were primarily members of national minorities, according to which 85% of applicants were Roma from Serbia.⁴⁷

In light of all the factors that force Serbian citizens of Roma ethnicity to leave, especially financial, social and health problems compared to the same problems of the majority of the population, there is the need to access each application on an individual basis. The updated EASO analysis from 2015⁴⁸ summarizes the five main reasons for leaving: social problems of particular groups, access to the labour market/unemployment, the lack of social infrastructure, underdevelopment of the health system and issues related to the education system.

The Balkan countries have been declared safe countries of origin, and in addition to the accelerated procedures, financial benefits to asylum seekers have been reduced or terminated. However, the decision itself did not lead to a reduction in the number of claims filed. Thus, according to the ESI report,⁴⁹ following the decision of the Federal Office for Migration and Refugees (BAMF) to solve priority and accelerate asylum applications of citizens of the Western Balkans, the average duration of procedures shortened from 3 months to 9 days, which led to a significant reduction in the number in the following period. Yet, the ESI noted that this measure was short-lived.

⁴⁵ Eurostat, 2016. Social Inclusion statistics.

Available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Social_inclusion_statistics

⁴⁶ The Strategy for the Reintegration of Returnees under the Readmission agreement (Official Gazette RS, no. 15/2009).

Available at: http://www.kirs.gov.rs/docs/Strategija_reintegracije_povratnika.pdf

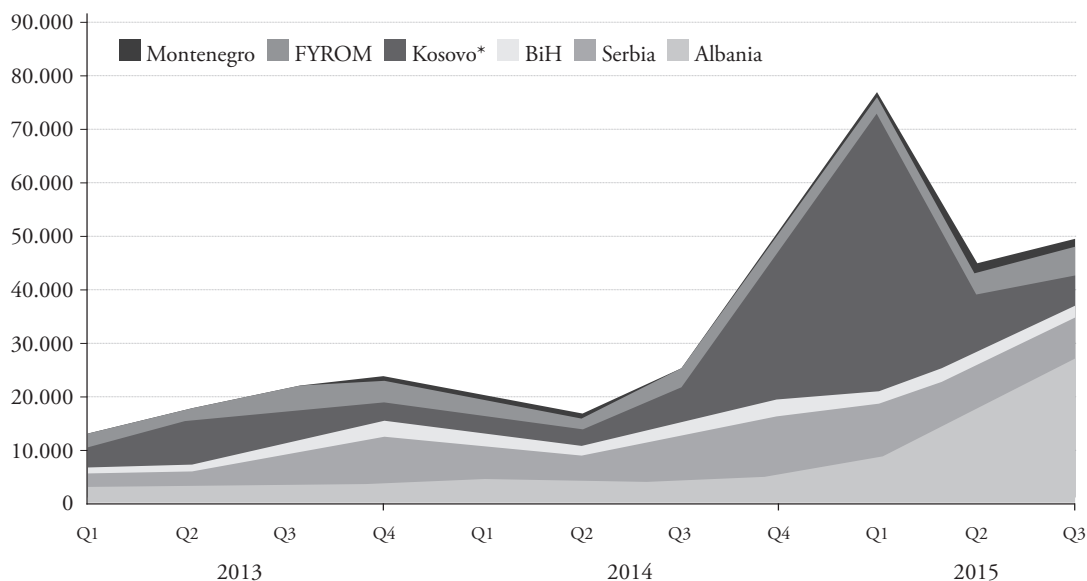
⁴⁷ EASO 2013. Asylum applicants from the Western Balkans: Comparative analysis of trends, push-pull factors and responses. Available at: http://www.ecoi.net/file_upload/90_1385373113_easo-2013-11-western-balkans.pdf

⁴⁸ EASO 2015. Asylum applicants from the Western Balkans: Comparative analysis of trends, push-pull factors and responses - Update. Available at: https://easo.europa.eu/wp-content/uploads/Asylum-Applicants-from-the-Western-Balkans_Update_r_May-2015.pdf

⁴⁹ ESI. 2015. New facts and figures on Western Balkan Asylum Seekers. Available at: <http://www.esiweb.org/pdf/New%20facts%20and%20figures%20on%20WB%20asylum%20claims%206%20April%202015.pdf>

Unfounded applications for asylum significantly burden the systems of EU Member States, as shown in the EASO report,⁵⁰ noting that in 2016 there was a decrease in the number of claims filed..

Table 1. The number of asylum applications for the Western Balkans in the period 2013-2015.



The countries of the region have taken a variety of measures to reduce the number of asylum seekers to the EU. However, it was only after the threat of the suspension of the visa-free regime that the government took the strongest measures in the harmonization process of the suspension clause in the EC Regulation 539/2001, especially following its adoption in December 2013.

Serbia conducted an information campaign on the abuse of the right to seek asylum. A regulation regarding the increased responsibilities of the border police was implemented and strict controls at border crossings was introduced, the so-called exit conditions, i.e. checking whether passengers have health insurance, means of support, an invitation letter or voucher from a travel agency and a return ticket. On this basis, a large number of people were returned to the border crossing (with the probability of ethnic profiling), which caused local heated debate over the abuse of human rights. The following criminal offense was introduced into the Criminal Code: “Enabling the abuse of achieving the right to asylum in a foreign country” (Art.350a). Also, the investigation of organizers transferring asylum seekers to the EU began. The aforementioned EASO Analysis of 2015 points to the seasonal nature of the submission of requests, and the tendency of asylum seekers from these countries to re-apply.

The Commissariat for Refugees and Migration regularly provides data on the number of returnees under the readmission agreement, and in the first 5 months of this year 1,929 people were returned by the Office for Readmission.

The European Parliamentary Research Service concluded that in the period 2008-2014 the number of people (who are not citizens of EU Member States) who were illegally staying in the EU fell from 608,865 (2008) to 428,840 (2013). At the same time, the number of people who return each year (mostly under readmission agreements) “fluctuates from between 241,965 and 215,885”.⁵¹ With regard to the return

⁵⁰ EASO 2016. Quarterly Asylum Report. Dostupno na: <https://www.easo.europa.eu/sites/default/files/public/Quarterly-Asylum-Report-2015-Q3.pdf>

⁵¹ European Parliamentary Research Service. 2015. *Briefing. EU Readmission Agreements. Facilitating the return of irregular migrants*. Dostupno na: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/554212/EPRS_BRI\(2015\)554212_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/554212/EPRS_BRI(2015)554212_EN.pdf)

process, voluntary or forced returnees from the Western Balkans return to the same environment from which they left.

In the case of national minorities, the Roma are exposed to specific risks in the return process. Non-governmental organizations report on the problems facing the Roma community. Thus, a survey conducted by the Roma Information Center in Serbia indicates the necessity to improve the situation of the Roma community at local levels: “The sense of vulnerability and discrimination experienced by the Roma community in Nis is disturbing. The bad material situation of the Roma minority, together with the generally poor economic conditions in the city have led to poverty and insecurity, and the numerous prejudices faced by both male and female members of the Roma community affect their sense of security in Serbia, and therefore they decide to seek a better life in EU countries. The experience of all of the respondents seeking asylum shows that a high percentage of the Roma population is in search of a better life, but their return suggests that going to other countries does not solve the problems they face. All the respondents were willing to work, some of them were working in the countries where they sought asylum, and they all wanted to stay in those countries and to work legally. After their return, they did not find work in Serbia, they lacked identity documents, and some of them had no accommodation.”⁵²

The Research Group 484 also came to the same conclusion, which clearly shows that this population is not exclusively prepared to be “passive recipients of aid”.⁵³ Although the issue of the sustainable return of its nationals is of special importance to Serbia, it seems that the concept of social inclusion, which entails the creation / implementation of measures to reduce poverty, has been abandoned with the aim of sustainable return.

On several occasions during 2015, German officials stated that it was unacceptable that 40% of the number of asylum seekers in Germany came from the Balkans as it significantly burdened the asylum system, while the Minister of the Interior called it “a disgrace for Europe”. In response, Serbian officials suggested the measure of abolishing social assistance for deportees. This announcement proves once again that there prevails an ad hoc approach to strategic challenges, as well as a lack of knowledge of / respect for/ the legislative and strategic framework that was created (especially in the area of human rights, the protection of minorities and the fight against poverty). Amnesty International⁵⁴ estimated that this decision would be discriminatory and that those returning would just be “pushed deeper into poverty”, so they would probably leave again.

According to the interviews conducted by the Roma Information Centre, the Roma go to Western Europe primarily in search of a better life, and in contrast to the widespread view, their main objective is to find employment rather than to obtain social benefits in the countries of destination. In this regard, this group of illegal migrants, who abuse the institution of asylum, or who live or work in the Schengen territory illegally for a long time and without applying for the relevant papers, very easily become prey to exploiters, while in the case of their return they are still unsatisfied because their living conditions have not changed. In Serbia, only 17.8% of registered unemployed Roma were involved actively on the labour market in 2015. The legal migration path for these citizens, taking into account their qualifications, can possibly be found in seasonal employment, as defined in a new instrument of the European Parliament and the council for seasonal workers.⁵⁵

⁵² The Roma Information Centre, 2016. The protection of the minority rights of the Roma. P.55.
Available at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2016/01/Zastita_manjinskih_prava_Roma.pdf

⁵³ Group 484, 2013. *Asylum seekers from Serbia: Migration, poverty and the risks of human trafficking*.

⁵⁴ <https://www.amnesty.org/download/.../EUR7024362015ENGLISH.pdf>

⁵⁵ Directive 2014/36/EU of the European Parliament and of the Council, of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers. Dostupno na: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0036&from=EN>

In addition, although according to the joint statement on reintegration, which is an integral part of the Agreement on readmission, “the contracting parties recognize the need for the efficient, effective and sustainable socio-economic reintegration of returnees”, post-visa monitoring by the European Commission indicates that sufficient attention is not given to the issue of reintegration.⁵⁶

Obligations regarding admission of third-country nationals and stateless persons

Occasionally since 2015, the issue concerning the implementation of the readmission agreements with the EU has been addressed. At the same time, data on the number of foreign nationals that have been accepted is not publicly available, according to article 3 of this Agreement, nor data about the effects of the implementation of the signed agreements with our neighbours.⁵⁷ The European Commission Questionnaire from 2011 regarding Serbia’s candidacy for membership of the European Union states that “up until now, the Republic of Serbia had the role of recipient in the readmission process, i.e. the majority of applications under the readmission agreements related to the return of citizens of the Republic of Serbia”.⁵⁸

The European Commission commends the efforts made to implement the final agreements, and states in the screening report on Chapter 24: “Serbia should continue this good trend regarding the implementation of the readmission agreements with the EU and finalize a network of bilateral agreements with all their neighbouring countries, including Kosovo. Focus should be placed on their implementation”.⁵⁹

From the evaluation of the European Commission⁶⁰ on the readmission agreements, two important conclusions can be drawn regarding their implementation: they refer almost exclusively to forced returns, while the clause on obligations regarding the acceptance of foreign citizens and stateless persons has not been applied (except in the case of Ukraine).

Concerns were raised by the UN Country Team in Serbia regarding the worsening situation of refugees/migrants on the border between Serbia and Hungary. And according to their statement, on just one day (6th July), access to the asylum procedure in Hungary was prevented for 120 asylum seekers, and contrary to procedures for readmission and return, they were expelled back to Serbia.

However, Serbia cannot become a buffer zone for refugees because there is no asylum system, and all EU Member States, except Hungary, do not consider Serbia a “safe third country”. Bearing this in mind, for the sake of preventing abuse of the exploitation of this topic by right-wing parties and movements, it is necessary to recall that according to the position of the UN High Commissioner for Refugees in 2012, the UNHCR “recommends that Serbia cannot be considered a safe third country for asylum, which is why countries should refrain from returning asylum-seekers back to Serbia” until such a system is built.

⁵⁶ European Commission. 2015. Report on the Post-Visa Liberalisation Monitoring for the Western Balkan Countries in accordance with the Commission Statement of 8 November 2010. Dostupno na: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20150225_5th_post-visa_liberalisation_report_with_western_balkan_countries_en.pdf

⁵⁷ This data can be obtained by special request from the Ministry of Internal Affairs.

⁵⁸ Government R. of Serbia, 2011. Response to the European Commission’s Questionnaire on Serbia’s candidacy for membership of the European Union. Available at: <http://www.seio.gov.rs/dokumenta/nacionalna-dokumenta.199.html>

⁵⁹ The European Commission 2014. Report on the screening of Serbia. Chapter 24 – Justice, freedom and security. Available at: http://www.seio.gov.rs/upload/documents/eu_dokumenta/Skrining/izvestaj_skrininga_24_sr.pdf

⁶⁰ European Commission, 2011. Communication from the Commission to the European Parliament and the Council: Evaluation of EU Readmission Agreements. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0076>

V Conclusion

The scope and implications of migration and international protection were the subject of ongoing debates conducted within the framework of the universal systems of the United Nations, as well as the regional systems, the Council of Europe, OSCE, and in particular the European Union. The refugee crisis has made the question of migration, a political issue par excellence, more transparent and has completely changed the frameworks in which people in migration were monitored in earlier periods – the ratified and binding international instruments of law. A number of political agreements and unilateral decisions of countries have “shaken” some of the basic postulates on which the system of the protection of human rights and refugee law was founded, and the scale of the effects will only be debated upon in the future.

At the moment, it cannot be predicted with great certainty how this area in a few years’ time will be regulated, primarily at the level of the European Union, and consequently how the harmonised standards and rules will be implemented in Member States, i.e. candidate countries. However, in the *status quo* situation in which we currently find ourselves, there is the need to insist on the consistent respect of the (still) formally binding instruments that protect the human rights of people in migration, decisions made by supervisory bodies and the relevant courts, as well as provisions of the already enforced internal legislation.

Changing attitudes concerning the migration policy and the institution of international protection now seem inevitable, but the changes to be made also depend on the actors involved in the evaluation of the potential solutions. Both in the case of the refugee crisis and the long-term “state of emergency” regarding Serbian citizens who leave and seek asylum in EU countries, the debate should be designed in a comprehensive way so that countries of origin, transit and destination are included on an equal footing. Also, in addition to the basic postulates underlying the protection of refugees and migrants - the right to asylum as an individual right, the prohibition of refoulement, the principle of non-discrimination, access to territory, etc. – the development potential of migration should be taken as one of the starting points, not only for the country of origin, but also for the transit countries, and in particular, the countries of destination.

Serbia should use the EU integration process primarily to create an adequate legal framework for the comprehensive consideration and regulation of the migration phenomenon. Firstly, the starting point for the announced reform is undoubtedly the European framework, however, in this process it is necessary to take into account the specificities of Serbia, its constitutional order, its institutional and administrative capacities, as well as the economic and social factors. It is crucial that the newly adopted documents are fully aligned with each other horizontally and vertically, in order to avoid legal gaps or contradictory solutions. In addition, one should bear in mind that the legislation of EU Member States often omits the possibility of introducing higher standards than the minimum prescribed. Also, the experience of other countries suggests that European standards should be adopted gradually. Finally, if it turns out that the process of joining the European Union is not a sufficiently motivating factor to overcome the identified shortcomings, i.e. if due to the length of the negotiations the reforms proceed slowly and thus the rights of asylum seekers to protection are not at a satisfactory level, as a legitimate means the possibility of submitting petitions to the European Court of human rights and other supervisory bodies should be used, bearing in mind that even the primary sources of European law proclaim the full respect of the provisions of the relevant instruments for the protection of human rights. Judging by the experience of other countries, the mandatory character of the judgment of the Court provides additional or creates a crucial incentive for specific changes in the legislative framework, its interpretation and its established practice.

Secondly, taking into account the specificities of the migrant-refugee crisis, Serbia should initiate and seek support for a constant dialogue on migration and asylum with the EU and its Member States as part of the European debate on the phenomenon of migration, as well as with other countries along the length of the migration/refugee routes. This type of dialogue should be opened in the application of the 17-point action plan, to provide the opportunity to participate in European debates and programmes on migration and solutions to this crisis (participation in the EU voluntary repatriation programme),

and to propose other important migration themes such as brain drain, which greatly affects the further development of Serbia and its future. The public must be informed about everything that is done and plans in this area. Bearing in mind that our neighbours face similar challenges, we need to seek support for the establishment of an annual summit on migration between the EU and the Western Balkans, as well as forums on key aspects of the migration phenomenon and its consequences both on the EU and on its future members from the region.

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