

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: *Fourth Cycle, 43rd Session*

SERBIA

I. BACKGROUND INFORMATION

The Republic of Serbia ratified the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* in 2001 (hereinafter jointly referred to as the *1951 Convention*). The Republic of Serbia also ratified the *1954 Convention relating to the Status of Stateless Persons* in 2001 and the *1961 Convention on the Reduction of Statelessness* in 2011 (the *1954 Convention* and the *1961 Convention* respectively).

According to the Serbian Constitution, every foreigner has the right to seek asylum¹, while generally accepted rules of international law and ratified international treaties are considered as integral part of the national legal system and should be applied directly².

Persons granted international protection

The Serbian asylum system was established in 2008 after the adoption of the first Law on Asylum³. The latest (2018) Law on Asylum and Temporary Protection (LATP) brought Serbian asylum system closer to the relevant international and EU standards, leading to a number of improvements including ensuring merit assessments of all asylum claims (compared to the previous practice of automatically applying a 'safe third country' concept) and the introduction of improved procedural guarantees for persons with specific needs (recognition of gender-based refugee claims, child specific claims, etc.). However, State funded interpretation in the asylum procedure and free legal aid are still dependent on international donors. Application of the LATP still needs to be strengthened by adoption of missing bylaws and the other relevant sectoral laws need to be better harmonized with the LATP to ensure effective access to rights for asylum-seekers and persons accorded international protection, as well as to allow for their inclusion and integration.

As of August 2022, in total 225 persons received international protection in Serbia since the establishment of the national asylum system. This includes: 103 refugee (including 81 adults and 16 children; 74 male and 23 female), originating from Afghanistan, Iran, Iraq, Cuba, Libya and Syria, and 122 persons have received subsidiary protection (69 male, 42 female; 81 adults and 30 children from Libya, Syria, Afghanistan, Ukraine, Iraq and Somalia. Since 2015 Serbia has been faced with increased mixed movements of migrants and refugees, albeit gradually decreased in the recent years, a majority of whom are transiting through the country aiming to reach EU member states while a small number are seeking protection in Serbia. In 2021, 60,075 persons arriving to Serbia have been accommodated in government run reception and asylum centers.⁴

In March 2022, the Serbian Government adopted a *Decision on providing temporary protection in the Republic of Serbia to displaced persons coming from Ukraine*, granting temporary protection for an initial period of one year to Ukrainian nationals, as well as all

¹ Art 57 of the Constitution of the Republic of Serbia

² Art. 16, the Constitution of the Republic of Serbia para 2.

³ The first Law on Asylum was adopted in 2007 and its implementation started in 2008

⁴ Commissariat for Refugees and Migration of the Republic of Serbia, "During 2021, a total of 68,308 migrants passed through reception and asylum centers", 13 January 2022. Available in Serbian at: <https://kirs.gov.rs/cir/aktuelno/tokom-2021-u-centrima-boravilo-68308-migranata/3866>.

third country nationals who had legal residence in Ukraine. While Serbia is faced with increased arrivals of persons fleeing Ukraine, smaller number opt to seek temporary protection in Serbia⁵. Since the adoption of the decision until 31 August 2022, in total 891 persons have been granted temporary protection.

Persons granted temporary protection have facilitated access to the territory and enjoy a set of rights prescribed by the LATP similar to refugees, including temporary residence, personal documents, healthcare, access to the labour market, free primary and secondary education, legal aid, freedom of religion, accommodation and appropriate accommodation for persons who need special reception guarantees, etc. They also have the right to submit an asylum application at any time. Accommodation in line with international standards has been provided to Ukrainian refugees in a specially designated centre. While access to health is being provided on ad hoc basis in practice, systemic access to health care needs to be strengthened by harmonizing the relevant laws regulating health protection with the LATP⁶.

Internally displaced persons (IDPs) and refugees from former Yugoslavia

The Republic of Serbia host 196,140 IDPs from Kosovo (S/RES/1244 (1999))⁷, of whom 68,500 are assessed as having displacement related needs and are without a durable solution more than 20 years after their displacement. Many of the problems faced by the most vulnerable IDPs are still unresolved, despite numerous strategic and project support measures to improve their situation. Many still live in informal settlements in deplorable conditions without basic infrastructure, with high percentage of unemployment, low monthly income⁸, low levels of education, etc.

According to the latest available data from the Serbia Commissariat for Refugees and Migration (SCRM), there are also 25,330 ex-Yugoslav refugees residing in the Republic of Serbia (approximately 32 per cent from Bosnia and Herzegovina and 68 per cent from Croatia). *The National Strategy for Resolving the Issues of Refugees and IDPs 2015-2020*, targeting refugees from former Yugoslavia and IDPs, expired at the end of 2020.

Persons at risk of statelessness

As a result of legislative changes adopted over the last 10 years, the number of persons without personal documents has dropped significantly⁹. According to a 2020 Survey commissioned by UNHCR, there are currently some 2,000 persons at risk of statelessness in Serbia, belonging to Roma community, living in Belgrade and southern and eastern parts of the country mainly in informal settlements¹⁰. They are faced with specific problems related to access to personal documents which still require systemic solutions. Trying to resolve the remaining issues related to personal documents, the authorities of Serbia have strengthened multisectoral cooperation by establishing an inter-sectoral Operational Group based on the MoU between the Government Ministry, UNHCR and the Ombudsperson. As a result of the work of the Operational Group, an inter-ministerial instruction was issued¹¹ to serve as guidelines for authorities at the local level. In the context of the #IBelong campaign, the authorities have also committed to eradicate statelessness and prevent in situ statelessness from reoccurring. Through its legal programme UNHCR supported confirmation/ granting of nationality for 134 persons in 2021 and 2022.

⁵ <https://data.unhcr.org/en/situations/ukraine>

⁶ Health Care Law, Health Insurance Law, etc.

⁷ References to Kosovo shall be understood to be in the context of the Security Council Resolution 1244 (1999).

⁸ For more than 75% households according to the SCRM, *Situation and Needs of Internally Displaced Persons in Serbia*, https://kirs.gov.rs/media/uploads/Migracije/Publikacije/Eng/Situation_and_Needs_of_IDPs_2018.pdf.

⁹ UNHCR, *Persons at risk of statelessness in Serbia: Progress Report 2010-2015*, <https://www.refworld.org/docid/57bd436b4.html>.

¹⁰ UNHCR, *Persons at risk of statelessness in Serbia – Overview of current situation and the way forward*, <https://www.refworld.org/pdfid/615efd094.pdf>.

¹¹ Instruction for processing cases of a birth of a child whose parents do not have personal documents to enable registration in the birth register, issued in 2020.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to 3rd cycle UPR recommendation no 113.31: “Make further efforts to promote opportunities for access to education for all (Iraq)”

Commendable efforts have been made to allow all refugee, asylum-seeking and migrant children to be included in the Serbian education system free of charge. In 2021, for the first time four young refugees benefitted from DAFI scholarships and enrolled at the University of Belgrade. Through the Council of Europe project European Passport for Refugees, as the tenth European country to do so, Serbia enabled recognition of high school and university diplomas by the Serbian Qualification Agency (even in the absence of physical evidence), and issues European Qualification Passports for Refugees (EQPR). Adoption of bylaws and affirmative measures are still necessary to allow refugees to fully access national scholarship schemes and promote tertiary education.

Linked to 3rd cycle UPR recommendation no.113.58: “Implement effective public policies to combat discrimination and ensure effective access to education and health-care services to ethnic minorities in the country (Mexico)”

Serbia included all asylum-seekers, refugees and migrants into the national COVID-19 vaccination plan at a very early stage in the pandemic, being among the first countries to do so in Europe and globally. In addition, specialized outreach campaigns by the competent Ministries have been conducted in informal Roma settlements to support COVID-19 vaccination.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Access to citizenship and naturalisation

Linked to 3rd cycle UPR recommendation no 113.74: “Establish an efficient and coordinated system for the integration of refugees into society (Germany)”

The current legal framework for persons granted international protection needs to be amended to allow for access to citizenship and naturalization. The sui generis nature of residence accorded to recognized refugees is not legally defined as either temporary or permanent, and thus it does not present a basis for accessing citizenship. In addition, there is no facilitated naturalization procedure for persons granted international protection. The relevant legal framework¹² needs to be amended and harmonized to ensure the residency of persons granted international protection is recognized for the purposes of citizenship applications, and to include facilitated conditions for their naturalization. Access to citizenship is a precondition for long term and meaningful integration. Lack of access to citizenship prevents persons granted international protection from completing their integration process, brings insecurity and can impact their ability to fully exercise their economic, social and cultural rights in the host community.

Recommendation:

UNHCR recommends that the Government of the Republic of Serbia:

- a) Amend and harmonize national legislation to provide access to citizenship for persons granted international protection enabling their full and long-term integration

¹² Law on Citizenship, Law on Foreigners, Law on Asylum

and effective access to economic, social and cultural rights.¹³

Issue 2: Durable solutions for vulnerable IDPs

Linked to 3rd cycle UPR recommendation no 114.116: “Adopt a comprehensive policy aimed at providing durable solutions for all internally displaced persons in Serbia, which would include local integration in a pragmatic way, taking into consideration return and settlement in other places, implementing the law on temporary and permanent residence in a holistic manner” (Honduras)

After more than 20 years of displacement, lack of temporary or permanent residence in places of displacement still presents one of the main obstacles for Roma IDPs living in informal settlements in Serbia. Consequently, they cannot effectively access socio-economic rights including health, social protection, employment, etc and remain excluded from the society. The 2011 Law on Permanent and Temporary Residence of Citizens needs to be flexibly applied to enable registration of residence for IDPs, as also noted by the Special Rapporteur for housing during her visit to Serbia (2015)¹⁴.

Recommendation:

UNHCR recommends that the Government of the Republic of Serbia:

- a) Enable effective access to socio-economic rights for internally displaced Roma communities in informal settlements, including them in the scope of the Law on Permanent and Temporary Residence of Citizens and enabling registration of their residence in places of displacement in Serbia.

Additional protection challenges

Issue 3: Issuance of travel documents and improving quality of personal documents for persons accorded international protection

Persons granted international protection in Serbia are not provided with travel documents, affecting their integration prospects, limiting their freedom of movement as well as their possibility to travel for education or work purposes. Although the LATP provides refugees with a right to travel document, incomplete secondary legal framework does not allow for issuance of such documents¹⁵. In addition, the quality of personal identity documents issued to refugees and persons provided with subsidiary protection are not the same as documents issued to other foreigners and citizens. This leads to difficulties in their daily lives, including in accessing rights and services, as many service providers are not familiar with these documents and frequently doubt their authenticity.

Recommendation:

UNHCR recommends that the Government of the Republic of Serbia:

- a) Issue travel documents to persons granted international protection, in line with the Law on Asylum and Temporary Protection and improve quality of identity cards for asylum-seekers and persons granted international protection in order to enable their full enjoyment of their rights.

Issue 4: Fair and efficient asylum procedures

¹³ To better fulfil its obligations under Article 34 of the *1951 Convention* and Article 2 of the ICESCR and considering the Committee's General Comment No. 20 and Statement on the Duties of states towards refugees and migrants.

¹⁴ See more in the report A11 Initiative for economic and social rights, *Realisation of Economic and Social Rights for internally displaced persons in Serbia*, Belgrade 2018. Available at: https://www.a11initiative.org/wp-content/uploads/2019/01/A11_zavrsni-izvestaj_ENG_web-compressed-1.pdf.

¹⁵ Convention relating to the Status of Refugees, Art. 28; LATP, Art. 91; Belgrade Centre for Human Rights, *Right to Asylum in the Republic of Serbia 2020*, pp. 142-148, 147-148 and *Right to Asylum in the Republic of Serbia 2021*, pp. 123-127, and p. 128.

Despite improvements of the 2018 LATP, there is still a need to improve the quality and efficiency of the asylum procedure. Despite a significant number of persons arriving to Serbia originating from refugee producing countries, Serbia remains a country of transit for most asylum-seekers and refugees. Only a small number decide to seek protection in Serbia, while an even smaller number decide to wait in Serbia for a final decision on their application, which can take more than one year. There is a need to quickly differentiate between persons in need of international protection and those who are not, as well as to ensure recognition of claims in accelerated procedures for manifestly founded cases. Capacities of the first instance body need to be further strengthened and the State needs to ensure sustainable state funded mechanism for provision of interpretation in the asylum procedure, as well as provision of free legal aid to asylum seekers and refugees. Second and third instance procedures need to be improved to allow for in merit assessment of the cases. Specialization of Administrative Court judges deciding in asylum cases needs to be ensured.

Recommendation:

UNHCR recommends that the Government of the Republic of Serbia:

- a) Invest in capacitating the national asylum system to apply differentiated approaches to identify and distinguish those who might have international protection needs from those who do not and ensure that existing legal framework and practices are capable of providing access to fair and efficient asylum procedures, including accelerated recognition of manifestly well-founded cases; and
- b) Improve the quality of the asylum procedure by establishing a sustainable quality assurance mechanism to ensure improved effectiveness of the procedure.

Issue 5: Respect for principle of non-refoulement during extradition procedures concerning asylum-seekers

There is a need to strengthen access to asylum procedure of persons in need of international protection within the extradition procedure in line with Serbia's non-refoulement obligations which remains relevant during the extradition procedures. Including clear safeguards from *refoulement* in the national legislation on extradition, would mitigate the risk of refoulement of asylum seekers in extradition procedures¹⁶

Recommendation:

UNHCR recommends that the Government of the Republic of Serbia:

- a) Harmonise extradition and asylum legislation by including sufficient safeguards from refoulement for persons in extradition procedures.

Issue 6: Statelessness determination procedures

While many sectoral laws recognize stateless persons and the rights to which they are entitled¹⁷, Serbia has not established a statelessness determination procedure in line with *1954 Convention* which would enhance the ability of stateless persons to effectively access to rights.

Recommendation:

UNHCR recommends that the Government of the Republic of Serbia:

- a) Establish a statelessness status determination procedure, to better enable stateless persons to exercise their rights under national legislation, in line with the *1954*

¹⁶ In this respect, the Committee against Torture found violation of the principle of non-refoulement in one case related to extradition. See case C.A. - Committee against Torture, Decision adopted by the Committee under article 22 of the Convention, concerning Communication No. 857/2017, CAT/C/67/D/857/2017, 16 August 2019

¹⁷ Including, inter alia, Law on Foreigners, Labour Law, Law on Health Care, and Law on Fundamentals of the Education System.

Convention relating to the Status of Stateless Persons.

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