



Migration along the Western Balkan Route: Beyond the Crisis

Case of Serbia

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August 2017

- Ensuring compliance with international human rights standards by all countries is crucial, particularly in a situation where some countries fail to observe their international obligations. Such countries' position must be identified in the context of protection of human rights of migrants and asylum-seekers that are transiting our region.
- In order to put in place a well-functioning migration management system in Serbia, all its interdependent subsystems must be continuously improved. A proper way of addressing the legal status of persons who are staying in the Serbian territory directly depends on the functioning of all subsystems within the migration management system.
- Apart from the media, local self-government units have a key role to play in sensitising the local population towards accepting their 'new neighbours'. Timely dissemination of accurate information and active involvement of local population can significantly shape public opinion and help avoid potential conflicts.

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This document has been produced as a result of discussions at the conference “Migration along the Western Balkan Route: Beyond the Crisis - Case of Serbia”, which was co-organised by the Belgrade Office of the Friedrich Ebert Foundation (FES) and Group 484 in Belgrade on 28 June 2017. The conference was attended by more than 60 representatives of competent governmental institutions, local self-government units and towns, relevant international organisations and civil society organisations. The conference was divided into three thematic panels, whose structure and content are reflected in the final conclusions.

I Challenges of regularising the legal status of refugees and migrants

As a result of developments in 2017, it has become crystal clear that migration flow across the Serbian territory can no longer be viewed independently from applicable migration regulations, unlike the situation in 2015 and 2016 when some political arrangements allowed for free transit of migrants and actions of the authorities that were not entirely supported by applicable regulations or international standards. At the same time, Serbia has found itself in some sort of a legal limbo. Even before the outbreak of the crisis, applicable Serbian legislation governing migration and asylum, i.e. the Aliens Act (“Official Gazette of the RS”, No. 97/2008) and the Asylum Act (“Official Gazette of the RS”, No. 109/2007), had been fraught with many shortcomings, which became even more pronounced during the crisis, while new legislation has not been adopted yet.

Putting aside humanitarian interventions and efforts to meet migrants’ essential needs, one may raise a question of legal status of refugees/migrants who have been staying in Serbia for a long time or of those arriving or departing every day. Legal status is key not only to the exercise of a whole set of rights, but also to compliance with obligations.

According to UNHCR, there are currently about 7,000 refugees/migrants in the Serbian territory.

Of that total, 98% of them are sheltered in reception/transit centres or asylum centres. In the January-May period of 2017, 2,922 persons (about 40% of men, 15% of women and over 50% of children) expressed intentions to seek asylum in Serbia. As for their countries of origin, they mostly come from Afghanistan, Pakistan, Iraq and Syria. In the first three months of 2017, Serbia’s Asylum Office interviewed 44 asylum-seekers of the total of 99 asylum applications submitted. The asylum procedures were discontinued in 22 cases regarding 36 asylum-seekers, because they had left Serbia or withdrawn from the asylum procedure. No asylum applications were lodged in April, whereas two applications were dismissed, i.e. one application was rejected. From January to May 2017, the Asylum Office did not uphold any applications, granting refuge or subsidiary protection in Serbia.

Apart from persons whose legal status is subject to the Asylum Act, several other categories of persons may be identified: persons who have not expressed intentions to seek asylum, but who have been provided with accommodation in a reception/asylum centre; persons who have been issued decisions cancelling their stay, but who have nevertheless failed to leave Serbia; persons accommodated in a reception/asylum centre, but who have been placed on a waiting list pending entry to Hungary; persons who have been staying outside designated shelters without being registered by the competent Serbian authorities; persons who have opted to join a programme of assisted voluntary return; persons who have been returned from neighbouring countries, mainly from Hungary, after attempting to illegally cross the border; persons whose asylum procedures have been completed, resulting in a final decision, but who lack any other legal basis that would allow them to stay in Serbia or an appropriate document that would allow them to leave Serbia pursuant to a decision cancelling their stay, etc. Most of these people have not been subjected to any of the measures applicable in case of a lack of legal grounds for staying in Serbia. Their motivation to seek asylum, regularise their stay or continue their journey to some Western European country will also depend to a certain extent on the functionality

of the asylum procedure, as well as on efficient enforcement of regulations governing integration of persons who are recognised as refugees.

What is called a 'tolerated stay' may be a solution to the issue of legal status for at least some of the people who are currently staying in the Serbian territory. This concept exists in EU member states' legislation, whereby 'tolerated' status may be granted to persons who are staying illegally in a country, but may not be removed therefrom, either forcibly or voluntarily, due to certain reasons. A tolerated status also implies a grant of a certain set of rights, such as the right to work, the right to education and possibly the rights to accommodation, health care, etc. As for the situation in Serbia, even though the Ministry of Interior had launched an initiative towards introducing a special status to regularise persons whose stay in the Serbian territory is *de facto* or *de jure* illegal, but who are unable to leave Serbia for various reasons, applicable legislation currently does not offer relevant legal grounds to do so.

A major issue is efficient enforcement of readmission agreements, especially in our region, because, to some extent, it also affects regularisation of the legal status of persons who are either staying in Serbia or have been returned to its territory.

Recommendations:

- In order to put in place a well-functioning migration management system in Serbia, all its interdependent subsystems must be continuously improved. A proper way of addressing the legal status of persons who are staying in the Serbian territory directly depends on the functioning of all subsystems within the migration management system.
- It is essential to adopt systemic legislation as soon as possible, notably law governing asylum and temporary protection, as well as the Aliens Act, which are currently in draft form.

Enforcement of this new legislation will help improve the functioning of the asylum system and create a legal basis for introducing the tolerated stay concept for persons lacking legal grounds for staying in Serbia, who are not in need of international protection, but who are nevertheless faced with obstacles that hinder their safe return to their respective countries of origin or to third countries.

- It is important to put in place as soon as possible appropriate procedures for early differentiation of migrant categories and for their subsequent referral to relevant procedures. To this effect, identification of particularly vulnerable migrant categories is also crucial. Such a system should be accompanied by a clearly defined set of rights and obligations for all categories of migrants.
- Efforts should be exerted towards enhancing regional cooperation in the area of migration, particularly in the context of enforcement of readmission agreements and implementation of the 'safe third country' concept.

II Further steps in ensuring access to rights for refugees and migrants

With a changing 'political climate' towards refugees and migrants due to various agreements between countries that are directly exposed to an increased influx of migrants, coupled with changes in internal regulations of countries along the Western Balkan route, a discussion on protection and admission modalities, apart from addressing humanitarian needs, focuses more on access to rights, inclusion in social life, access to education, as well as integration as a mechanism towards reaching a durable solution. Raising a question of durable solution also calls for consideration of other mechanisms, such as repatriation or resettlement in third countries. Issues such as access to territory, use of a principle of non-refoulement, access to asylum procedure, efficiency of the asylum system, as well as prohibition of collective expulsion, remain highly topical for Serbia, too.

With regard to integration of persons who have been granted international protection, certain steps have indeed been taken, but given the actual number of statuses granted, it appears that access to rights for certain categories of refugees/migrants is more topical.

The above questions should certainly be analysed also from the perspective of applicable regulations and announced amendments to strategic pieces of legislation. However, one must not disregard actual indicators of the situation on the ground, i.e. the fact that most persons who are staying in Serbia do not display any readiness or interest to stay longer in Serbia or to take an active part in various forms of activities/measures aimed at their inclusion in social life or their integration; there is a lack of standardised types of services that would be available in all centres sheltering migrants and asylum-seekers; there is no legal certainty with regard to treatment of unaccompanied minors; access to formal education is limited and available only in some geographical areas; there is a lack of uniform practices in terms of restricting freedom of movement, sanctioning and further treatment of persons who are found illegally crossing the border and/or returned from neighbouring countries; there is a lack of a well-defined set of rights for persons who opt for assisted voluntary return, etc.

The Government of the Republic of Serbia adopted its third migration response plan for March-December 2017, which shows some initial signs of headway being made in terms of providing basic protection and access to certain rights and services for migrants who are staying in Serbia, as different from the previous two plans of predominantly humanitarian nature.

A major challenge is how to strike a balance between reforms that need to be made in order to comply with International Monetary Fund requirements in respect of fiscal consolidation, cutting budgetary expenditures, public administration reform, on the one hand, and ensuring sustainability of service provision for everyone staying in the Serbian territory, on the other.

Recommendations:

- Ensuring compliance with international human rights standards by all countries is crucial, particularly in a situation where some countries fail to observe their international obligations. Such countries' position must be identified in the context of protection of human rights of migrants and asylum-seekers that are transiting our region.
- It is of key importance to ensure access to territory for persons who are in need of protection under international law and to enable them to seek such protection and exercise it through a fair and efficient procedure. A functional refugee protection and migration management system primarily calls for solidarity among states, both at the international and EU levels, as well as for all of them to embrace the same or similar practices. Responsibility-sharing mechanisms must be built or enhanced among states, which would allow for designation of a state that will offer international protection in a particular case.
- Since their resources are limited, all institutions involved must timely prepare their work plans and needs projections. They must do so jointly, as well as individually, acting in line with their respective competences. Furthermore, in the process of drafting such plans, it is crucial to maintain ongoing communication with civil society organisations given the fact that positive results had been achieved during the climax of the refugee and migration crisis thanks to joint action with CSOs. Communication with donor communities is also essential, as donors are ready to allocate funds to support measures that will enable persons who are staying in the Serbian territory to exercise their rights.
- Attention should particularly be paid to access to education for migrants, not only because each state has a responsibility to ensure the exercise of the right to education, but also because inclusion of migrants in the education system lowers the risk of various forms of their exploitation, at least to some extent. The state has a duty to create all the necessary prerequisites for this, in terms

of defining precise rules and standards, in order to make arrangements that would prepare the education system for appropriate inclusion of migrants.

- Special focus should be placed on the treatment of unaccompanied minors, bearing in mind their vulnerability and exposure to various forms of exploitation, abuse and violence. It is crucial to improve the system of identification and better assessment of needs of this category of migrants from the moment they are found in the Serbian territory until they are provided with some durable solutions in the broadest possible sense. The Centre for Social Work, as a competent guardianship authority and a specialised child care institution, should, in each case, work towards assessing the best interest of the child immediately upon identification of an unaccompanied minor and should continue to make such assessments throughout the child's stay in Serbia.

III The role of local self-government units in the refugee and migrant reception system

Some local self-government units in Serbia are highly exposed to challenges due to the country's important position on the Western Balkan route. With this route being seemingly closed, the problem of admission of migrants to local communities has become ever so topical: continuation of migrants' journey towards Central and Northern Europe is aggravated and more uncertain, so their stay in Serbia is protracted, making their inclusion in Serbian society even more likely. According to various studies that have been conducted and statements by both Serbian politicians and ordinary citizens, their fear and

concern are noticeable. However, some issues that might potentially strengthen local resistance towards refugees and migrants may also be identified, such as personal safety, economic and social circumstances in (often impoverished) local communities, health care, social welfare and employment. On the other hand, topics for discussion should also include expectations vis-à-vis those 'new neighbours', as well as relations between authorities at the local, national and provincial levels, and proposals for improvement of certain policies and practices.

Recommendations:

- Continuous presence on the ground of all actors involved in the reception and care of migrants is crucial. This also implies a continuous dialogue on key challenges faced by local self-government units and towns that host shelters designated for accommodation of migrants.
- Apart from the media, local self-government units have a key role to play in sensitising the local population towards accepting their 'new neighbours'. Timely dissemination of accurate information and active involvement of local population can significantly shape public opinion and help avoid potential conflicts.
- While designing integration measures and programmes, account should be taken of local self-government units' experience in integrating refugees from the former Yugoslavia, internally displaced persons and returnees under readmission agreements, as well as their experience in implementing measures of support to vulnerable categories of population, given their prior active role in these processes.

About author

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Imprint

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