

Right to Asylum in the Republic of Serbia
and comparative solutions in the region of Southeast Europe¹

Analytical report

Serbian Refugee Council

Author:
Vladimir Petronijevi (Group 484)

Belgrade, September 2006

¹ Extracts from this text were used in the realisation of the Fund for an Open Society project "Monitoring the process of Serbia's rapprochement with the EU and Europeanisation of Serbia" realised by Group 484

Introduction

The document before you aspires to comprehensively meet the challenge of analysing the existing condition in the field of asylum protection in the Republic of Serbia. The field of migration management policy, which also includes the field of asylum protection in the EU, is the subject to criticism of many nongovernmental organisations in the EU itself, and therefore the ambition of this document is to present the shortcomings in the European system of asylum protection and raise awareness of the legislators in Serbia to the challenges before them, as well as to the necessity of providing balance between universal standards and regional European solutions which should be equally represented in our future legal text.

In the absence of the law which would establish the refugee status determination procedure, as well as of the organs which would participate in the procedure and the scope of rights guaranteed to asylum seekers and persons who have been granted the status, the activity of the UNHCR in this field is presented.

I Present condition

On its way to European integrations, Serbia will have to harmonise and build its migration policy in accordance with the universal and European standards. It is a demanding process, which implies a strategic approach and full coordination of all the relevant organs. At the moment when the suspension of negotiations for signing the Agreement on Stabilisation and Association of Serbia with the European Union threatens to seriously jeopardise the dynamics of rapprochement of SCG with the European Union, the problem of migration management policy remains open, without an appropriate solution.

The general impression is that stakeholders in Serbia are not sufficiently aware on the challenges related to defining the state policy in the field of migration, which should be harmonised with regional initiatives, international and European standards. When it is finally legally completed, the asylum system will be a completely new and unfamiliar «organism» in the legal system of Serbia. The Republic of Serbia cannot be commended for a successful implementation of the readmission agreement and the concern expressed towards returnees from Western Europe. The legal framework which regulates the status of aliens was conceived almost three decades ago and some of its provisions can no longer be implemented. The status of internally displaced people is also very difficult, and the process of integration and return of refugees from the territory of Croatia and BiH is slow and with many problems.

The EU is also monitoring the reform policy in this field, carried out in the countries potential membership candidates. The very Agreement on Stabilisation and Association will also contain the provisions related to this issue, also present in the agreements signed by Croatia and Macedonia. Namely, the acts of primarily economic/trade character will also contain the articles related to the migration policy of Serbia. This is a strong message of the EU, which will expect from Serbia full cooperation and genuine reforms in this field.

The issues of asylum protection and the status of aliens are necessary to observe in the context of European integrations of Serbia. Serbia was the last country in Southeast Europe to start the process of rapprochement with the EU. To date, the progress toward stabilisation and association has not been sufficient to 'catch up' to the degree of Europeanization found elsewhere in the region.

The process of developing migration management policy remains in the very early stages. Ultimately, the policy should incorporate a clear position of the state and accompanying legislation in accordance with universal and European standards in the fields of asylum protection, the protection of refugees and internally displaced persons, the status of aliens and visa policies, the conclusion and implementation of readmission agreements, border control and illegal migration.

The Serbia and Montenegro Stabilisation and Association Report 2003, in its part related to the cooperation in the field of judicature and internal affairs, states the following: "The Constitutional Charter foresees the

competences in adopting legislation, related to some issues from this field (judicature and internal affairs) and other fields (visa, border management, asylum and migration), but there is still a considerable lack of clarity in regards to the institutionalisation and coordination mechanisms (...) The legislation implemented at the federal level (i.e. the one in the field of asylum and migration) is on hold and the lack of the harmonisation of policies is obvious."² The EU also presented its position through the Report on the Preparedness of Serbia and Montenegro to Negotiate a Stabilisation and Association Agreement with the European Union (Feasibility Study), in the Chapter 3.6.2., related to the issues of asylum, visas and migration.

"The constitutional dispute on the division of competences affects the timely adoption of legislation in this field. Serbia and Montenegro is therefore seriously lagging behind other countries in the region. The Framework Asylum Law at the State Union has been adopted by the Parliament. Two republican laws, covering the procedures, are at an advanced stage, with the significant assistance of the UNHCR"³.

Special attention is also focused on the issue of readmission, where positive development is noted. Thirteen agreements with fifteen countries have been signed and implemented. The process of signing further readmission agreements has slowed down compared with the period before March 2003.⁴ The slowed-down activity of the state in this field is a possible reason for tightening the visa regime of France towards SaM. The positive assessment presented in the Study could easily be replaced with the negative position of the EU if the process of signing the readmission agreements does not continue in a more dynamic manner.

The Report of the European Commission on the Preparedness of Serbia and Montenegro to Negotiate a Stabilisation and Association Agreement with the European Union notes that determining competences between the State Union and member countries is still problematic in regards to the policies of visa, asylum, migration and integrated border control.

The Report on Stabilisation and Association for SaM for 2005 states that there have not been any improvements related to the adoption of the Republic Laws on Asylum necessary for implementation of the law adopted at the State Union level. It also states the absence of the capacities necessary for the reception of asylum seekers. "There is only one reception centre in Serbia⁵ for asylum seekers and refugees, with very a limited capacity and inadequate infrastructure. In Montenegro there are no appropriate reception facilities, although there were plans to develop some in 2005."⁶

National Strategy of Serbia for the Serbia and Montenegro's Accession to the European Union in the section 4.5.2.2. Migration, states the obsolescence of the regulations related to the status of aliens and the lack of legal regulations in the field of asylum protection. "Being a transit country for migrants from Asia and Africa towards the European Union, Serbia faces increasing challenges in solving the illegal immigration issues."⁷ It also states the absence of an adequate reception centre for aliens according to the EU standards. The need for completing the system of asylum protection with the adoption of a relevant Republic law is clearly emphasised, as well as the need for regulating the rights of aliens in Serbia through new regulations in these fields. Relevant recommendations for enhancing the conditions in these fields are also provided.

The Council Decision of January 30, 2006, on the principles priorities and conditions contained in the European Partnership with Serbia and Montenegro including Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2004/520/EC, defines the issues of visa, border control, asylum and migration as short-term priorities, where the European Union once again emphasised the need for fast and efficient reforms in this field.

"Develop a State Union-level approach to issues related to visas, asylum and migration in line with the Constitutional Charter, notably through the complete harmonisation of the visa regimes applied in the

² ICMPD, Visa module, Report for Serbia and Montenegro, 2005, pages 9-10

³ <http://www.ssinf.sv.gov.yu/dokumenta/studija.pdf>

⁴ In the last three years, only one Agreement was signed recently with France in April 2006, and only the Readmission Agreement with Canada was ratified at the Assembly of SaM, on May 10, 2006.

⁵ The reception centre as well as the entire asylum issue in SCG is still in the competence of UNHCR

⁶ www.feio.sv.gov.org

⁷ www.seio.sv.gov.org; National Strategy of Serbia for the Serbia and Montenegro's Accession to the European Union

Republics. Put in place mechanisms to monitor the consistent implementation of these policies at the level of the Republics.

Adopt the Asylum Laws in both Republics and proceed with the conclusion and implementation of readmission agreements. In Serbia: enhance the capacity and infrastructure of the reception centre for asylum seekers and refugees. In Montenegro: Carry out the construction of the planned reception centres for asylum seekers and refugees.”⁸

On April 7, 2006, the Government of the Republic of Serbia adopted the Plan for Implementation of the European Partnership⁹. Within the chapter VIII Justice, Freedom and Security, in the paragraph 8.1 Visa, border control, asylum and migration, subparagraphs 8.1.5 and 8.1.6. define the adoption of relevant law on asylum and improvement of the capacity and infrastructure of the reception centre for asylum seekers and refugees as short-term priorities. The Ministry of the Interior of the Republic of Serbia is mentioned as a responsible authority.

In regards to refugees and internally displaced persons, within the chapter IV, Regional Issues and International Obligations, the subparagraph 4.1.9. defines ensuring adequate cooperation between the State Union and Member States as regards the legislative basis for and practical protection of the rights of refugees and internally displaced persons as short-term priorities, by building relevant administrative capacities with the foreseen sum of 1.2 million Euro, where the activity will be realised in the period August 2005 - October 2006. The short-term objective is also ensuring right of a real choice between sustainable return and integration, as well as contributing to ensuring the implementation of the Sarajevo Declaration for sustainable return. The adoption of the changes and amendments of the Law on Refugees was foreseen for the fourth quarter of 2006¹⁰, and the amendment of the National Strategy on Refugees and Internally Displaced Persons was planned for the second quarter of 2006. The lack of financial means is emphasised as the biggest obstacle for the realisation of these objectives.

In 2004, the UNHCR, OSCE and European Commission missions to SaM, Croatia, and BiH launched a regional initiative called Road Map aimed at enhancing sustainable solutions through return or integration and closing the refugee chapter by the end of 2006. At the trilateral ministerial meeting held on January 31, 2005 in Sarajevo, the three countries signed the Sarajevo Declaration. Each signatory is expected to adopt an action plan after which all three action plans would be joined together in a joint template specifying tasks and deadlines. The countries in the region are expected to offer conditions permitting refugees to freely choose whether to integrate in the host country or return to the country of origin. According to the Serbian Commissariat for Refugees, the implementation of action plans is behind schedule. To date, two common chapters of the joint template have been defined: the chapter on joint actual statistics and the chapter on access to rights as individual road maps. It was agreed that BiH would co-ordinate the activities and international organisations would provide information and comments on individual road maps. As was the case with the implementation of the National Strategy for Refugees and IDPs, there is a pending issue of institutional competences.

The task force established to assist with the regional process has had some success in resolving technical issues; however, the road maps have not been finalised in a timely fashion. The deadline of 2006 for resolution of all refugee issues is becomingly increasingly unrealistic. However, the Sarajevo Declaration represents a unique opportunity to address not only issues of refugee return, but also of local integration. As concluded by the European Commission, after more than a decade refugee files could be permanently closed.¹¹

II Policies and legislation

⁸ http://www.delprn.ec.europa.eu/en/eu_and_kosovo/key_documents/Partnership2006.pdf; Council Decision of 30 January 2006, on the principles, priorities and conditions contained in the European Partnership with Serbia and Montenegro including Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2004/520/EC , 2006/56/EZ

⁹ www.seio.sv.gov.org

¹⁰ On the website of the Government of the Republic of Serbia there is the Draft Law on Changes and Amendments to the Law on Refugees, which due to some of its controversial solutions has been a subject to discussions in the expert public.

¹¹ European Commission, Progress Report Croatia, November 2005.

Field of asylum protection

Within the Stability Pact of the Southeast Europe, as a part of the MARRI programme (Migration, Asylum, Refugee Regional Initiative) a Regional Programme of Action was presented at a summit held in Thessalonica, on June 21, 2003, for the countries of Western Balkans, which contained the solutions for better migration management and problems of asylum, for return of refugees, integrated border control and establishing an acceptable visa regime in the region. This regional Programme of Action was the result of a six-month work and joint activities of representatives of Western Balkan countries, other member states of the Stability Pact, representatives of the European Commission and other relevant international organisations. This programme is fully complementary with the Stabilisation and Association Process which is in different implementation phases in countries of Western Balkan.

The main characteristics of this Regional Plan of Action are as follows:

- Switching the focus from the humanitarian approach to solving refugee problems to integrated approach to citizenship;
- Establishing instruments for the control of illegal migration and establishing free flow of people and goods;
- Establishing Integrated Border Management.

The Regional Plan of Action is fully complementary with the basic principles of the EU asylum system, adopting both its good sides and weaknesses. On 45 pages, there are strategic and operational goals which should be individually realised by counties of Western Balkans, adopting their own National Plans of Action, with the support of the European Commission and CARDS programme. Macedonia and Croatia have already adopted their National Action Plans and they are in the implementation phase. The content of the National Action Plan for Croatia remains unavailable to the public despite the appeal of MARRI to remove the veil of secrecy from the entire process. As part of the National Action Plan, a former military barrack has been turned into a reception centre for around 800 asylum seekers. This project is part of the pilot project for Transit Processing Centres and is supported by approximately one million Euros from the European Commission/CARDS. . National Action Plan for Bosnia and Herzegovina was adopted by the Country Team on January 28 this year. National Action Plan for Serbia and Montenegro is examined and generally approved in its draft form at the meeting in Podgorica on January 21, 2004.

The adoption of National Action Plans in countries of Western Balkans is only the first step towards harmonisation of their systems of migration management with that of the European Union. The subject of concern in this regards is the fact that the adoption of Regional Plan of Action (as well as national plans) was not preceded by the assessment of the conditions and technical and human resources in these countries.

In the domain of harmonisation of asylum rights, Regional Plan of Action sets the following as its priorities:

- same standards for reception of asylum seekers;
- access to legal assistance;
- obligation to accept the admission of persons who fail to meet the conditions for regulating their status in the countries in which they illegally reside (bilateral readmission agreements not only with the EU countries but also with the countries in the region);
- obligation for providing conditions for integration of persons who have been granted asylum, refugees and internally displaced persons;
- creating conditions for special protection of women and children asylum seekers;
- realisation of the principle of family reunion.

One of the aims of harmonisation according to Regional Plan of Action is the introduction of a uniform, just and efficient procedure for examining asylum claims, which would be applied to the persons fulfilling conditions for granting protection according to the Geneva Convention, as well as for asylum seekers fulfilling conditions for granting temporary protection or humanitarian protection. Temporary protection should be granted only in cases of exodus of a large number of people due to violence which is not focused

on a certain national, racial, religious and social group, as a result of external aggression, inner conflicts, systematic violation of human rights and other circumstances which are seriously jeopardising public order in the country of origin. According to the EU standards, the second category encompassing persons enjoying temporary protection are those who left their country of origin due to well-founded fear of torture, humiliation and inhuman behaviour or violation of other basic human rights.

The programme particularly emphasises the education of professional services, administrative/police and court organs for implementing new and harmonised standards. Unfortunately, Balkan countries have not only the problem of the legal framework, but also of exceptionally poor human resource capacities in the services, mainly police, that decide upon the right to asylum, the lack of basic institutional and technical capacities, as well as the lack of training centres for employees.

The current factual situation in the Balkan countries often implies the cases of unpenalised deportation (refoulement) of asylum seekers, inadequate conditions for reception of persons in the procedure of seeking asylum, and in case of manifestly unfounded claims, the applicant does not have the right to appeal to the first instance decision with the suspensive effect. If the domestic legislation does not ensure the right to appeal to the first instance decision, in the procedure before an independent, preferably judicial organ, various possibilities for refoulement are opened. Having in mind all that, it is difficult to imagine that in the relatively short period it is possible to realise a harmonised implementation of procedures related to asylum with the respect of basic human rights of asylum seekers, without intensive international cooperation in this field.

The conditions for reception of asylum seekers and ensuring the minimum socio-economic rights until the decision about the claims have been made are also of an utmost importance. It is very important to ensure the minimum standards for all the countries members of the Council of Europe, not only the EU countries or the countries in the process of accession, but the standards that will be accepted by all the countries in Europe, and which will be based on harmonisation of minimum principles providing dignified and humane living conditions for asylum seekers and their families. Many European countries, not only the countries of the Western Balkans but also the EU countries, are lacking procedural guarantees for asylum seekers related to free legal assistance; they limit their freedom of movement, completely deny the right to social care and protection, the right to health care, apart from the right to urgent medical help, hinder education (including foreign language learning) for asylum seekers aged sixteen and over, discriminate children of asylum seekers in regards to the quality of education, they do not have legal guarantees for special forms of psychosocial support for asylum seekers victims of torture and abuse in the country of origin, and physical guarantees for women in joint reception centres.¹²

In regards to the protection of children and women, having in mind the fragility of the region of the Western Balkans which is the transit spot for human trafficking, the lack of additional guarantees in the procedure of seeking asylum on the request of women and children asylum seekers, especially the unaccompanied minors is a special cause for concern. In this regards, the adoption of recommendations from the EU Resolution on unaccompanied third-country national minors into the laws of the countries in the process of accession to the EU or those still in the phase of accession negotiations would be recommendable, where the unaccompanied children cannot be deported to the safe third country.

Regarding the decision on termination of refugee status, above all the implementation of the Provision 1 (c) of Geneva Convention, and when there is no need for international protection from persecution, it is recommendable to seek an opinion from the UNHCR whenever this provision is implemented. For now, countries arbitrarily decide on the conditions for termination of protection. The standard should be the same as in the procedure of granting asylum, including the suspensive right to appeal, interrogation of the person in question, and the right to free legal assistance. The refugees who have strong family, economic or social bonds with the country which has granted them asylum should have the right to permanent residence in that country, in accordance with Article 34 of Geneva Convention saying that the country is obliged to ensure conditions for assimilation and naturalisation of refugees.

¹² Since the adoption of the Dublin Convention in 1990, many NGOs in Europe have shown lower standards of protection of asylum seekers in the EU than stipulated in the UN Convention relating to the Status of Refugees of 1951 and the New York Protocol of 1967.

Regardless of the first positive steps made in the early 1990's towards liberal and humane conditions for reception and refugee status determination primarily in the countries of the former Yugoslavia, countries of the Balkans in the mid nineties and again in the past couple of years have started implementation of EU migration policies. However, the implementation has been unfortunately selective and lacking the minimum procedural guarantees established in the EU countries. Mechanical and uncritical implementation of categories such as «safe third country», «manifestly unfounded claim», «accelerated procedure» is very dangerous. These complex processes of harmonising legislations, political approaches and practices have been carried out in the context of waves of terrorism, xenophobia and extreme nationalism in Europe.

We believe that in the process of harmonisation of legislations and practices of the countries of the Western Balkans with the EU standards, the following conditions have to be fulfilled: reaching consensus regarding the criteria for determining a «safe country» and establishing a common list of safe countries, ensuring security risk assessment in each individual case, ensuring minimum socio-economic rights of asylum seekers, ensuring the right to legal remedy against the decision transferring their claim to the safe third country, as well as the minimum standards of protection in the procedure of deportation to safe third countries and the quality process guarantees and transparency of the very procedure.¹³

Serbia is the only country in the region of Southeast Europe which has not yet defined the system of asylum protection and established a coherent system of refugee law.

Serbia's neighbours already have their well-defined systems of asylum protection in place, more or less harmonised with the European standards: Law on Asylum of the Republic of Croatia adopted on June 18, 2003; Law on Movement and Stay of Aliens and Asylum of Bosnia and Herzegovina adopted on July 18, 2003; Law on Asylum and Temporary Protection of the Republic of Macedonia adopted on July 16, 2003; Law on Asylum of the Republic of Albania, adopted on December 14, 1998; Law on Asylum of the Republic of Bulgaria adopted on May 16, 2002; Law on Status and Regime for Refugees of the Republic of Romania adopted on April 5, 1996. The Assembly of Montenegro adopted its Law on Asylum on July 10, 2006.

Law on Asylum of SaM, which is now implemented in the Republic of Serbia is the first and only step towards the international standards in the field of asylum protection.

The Constitutional grounds for passing the Law on Asylum is encompassed in the provision of Article 19, Indent 8 of the Constitutional Charter of the State Union of Serbia and Montenegro, according to which the Assembly of Serbia and Montenegro passes laws and other legal acts on the policy of granting asylum.

The right to asylum is guaranteed in the Constitutional Charter, in the Article 38, Section 2 of the Charter on Human and Minority Rights, stipulating that "every alien who has a well-founded fear of persecution because of his/her race, complexion, sex, language, religion, ethnicity, membership in particular social groups, or political opinion shall have the right to refuge." Article 50, Section 2 of the Constitution of Serbia specifies that "The right to asylum shall be guaranteed to a foreign citizen and stateless person who is being persecuted for supporting democratic views and participating in movements for social and national emancipation, for human rights and freedoms, or for the freedom of scientific or artistic creativeness".

"Constitutional Charter, as noted in the National Strategy for SaM Accession to the EU, goes beyond the 1951 UN Convention relating to the Status of Refugees in that it provides for protection of persons persecuted in grounds of their sex, complexion and language which is not envisaged in the Convention as a basis for granting asylum status. It is stipulated, though, both in the Constitutional Charter and Serbian Constitution that the asylum system will be regulated by a separate law."¹⁴

Serbia was a signatory of the UN Convention relating to the Status of Refugees of 1951 and the UN Protocol on Refugees of 1967, and is obliged to incorporate these international documents into its legislation. However, apart from introducing solutions from the aforementioned Convention, it is necessary to implement certain solutions from many other international documents on human rights related to refugees, since the international refugee right is a part of a wider spectrum of human rights. Refugees are entitled to two

¹³ Group 484, The Problem of Asylum Protection, unpublished text, pages 8-11, 2005

¹⁴ Group 484, "Towards White Schengen List", pages 16, 2005

overlapping sets of rights: the rights according to international norms of human rights and special rights related to their status.

In order to regulate this matter, the domestic legislation should not only encompass the solutions from the UN Convention relating to the Status of Refugees, but also the solutions from other documents on human rights related to refugees, such as: Un Universal Declaration of Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms, European Convention for the Prevention of Torture and Inhuman and Degrading treatment or Punishment, UN Convention on the Rights of the Child, UN Convention on the Elimination of all Forms of Discrimination against Women, etc. Special attention should be paid to various documents of relevant organs of the Council of Europe, European Union, as well as the recommendations of the UN High Commissioner for Refugees Executive Committee (UNHCR).

One of the internal regulations which partially incorporated this Convention was the Law on Movement and Stay of Aliens. However, this law was not completely in accordance with the aforementioned Convention and its Protocol, as well as the international standards of human rights. From the moment the Constitutional Charter had been adopted, Law on Movement and Stay of Aliens could no longer present the legal grounds for granting refugee status in Serbia and Montenegro, since the Federal Ministry of the Interior responsible for making decisions on asylum claims has ceased to exist. Since the Law on Asylum of SaM was passed, the provisions from Articles 44 to 60 of the Law on Movement and Stay of Aliens have not been valid.

During the last decades in Serbia, the refugee status determination procedure has been carried out by the UNHCR.

Law on Asylum of SaM determines basic principles in the policy of granting asylum. After the Law had been passed, the member countries were and are obliged to adopt their laws regulating the granting asylum procedure, determine the organs responsible for asylum claims and specify a concrete scope of rights guaranteed to the persons who have been granted asylum in Serbia and Montenegro. The Republic of Montenegro, as an independent state, has legally established the system of asylum protection.

Interestingly enough, the Plan for Implementation of European Partnership of the Government of the Republic of Serbia states that the draft Law on Asylum of the Republic of Serbia already exists. This document has never been presented to the public and the expert public has not had the opportunity to comment it. The Ministry of the Interior has not organised a public discussion on that matter as well. The plan also does not specify the deadline for the adoption of the Law. Having in mind that since its reception to the Council of Europe in April 2003, SaM has undertaken the obligation to establish and complete its system of asylum protection, the lack of a timeframe for adopting the Law is unprofessional on the part of the Ministry of the Interior of Serbia on this very important issue. The Ministry states the lack of financial support and insufficient expertise of employees as obstacles to the adoption of the Law. These obstacles, however, cannot be used as excuses for failing to adopt an appropriate legal solution. In spite of current insufficient financial resources, asylum protection can also find its place on the agenda by a careful setting of priorities for the budget. The lack of financial resources can be neither a reason nor an excuse for the failure to fulfill the international obligations accepted by SaM through the ratification of the Convention relating to the Status of Refugees and its Protocol and through her membership in the Council of Europe.

Regarding the lack of expertise and professional experience, the Ministry of the Interior should present to the public where are all those employees of the Ministry who have attended the trainings organised by the UNHCR Belgrade Office in the previous period

The analysis of the Law on Asylum of SaM

The Law on Asylum of SaM follows the standards and principles established by the international documents: UN Convention relating to the Status of Refugees of 1951 and its Protocol of 1967.

Asylum as a legal institute is defined as the right to reside and receive protection given to a person to whom refugee status has been granted by the competent body that has passed a decision on his/her application for asylum in Serbia and Montenegro or to a person who has been granted other forms of protection prescribed by this Law (Article 2).

According to the principle of family unity from Article 8 of the Law, the person who has been granted the refugee status has the right to family unity, and he/she will share the refugee status with the members of his/her family. The Convention relating to the Status of Refugees of 1951 does not encompass the principle of family unity. However, this principle is incorporated in the Final Act of the Conference. The Final Act foresees that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country. Moreover, this principle is encompassed in the Universal Declaration on Human Rights where "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State". The laws of the member states will specify more precisely the circle of persons making the family of a refugee and having the right to family unity.

The principle of confidentiality from Article 7 of the Law is related to personal information related to individual asylum claims. The principle is derived from the right to privacy as one of the fundamental human rights, inherent in Article 8 of the European Convention on Human Rights and Fundamental Freedoms, as well as in the European Convention on the Protection of Individuals with Regard to the Automatic Data Processing.

The obligation of cooperation of competent organs with the UN High Commissioner for Refugees, foreseen in Article 11 of the Law is inherent in Article 35 of the Convention relating to the Status of Refugees where all contracting states are obliged to cooperate with the UN High Commissioner for Refugees or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention. The cooperation foreseen in this Law among other things implies free access to information, statistical data, personal dossiers of asylum seekers and is an exception in regards to the principle of confidentiality (Article 7). The obligation of cooperation with the UN High Commissioner for Refugees has also been incorporated in the legislations of all the EU countries, as well as the candidate countries.¹⁵ In that way, all relevant organs, as well as nongovernmental organisations in a country are familiarised with this obligation and the UN High Commissioner for Refugees is enabled to act in accordance with its mandate.

Article 12 of the Law foresees that, as a rule, the person seeking asylum will not be imposed penalties for illegal entry and residence, provided that he/she submits claim for granting asylum as well as valid reasons for his/her illegal entry or residence. The words 'as a rule' leave open the possibility for the person to be penalised for an illegal entry or stay if he/she has obviously misused the asylum claim for other perpetration. The provision on not imposing penalties to asylum seekers for illegal entry or stay is inherent in Article 31 of the Convention relating to the Status of Refugees. However, the Law, in accordance with the contemporary development of the refugee law, offers wider protection to these persons. According to the Section 2 of the same Article, the person seeking asylum will be deprived of his/her freedom only when necessary and prescribed by the law. According to the position of the UNHCR Executive Committee the detention measures should be applied only when necessary and out of the reasons prescribed by the law, such as: determining identity, determining elements upon which the claim is based, in cases when the person has used false identification documents to enter a country, as well as for the purpose of the protection of national security or public order.

Article 16 of the Law, related to "removal of a person who has not been granted asylum", stipulates that an alien whose application for asylum has been refused after a final decision is obliged to leave the country and failing this, he/she will be expelled.

¹⁵ Article 9 Section 4 of the Law on Asylum of the Republic of Slovenia; Article 11 of the Law on Asylum of the Republic of Croatia, Article 86 of the Law on Movement and Stay of Aliens and Asylum of Bosnia and Herzegovina; Article 13 of the Law on Asylum of the Republic of Macedonia; Article 20 of the Law on Asylum of the Republic of Albania; Article 3 Section 2 of the Law on Asylum of the Republic of Bulgaria.

According to Article 31 of the Convention relating to the Status of Refugees, Article 17 of the Law, "Expulsion of refugees", stipulates the refugees lawfully residing in Serbia and Montenegro will be expelled only for reasons pertaining to national security and public order. The expulsion shall be carried out only on the basis of a decision passed in accordance with due process of law and a refugee shall have the right to submit evidence to the competent body in order to justify his/her acts, to appeal and to decide on a legal representative.

The Provision of Article 18 of the Law, "Rights of refugees", stipulates the minimum rights enjoyed by the person who has been granted refugee status in Serbia and Montenegro, where the member states with their laws can guarantee a wider scope of rights than prescribed by the Law and specify a concrete contents of the guaranteed rights. The obligation related to the refugee rights and stated in the Law is the result of the fact that we have ratified the Convention relating to the Status of Refugees of 1951. All these rights, apart from the right to family unity are stipulated by this Convention and the signatory countries are obliged to guarantee these rights to the persons who have been granted the refugee status.

The persons seeking asylum in Serbia and Montenegro will enjoy somewhat smaller scope of rights as stated in Article 13 of the Law ("Rights of asylum seekers").

Article 20 of the Law related to "integration" stipulates the obligation of integration of refugees into the social and economic life of the country, within the current socio-economic potential, as well as of an efficient procedure for acquiring citizenship in accordance with the law. This obligation of integration follows Article 34 of the Convention relating to the Status of Refugees, and the laws of the member states will further elaborate the contents of this provision.

A special chapter is related to the protection of asylum seekers and refugees with special needs, (Articles 24-26), such as minors, children separated from parents or guardians, disabled persons, elderly persons, pregnant women.

Article 22 of the Law defines that the temporary protection may be granted, in accordance with the law, in the case of a mass influx of persons from a country where their life, safety or freedom is threatened by general violence, foreign aggression, internal conflict, massive violation of human rights or other circumstances seriously affecting public order, and when, due to the mass influx, it is not possible to conduct the individual refugee status determination procedure.

According to Article 23 of the Law, humanitarian protection shall be granted to a person who has fulfilled the conditions for granting refugee status and who would be, in case of return, subjected to torture or inhuman or degrading treatment, or whose life, safety or freedom would be threatened by general violence, foreign aggression, internal conflict, massive violation of human rights or other circumstances seriously affecting public order. According to the principle of subsidiary protection (Article 4), the decision on humanitarian protection is made by the competent body deciding on an asylum application when it is established that the person in question does not fulfil the conditions for being granted refugee status.

The legal grounds for humanitarian protection can be found in Article 3 of the European Convention on Human Rights and Fundamental Freedoms which foresees that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". The position of The European Court for Human Rights is that Article 3 of this Convention applies also on this category of rights which cannot be derogated. Serbia and Montenegro is the signer of the European Convention on Human Rights and Fundamental Freedoms, and the international and legal obligation for this solution to be incorporated in the domestic legislation is derived from that fact.

In regards to determining bodies competent to grant asylum, which is probably its biggest shortcoming, the Law has only one general provision (Article 9) stipulating that the asylum claims will be decided on by the competent body of the member state in question. According to Articles 9 and 21, an appeal against the decision of the competent body can be lodged with the competent second instance body of the member state in question that is independent of the organ having passed a first-instance decision. The laws of the member states will stipulate more precisely the competent first and second instance organs and prescribe the procedure. For example, in some countries the second instance organ is the administrative organ or the

court.¹⁶ Regardless of the adopted solution and according to the international standards, the national legislation should ensure that the second instance organ is independent from the first instance organ.

The Law contains the collision provision (Article 10) which prevents the conflict of jurisdictions between competent organs of the member states. According to this provision, the jurisdiction of the body of a member state for assessing asylum applications will be established on the basis of the point of entry of the applicant at the state border and in the case of asylum applications submitted inside the country, it will be decided on the basis of the point of application.

The section "Basic principles" (Articles 4 to 8) contains basic principles in the procedure of granting asylum and they are: the principle of subsidiary protection, the principle of non-discrimination, prohibition of expulsion or return, confidentiality and family unity.

The principle of subsidiary protection, of Article 4 of the Law stipulates that when the competent body deciding on an asylum application establishes that the person in question does not fulfil the conditions for being granted refugee status, it will assess ex officio whether there are conditions for granting another form of protection prescribed by this Law. This solution has been adopted by some EU countries (Sweden, The Netherlands, Finland and the United Kingdom), and the study carried out in the European Union has shown that the countries which are implementing the common procedure in which one organ examines and decides about all possible grounds for protection are more efficient, the procedure in these countries is faster, and the quality of decision better. Therefore, on July 15, 2004, the European Commission compiled recommendations to the Council of Ministers and the European Parliament for introducing a common procedure as the next step in the asylum policy of the EU.

The principle of non-discrimination of Article 5 of the Law foresees that in the process of granting asylum no one will be discriminated against on any grounds whatsoever, especially on the grounds of race, colour, sex, ethnic background, social origin or similar status, birth, religion, political or other opinion. As we have already emphasised, the principle of non-discrimination was defined more widely than the same principle of Article 2 of the Convention relating to the Status of Refugees where a person is not discriminated on the grounds of race, religion, and the country of origin, incorporating elements from Article 14 of the European Convention on Human Rights and Fundamental Freedoms, the prohibition of discrimination on grounds of "ethnic background", "sex" and "political opinions".

The principle of prohibition of expulsion or return (non-refoulement) of Article 6 of the Law stipulates that no person will be expelled or returned to the territory where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinions. The principle of prohibition of expulsion is defined in Article 33, Section 1 of the Convention relating to the Status of refugees of 1951, but also in some other documents – UN Declaration on Territorial Asylum of 1967 and the Resolution of the Committee of Ministers of the Council of Europe of 1967. However, this principle has exceptions. A person can be expelled when there are reasonable grounds to believe that she/he represents a threat to security of the country or who has been convicted by an irrevocable court decision of a particularly serious crime, on account of which they constitute a threat to the security and public order of the country. These exceptions are in Article 6, Section 2, which are in accordance with Article 33, Section 2 of the Convention relating to the Status of Refugees.

The Convention relating to the Status of Refugees of 1951 does not encompass the right to asylum, but this right is incorporated in the Universal Declaration on Human Rights in Article 14, stipulating that "everyone has the right to seek and to enjoy in other countries asylum from persecution". The Law encompasses a wider concept of asylum which includes other forms of protection (temporary and humanitarian) in

¹⁶ Therefore, according to Article 38 of the Law on Asylum of the Republic of Slovenia, asylum seeker has the right to appeal against the decision at first instance to the Administrative Court. In contrast to the Law on Asylum of the Republic of Slovenia, Croatian Law on Asylum determines the Ministry of the Interior to decide about asylum claims at first instance (Article 6), and an independent administrative body – Commission is determined as the second instance organ (Article 7). Court protection is possible according to the law regulating administrative disputes (Article 47). The Law on Asylum of the Republic of Macedonia also determines Competent Commission of the Government as the second instance administrative organ, and it is possible to initiate an administrative dispute against the decision of the second instance organ (Article 32). Only the Law on Asylum of the Republic of Albania does not mention the possibility of administrative dispute.

accordance with the Recommendation of the High Commissioner for Refugees that a liberal policy of granting asylum should be carried out, in the spirit of the Universal Declaration on Human Rights. Such concept of asylum has been accepted by the majority of the EU countries.

The meaning of the term refugee from Article 2 of the Law (“a person who, due to a well-founded fear of persecution on the basis of his/her race, religion, nationality, membership of a particular social group or political opinion, is outside his/her country of origin and is not able, or due to the above-mentioned fear, does not wish to avail himself/herself of the protection of this country, as well as a stateless person who is outside the country of his/her previous residence and who cannot, or due to the above-mentioned fear, does not wish to return to that country”) is taken from the Convention relating to the Status of Refugees of 1951. According to the Convention, a person becomes a refugee as soon as he/she fulfils the conditions from the definition, before his/her status has been granted by the competent organ of that country. Therefore, apart from the term refugee, the Law encompasses the concept of a person who has been granted refugee status (Article 2), an alien on the territory of Serbia and Montenegro for whom the authorised state organ of the member state in question establishes that he/she has fulfilled the criteria for granting refugee status.

A well-founded fear of persecution is the key element of the definition of the term of refugee, containing the subjective element – fear, and the objective element – well-foundedness. In defining the refugee status, the starting point is the assessment of the statement of the asylum seeker which has to be supported by certain objective circumstances, i.e. the conditions in the country of origin. The grounds for persecution are precisely listed, and it is the persecution on grounds of race, religion, nationality membership of a particular social group or political opinion. The next condition for granting the refugee status is that a person is out the country of origin. It is not necessary that the person has left the country of origin on the grounds of fear from persecution, but the person can subsequently ask for the recognition of his/her refugee status, if the circumstances in his/her country change during his/her absence (refugee sur place). The last condition is that the person is not able, or due to the above-mentioned fear, does not wish to avail himself/herself of the protection of the country of origin. The inability to avail of the protection implies that the circumstances are not appropriate for that person (i.e. civil war or other problems in the country of origin). For a stateless person it is required that he/she is outside the country of his/her previous residence and he/she cannot, or due to the above-mentioned fear, does not wish to return to that country.

According to Article 15 of the Law (“refusing refugee status”), the refugee status shall not be granted to a person with respect to whom there are serious reasons for considering that: 1) he/she has committed a crime against peace, a war crime or a crime against humanity, according to the provisions of international documents drawn up for the purpose of preventing such crimes; 2) he/she has committed a serious non-political crime outside Serbia and Montenegro prior to entering the country; 3) he/she has been responsible for acts contrary to the purposes and principles of the United Nations. International grounds for refusing the refugee status is included in Article 1F of the Convention relating to the Status of Refugees, as well as Article 14, Section 2 of the Universal declaration on Human Rights stipulating that the right to asylum “may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.”

Article 21 of the Law “cessation of refugee status” foresees the reasons for the cessation of the refugee status of the person who has been previously granted the same status. These reasons, incorporated in Article 1C of the Convention are related to certain circumstances considered to be cause for the cessation of the international protection. The circumstances are the following: 1) if a person has voluntarily re-availed himself/herself again of the protection of the country of origin; 2) if a person has voluntarily re-acquired the citizenship which he/she previously lost; 3) if a person has acquired a new nationality, and thereby enjoys the protection of the new state; 4) if a person has voluntarily re-establish in the country he/she has left or has stayed outside of on account of fear of persecution or ill-treatment, or 5) if a person can no longer continue to refuse to avail himself/herself of the protection of his/her country of origin, because the circumstances on account of which he/she has been granted protection have ceased to exist. However, the refugee status does not cease ex lege with the appearance of some of the aforementioned circumstances, but by the decision of the authorised organ of the member state. The appeal against this decision can be filed to the organ independent from the first instance organ.

According to the Law, other forms of protection of asylum seekers are temporary protection (Article 22) and humanitarian protection (Article 23).

Temporary protection may be granted in the case of a mass influx of persons from a country where there is general violence, foreign aggression, internal conflict, where it is not possible to conduct the individual refugee status determination procedure. The protection lasts until the circumstances that forced this person to leave the country of origin have changed (this kind of protection was offered by the countries of Western Europe to the persons fleeing from conflicts in the former Yugoslavia at the beginning of the nineties of the last century). Temporary protection is not foreseen by the Convention relating to the Status of Refugees, but the countries of Western Europe have accepted the concept upon recommendations of the High Commissioner for Refugees. In their laws the member states will determine the organ competent for granting temporary protection.¹⁷

Unfortunately, although it follows the international standards, this Law does not have a practical value since it is lacking an appropriate procedure for granting asylum. There is a general concern that, due to the unsolved relations between member states, the republic laws will not be appropriately harmonised in order to guarantee:

- Asylum granting procedure;
- Organs participating in the procedure;
- Scope of rights guaranteed to asylum seekers and those who have been granted asylum.

Review of certain legal solutions in the field of asylum in the region of Southeast Europe

Having in mind the fact that the countries from the region of Southeast Europe already have well-defined asylum protection systems, their legal solutions will be of outmost value for the legislators in Serbia and Montenegro.

This short review will be primarily dealing with the procedures for granting asylum, the organs participating in the procedures, as well as the scope of rights guaranteed to asylum seekers and persons who have been granted the refugee status.

Law on Asylum of the Republic of Albania

This Law was adopted on December 14, 1998.

The Law fulfils the requirements of the Convention relating to the Status of Refugees of 1951 and its Protocol of 1967, related to the determination of the refugee status, grounds for the termination of the status and deportation, prohibition of penalisation in case of illegal entry, the principle of non-refoulement and family unity.¹⁸

In regards to the scope of guaranteed rights, Article 12 emphasizes that a refugee also enjoys "all rights stipulated in other relevant international treaties the Republic of Albania is party to". However, in the second Section of the same Article, the Law is more concrete, stipulating the right of a refugee to a special residence permit and a work permit, social assistance to the same extent as an Albanian national. It is unclear why the Law has not specified other refugee rights such as the right to accommodation, access to education and the freedom of religion.

The organs participating in the procedure for granting asylum are: Office for Refugees as the first instance organ and National Commission for Refugees as the second instance organ. They are both administrative organs which points to the fact that the court does not participate in the procedure. The established standards in the comparative law specify that the first instance and second instance organs must be independent from each other. The Law does not contain explicit provisions related to who nominates the National Commissioner as the Head of the Office, but the Section 7 of Article 18 stipulates that the National Commissioner for Refugees is guided by the guidelines provided by the respective Minister. The second

¹⁷ Explanation of draft of the Law on Asylum, the Ministry of Foreign Affairs of SaM, March 21, 2005

¹⁸ Law on Asylum of Albania, Articles 2, 3, 4, 5, 8, 9, 30, 16, 7, 6

instance organ is the National Commission whose members are nominated by the Ministries, Department of National Security, the Albanian Helsinki Committee and the Albanian Bar Association.

Article 27 foresees that the Office for Refugees shall take a decision within 30 days from the day of the hearing of the asylum seeker, and if the decision is not served within 51 days, the application is considered rejected. The appeal against the decision of the Office for Refugees shall be addressed to the National Commission for Refugees within 15 days from the date the decision is received by the asylum seeker. The National Commission for Refugees shall take its decision at the latest 45 days from the day the appeal was filed, which is then final.

The principle of “safe third country” and “manifestly unfounded claim” are parts of Article 28 of the Law. The accelerated procedure is also applied if: it is established that the statement of asylum seeker is false and when there is an intention to deceive relevant organs, if their claims do not correspond with the criteria for granting asylum, if the asylum seeker comes from the third country, the signatory of the Convention relating to the Status of Refugees and its Protocol, where there is not a well-founded fear of prosecution and if the refugee cannot be legally returned to the country where his/her asylum claim will be examined in accordance with international standards. The Office for Refugees is obliged to reach the decision on the procedure within 10 days, and the deadline for the appeal is 7 days upon the decision.

The Law on Movement and Stay of Aliens and Asylum of Bosnia and Herzegovina

This Law was adopted on July 18, 2003, followed by the Provision on Asylum of June 2004.

The Law fulfils the requirements of the Convention relating to the Status of Refugees of 1951 and its Protocol of 1967, related to the determination of the refugee status, grounds for the termination of the status and deportation, the principle of non-refoulement and family unity.¹⁹

Refugees will not be penalised for illegal entry and they are guaranteed the right to freedom of movement, accommodation, education, social protection, personal documents, information protection, and contact with the UNHCR.²⁰

Refugees are given the opportunity to follow the course of the procedure through an interpreter, and if possible, women will be provided women interpreters.²¹

Article 32 of the Provision is the example of the most comprehensive list of support to the rights of refugees: the right to primary health care, accommodation in the asylum centre, food according to the most contemporary standards, elementary education, legal assistance, social protection, clothing, footwear, hygienic items.

Asylum claim is submitted to the organisational unit of the Ministry of Security of BiH, to its Seat Office. The claim is examined by the organisational unit for asylum. The decision on the application is final with the possibility for administrative dispute.²²

Law on Asylum and Temporary Protection of the Republic of Macedonia

Law was adopted on July 16, 2003.

The Law fulfils the requirements of the Convention relating to the Status of Refugees of 1951 and its Protocol of 1967, related to the determination of the refugee status, grounds for the termination of the status and deportation, the prohibition of penalisation in case of illegal entry, the principle of non-refoulement and family unity.²³

¹⁹ Law on Movement and Stay of Aliens and Asylum of BiH, Articles 72, 83, 73, 90, 35, 60,38 ; Provision on Asylum in BiH, Articles 2, 3

²⁰ Ibid, Articles 75, 5, 35, 77, 80, 81, 82; provision on Asylum in BiH, Articles 118,12, 17

²¹ Provision on Asylum in BiH, Articles 9, 10

²² Law on Movement and Stay of Aliens and Asylum of BiH, Articles 76, 78

²³ Law on Asylum and Temporary Protection of Macedonia, Articles 4, 6, 7, 8, 17

The Law stipulates the concepts of “safe country of origin” and “safe third country”. Certain rights of the Convention relating to the Status of Refugee and its Protocol are incorporated, such as: accommodation, financial assistance, health care, pension and invalid insurance, but also the transfer of property, invested capital and profit.²⁴

The first instance organ is the Section for Asylum, and the second instance organ is the Competent Commission of the Government. The Section can take a status determination decision, ex-officio decision related to the person under the humanitarian protection or a decision rejecting the application for recognition of the right to asylum. The second instance decision is taken within two months from the day of submission of the appeal. Against the decision of the Competent Commission of the Government, an administrative dispute may be initiated.

The Macedonian Law stipulates the possibility of the accelerated procedure and its is implemented when the asylum application is manifestly unfounded. The reasons for the accelerated procedure are also related to the fact that the asylum seeker comes from “safe third country” or “safe country of origin”. The deadline for the appeal is three days. According to the Law the procedure must not exceed 15 days from the date the application is filed.²⁵

Law on Asylum and Refugees of the Republic of Bulgaria

This law was adopted on May 16, 2002.

There are no significant differences regarding the rights stipulated in other laws in the region.²⁶

The characteristic of this law is that the asylum is granted by the President of the Republic, and the president of the State Agency for Refugees will grant, refuse, withdraw and terminate the refugee status.²⁷ In the status determination procedure, the key role is given to the State Agency for Refugees²⁸. Temporary status is given by the Council of Ministers. A written request for granting asylum is submitted to the President of the Republic, a temporary status is decided upon by the Council of Ministers, and the president of the State Agency decides upon the refugee status. The Law also stipulates the possibility of relevant court protection, depending on the accelerated or general procedure.²⁹ The District Court and the Supreme Administrative Court are responsible respectively.

The Law stipulates the concepts of “safe third country”³⁰, “safe country of origin”³¹, “manifestly unfounded claim”³². The minors are exempted from the accelerated procedure upon the appeal.³³

Regarding the best practice examples, there is a possibility of recognition of foreign documents of education, academic degrees or qualification, as well as the programmes of assistance to integration in the Bulgarian society.³⁴ Article 53 also encompasses the orientation towards a coordinated action of assistance of public and civil society (nongovernmental organisations) for better integration in the Bulgarian society, including: language courses, vocational trainings, social, medial and psychological assistance, promotion of public awareness among the population on the refugee issues, as well as the development of legislature in that direction.

Law on Asylum of the Republic of Croatia

The law was adopted on June 18, 2003.

²⁴ Ibid, Articles 48, 49, 52, 53, 54 56 57

²⁵ Ibid, Articles 34, 35, 36, 37

²⁶ Law on Asylum and Refugees of Bulgaria, Articles 20-29

²⁷ Ibid, Articles 2, 48

²⁸ ibid, Article 53

²⁹ Ibid, Articles 58-92

³⁰ Ibid, additional provision 1 (5)

³¹ Ibid, additional provision 1 (4)

³² Ibid, Article 13

³³ Ibid, Article 71

³⁴ Ibid, Articles 53, 54

The Law also follows on the provisions of the Convention relating to the Status of Refugees and its Protocol of 1967, regarding the rights guaranteed to asylum seekers and those who have been granted status. It is about the right to reside, to basic living conditions, health care, elementary education, financial aid, access to courts and legal counselling, humanitarian assistance, freedom of religion and religious upbringing of children³⁵, as well as the right to work and family unity.³⁶

Although the UNHCR recommends that difference should not be made between the persons who have arrived in a mass influx and those who have sought protection individually, the Croatian law does exactly that. It is clear that persons under temporary protection have fewer rights than those who have not arrived in a mass influx.³⁷

The organs participating in the procedure of granting asylum are: The Ministry of the Interior at the first instance and the Commission of the Croatian Government at the second instance. The administrative dispute can be initiated against the Commission.

It is interesting that the asylum claim will be rejected if the person comes from safe third country. Their applications will not be considered and the relevant organ will not examine the concrete situation. This could be compared with the solution of the Macedonian Law, where the fact that the person comes from "safe third country" is the reason for initiating the procedure where the asylum seeker is at least given the opportunity to prove that the country is not safe for him/her.

This law also encompasses the concepts of «safe third country», «safe country of origin»³⁸, «manifestly unfounded claim»³⁹. Article 40 of the Law also stipulates the possibility of the Government restricting the movement of an asylum seeker for the reason of: establishing his/her identity, preventing the spread of infectious diseases, protection of public order. The movement is restricted for a period of up to 3 months, and in particularly justified circumstances it may be extended for another month.⁴⁰

Law on Asylum of the Republic of Slovenia

This Law was adopted on August 14, 1999.

The Law also follows the provisions of the Convention relating to the Status of Refugees and its Protocol. The guaranteed rights are same as in the Croatian Law.⁴¹ There are no special provisions related to the freedom of religion and the norms related to the massive refugee influx.

This Law addresses the issue of unaccompanied minors. They are immediately assigned a legal representative and cannot be deported to their country of origin or a third country willing unless adequate reception and basic living conditions are provided. During the examination of the asylum claim, filed by the unaccompanied minors with the assistance of the legal representative, the level of the mental maturity of an unaccompanied minor is assessed.⁴²

The provisions related to access to courts are satisfactory. Legal assistance is provided by lawyers who have passed the state legal exam and have adequate experience in asylum and refugee matters. These persons have the status of refugee councillors appointed by the Minister of Law. Upon the asylum seeker's request, the councillors inform asylum seekers of all the issues concerning the laws of asylum and asylum claims, provide assistance in their asylum claims, as well as general legal assistance and representation in the procedure for granting asylum.⁴³

The organs participating in the procedure are the Ministry of the Interior and the Administrative Court.

³⁵ Law on Asylum of the Republic of Croatia, Article 20

³⁶ Ibid, Article 24

³⁷ ibid, Articles 20, 60

³⁸ Ibid, Article 2

³⁹ Ibid, Article 43

⁴⁰ Ibid, Article 41

⁴¹ Law on Asylum of the republic of Slovenia, Articles 43, 47

⁴² Ibid, Articles 14, 28

⁴³ Ibid, Article 16

The Law makes distinction between two types of procedures: one being for aliens coming from safe third countries and the regular procedure. The first one is carried out according to the accelerated procedure. A petition is submitted within three days, and the Administrative Court reaches the decision within seven days. In the regular procedure, a petition is submitted to the Administrative Court within 15 days and it decides on the appeal within 30 days from the day of lodging the appeal.

The Slovenian Law also encompasses the concepts of «safe third country», «safe country of origin», as well as the accelerated procedure in case a petition was submitted by the person from the list of safe third countries.⁴⁴

III Implementation of laws and policies

In the absence of an asylum law and the accompanying institutions, the UNHCR in SaM has continued the refugee status determination procedure of the persons out of the former Yugoslavia. They are mainly persons caught while illegally entering or staying in the territory of the former Yugoslavia, but there are also persons with legal residence in SaM who have voluntarily approached the UNHCR. Furthermore, a number of asylum seekers have entered the procedure through the UNHCR reception office at the Belgrade Airport. The UNHCR does not have its reception centres at other border crossings. If they are granted refugee status by the UNHCR, these people will be relocated to the third countries – mainly the USA and Canada.

The citizens of Iraq are enjoying temporary protection in SaM, under the care of the UNHCR. Although they have entered the UNHCR procedure, the UNHCR does not examine the reliability of their claims for international protection as long as the security situation in Iraq remains the same. There were 19 Iraqi nationals in SaM who enjoyed this kind of temporary protection.⁴⁵

In 2005, the total of 55 foreign nationals entered the refugee status determination procedure. The refugee status was granted to 11 persons (three families) – 10 Turk nationals and one Uzbekistan national. Among the asylum seekers, the majority are from Bangladesh (8), Georgia (7) and India (5).

The UNHCR does not have data on the cases of failed asylum seekers who were returned to places where their lives or freedom could be jeopardised (refoulement), but with the present unregulated conditions related to asylum protection, there is a great possibility for refoulement. According to the unofficial estimations, 27,000 foreign nationals were not allowed to enter SaM in 2005, and there were likely asylum seekers among them. Furthermore, the UNHCR prevented the repatriation of an Iraqi national who should have been deported since his travel document had expired in SaM.

As already mentioned, SaM passed the Law on Asylum in March 2005. It is a state union level law that only generally guarantees the right to seek and enjoy asylum. The Republics have been left to adopt substantive laws to implement the general right in accordance with the international standards. In Montenegro, the draft law has been prepared for adoption at the Assembly, while in Serbia it is still in its draft form. The reason for delay in Serbia lays above all in the lack of institutional organisation characterised by the animosity among certain Ministries.

Aiming at strengthening capacities for future asylum protection, the UNHCR carries out training for the police members in Serbia and organises study visits in order to familiarise the authority representatives with the asylum systems in neighbouring countries. After the Law on Asylum is adopted, the UNHCR is planning training for jurisdictional organs and the civil sector.

⁴⁴ Ibid, Article 2

⁴⁵ There were 18 asylum seekers in Kosovo in 2005 under refugee status determination procedure of UNHCR.

I) List of countries from which the asylum seekers arrived:

Country of origin	January- June 2005	July –December 2005	TOTAL
Albania	1	1	2
Bulgaria	1	2	3
Bangladesh	8	0	8
Georgia	5	2	7
India	5	0	5
Iran	0	2	2
Iraq	0	5	5
Moldavia	0	3	3
Mongolia	0	4	4
Morocco	0	3	3
Netherland	1	0	1
Nigeria	0	1	1
Palestine	0	1	1
Russia	0	4	4
Sri Lanka	0	1	1
Tunis	0	1	1
Turkey	1	0	1
Uzbekistan	1	0	1
TOTAL			55

II) Number of persons who applied for asylum

Male	48
Female	7
Unaccompanied minors	1
Minors included in family	5
TOTAL persons	55
TOTAL (cases)	47

III) Recognition

Male	7	
Female	4	
Unaccompanied minors	0	
Minors included in family	6	
TOTAL persons	11	10 individuals applied in 2004
TOTAL (cases)	3	2 cases submitted appl. in 2004

IV) Rejections (1st instance)

Male	19
Female	5

Unaccompanied minors	0
Minors included in family	2
TOTAL persons	24
TOTAL (cases)	20

For those who have been rejected the asylum by the UNHCR, IOM organises return to the country of origin. In 2005, there was only one case of voluntary return of an asylum seeker. An Albanian national gave up the asylum claim and through IOM voluntarily returned to Albania.⁴⁶

Apart from the UNHCR, the organisations that assist asylum seekers are: the Red Cross of SaM, whose assistance mainly consists of clothing and basic food items, and Amity, who provides psychosocial support. The vast majority of support is provided by the UNHCR.

The UNHCR is not familiar with any cases where an asylum seeker has tried to resolve a matter through the courts in SaM. Considering that asylum seekers have almost no rights apart from the right to temporary stay, their status in the country is suspended while in the UNHCR procedure, and they generally avoid contact with the authorities.

The UNHCR organises free legal assistance for any asylum seekers that find themselves at court due to minor offence, or rarely a criminal deed.

Access to labour markets and social services

The asylum seekers and refugees who have been granted status by the UNHCR do not have access to any social and economic rights as long as they are in the territory of SaM. Many of them have seasonal jobs in agriculture and construction business and are completely unprotected from exploitation and fraud.

Documents, choice of residence and freedom of movement

As in previous years, asylum seekers in SaM do not regulate their stay with the Police, but the Police tolerate their stay as long as the UNHCR takes care of them. The UNHCR issues two types of documents – for people who have entered the procedure for the refugee status and for those who have been granted the refugee status. In the process of preparing the Law on Personal ID, the Serbian authorities are considering the possibility of issuing ID for foreign citizens.

In Serbia people who have entered the UNHCR determination procedure can freely move throughout the country, with the previous authorisation from the police.

The UNHCR provided accommodation to asylum seekers at the motel “Hiljadu ruža” (10 kilometres southeast from Belgrade) until December 2005. After that, the UNHCR has been accommodating asylum seekers in the workers’ barracks in a part of New Belgrade called “Savski nasip”, based on the agreement with a construction company. The asylum seekers there have regular meals, but the living conditions are generally worse than at the motel “Hiljadu ruža”. If they have money, asylum seekers can pay for private accommodation in a room or a flat.

The UNHCR offers 100 US dollars a month as assistance to the persons who have been granted refugee status, in order for them to find their own private accommodation while they are waiting relocation to third countries. There are no restrictions regarding the choice of accommodation for refugees, but the UNHCR advises them to select Belgrade or its surroundings due to the vicinity of the UNHCR office.

⁴⁶ Group 484, Human Rights of Refugees, Internally Displaced Persons, Returnees and Asylum Seekers in Serbia and Montenegro, Report for 2005, May 2006, working version

There are cases where people leave the UNHCR accommodation and illegally continue towards Western Europe even after the UNHCR has indicated that their asylum claims will be positively resolved and that they will be transferred to a third country.

Right to education and health protection

Children of asylum-seekers have only the right to primary education and they are enrolled in one elementary school in Belgrade.

Expenses which occur for the medical treatment of asylum seekers at local health institutions are refunded by UNHCR.

Recommendations:

- The authorities of Serbia and Montenegro should urgently adopt their laws possible in accordance with the international and European standards. The possibility of returning asylum seekers to the territory where they would be grounds for persecution (refoulement) should be eliminated;
- The accompanying institutions should be established, reception centres for asylum seekers, state bodies and expert services should be formed which should undertake the role of UNHCR in the protection of asylum seekers;
- Special attention should be paid to the role of nongovernmental organisations in providing legal and psychological support to asylum seekers;
- It is necessary to intensify professional training for Government authorities, nongovernmental sector and the media in the field of international protection of refugees.