



Serbian  
Refugee  
Council

# Newsletter

## Focus of this issue:

### ***Serbia's Draft Amendment to the Law on Refugees***

Issue nr. 1: June – August 2006

## - Content -

### Events

- ❖ World Refugee Day
- ❖ Refugee Workshop in Zlatibor

### In Focus

- ❖ Serbia's Draft Amendment to the Law on Refugees - SRC position
- ❖ A Possible Approach to Resolving Refugee Issue in Serbia
- ❖ Comment by *Praxis* on the proposed Law on Changes and Amendments to the Law on Refugees

### Related News

- ❖ Laws on Asylum and Refugees in South-Eastern Europe – A Comparative Overview

### Coming up

- ❖ ECRE seminar in Belgrade
- ❖ Events by SRC members

*Dear readers,*

*Before you is the first issue of the Serbian Refugee Council Newsletter. Its purpose is to contribute to an open dialogue about important refugee and migration related issues, as well as provide information on the activities of the SRC and its members.*

*It was difficult to choose one of many burning topics in this period of transition and gradual approach of Serbia to the European Union.*

*However, we believe that systemic solutions are of key importance in ensuring a reliable legal framework for resolving complex problems related to finding durable, sustainable solutions for people affected by forced migration.*

*It is for this reason that we have dedicated the first issue of the Newsletter to the highly important question of changes and amendments to the law on refugees in Serbia, which is prompting an exchange of divergent opinions among stakeholders in this field.*

*The Serbian Refugee Council believes that legislative solutions in the field of protection of and care for refugees should be dealt with comprehensively and in keeping with international standards.*

*The authors have tried to provide a critical insight into the existing proposals as well as offer possible other legal solutions. Hence we hope that their texts would encourage a constructive debate and facilitate the process of identifying solutions that would be of benefit for all stakeholders.*

*Your opinion is therefore highly welcome; we would be grateful for any suggestions and comments that could help improve the Newsletter, making it indeed useful and interesting for all those active in this field.*

*Anika Krstić  
SRC Secretary General*



## - Events -

### World Refugee Day Events Organized by SRC Members

In several cities of Serbia, SRC members organized numerous and versatile events on 20 June to mark the World Refugee Day; the global topic for this year was HOPE. The activities, of which many were financially supported by UNHCR, included both informational events as well as cultural gatherings. Two press conferences were held in Belgrade. While Group 484 presented its newly published 2005 report on *Human Rights of Refugees, IDPs, Returnees, Asylum Seekers and Victims of Trafficking*, SDF reported its findings about the improvement and remaining obstacles with regard to return to Croatia. In Novi Sad, a round table on the problems and perspectives of integration was hosted by NSHC.



Photo by Media Centar – SDF/SRC press conference

Cultural and entertaining performances were arranged by Hi Neighbour, Protecta, NSHC and IAN. In cooperation with UNHCR, Hi Neighbour held a reception ceremony in Belgrade. The event focused on social and cultural integration and relied on the active participation of refugees and IDPs. Besides an exposition of handicrafts, a photo presentation and the distribution of promotional material, women involved in one of Hi Neighbour's programs prepared traditional food from their regions of origin. In Niš, Protecta organized a concert, a film and reportage on refugees and IDPs in order to direct public attention towards the major contribution of refugees and IDPs to cultural diversity in society.



Photo by Protecta

In several parts of Vojvodina, NSHC raised awareness about refugee and IDP issues through a photo exhibition, poetry reading by poets being refugees themselves, celebrations with artistic interludes attended by local government representatives as well as representatives of refugee and IDP associations, a street action and a radio emission. Inspired by the ongoing World Cup and the spirit of sports creating cultural connections, IAN organized a soccer tournament between members of the refugee and IDP community and NGO volunteers.



Photo by NSHC

As diverse as the events were, all had the purpose to sensitize the public to the important role refugees and IDPs play in society as well as to assure the refugee community that they are not alone in overcoming their hardship, hence that there is HOPE.



## Refugee Workshop in Zlatibor, Serbia, 5 August 2006

Upon request of the Standing Committee on Human Rights and Peace (SCORP) of the International Federation of Medical Students' Associations (IFMSA), the SRC held a Refugee Workshop for medical students engaged in SCORP, at the General Assembly of the IFMSA. The half-day workshop covered various topics and comprised both theoretical introductions and active participation. Vladimir Petronijević from Group 484 presented the legal framework. After acquainting the students with the UN Refugee Convention and IDP Guidelines, practical case studies on refugee status determination were met with lively interest. Health and psychological problems of refugees and IDPs were illustrated by Ksenija Mijuk from IAN, while Anika Krstić from the SRC Secretariat provided a general overview of guidelines in emergency interventions, humanitarian standards (notably SPHERE) as well as numbers and percentages of refugees and IDPs. The workshop ended with a role

play. The larger group of participants represented refugees fleeing a conflict, whereas the smaller group had to take care of the refugees as aid workers.



Photo by SRC

In the following debriefing session everyone shared his or her experiences and impressions. There was a highly positive feedback from participants with regard to the themes covered, the structure of the workshop and the expertise of the facilitators.

## - In Focus -

### SRC position on Serbia's Draft Amendment to the Law on Refugees

With regard to the Draft Bill on Changes and Amendments to the Law on Refugees, recently adopted by the Serbian Government and soon to be discussed in Parliament, the Serbian Refugee Council wishes to point out significant shortcomings of this bill.

Firstly, the article 1 of the draft bill fails to adopt the definition from the article 1 of the 1951 Convention on the Status of Refugees. The draft is also in contravention with article 2 of the Law on Asylum of Serbia and Montenegro, which provides the definition of a person who has been granted refugee status, as well as broadens it in keeping with article 38, para. 2 of the Constitutional Charter.

Defining the concept of a refugee by narrowing it down to a specific territory of origin or a period of exile, as done in the draft bill, is in breach of the international refugee law, primarily of the Convention on the Status of Refugees, as well as of the provisions set forth by the Constitutional Charter as the *lex superior* in domestic law.

We believe there could not and must not be a dual approach in defining the concept of a refugee. A law intended to regulate the protection of refugees must encompass all people to whom the Convention on the Status of Refugees applies, regardless of their place of origin.

This draft bill does not in fact represent a proper law on refugees, since it separates one particular category within the overall refugee population; it also deals more with integration and property relations, as well as includes refugees who have in the meantime obtained citizenship and become citizens of Serbia and Montenegro and the Republic of Serbia.

Among many equally problematic provisions of the draft bill is the article 19, according to which all real property that has been built or will be built in the future for the purposes of housing the refugees, shall become state property. This property can be used by refugees, rented by refugees for a fixed term or bought by refugees from the state; the



category of an indefinite lease has not been envisaged.

In case this draft bill is adopted and the new law implemented, it would not be for the benefit of either the refugees or the local communities into which they are integrating.

Therefore the Serbian Refugee Council proposes the following:

- Revoke the existing Law on Refugees; instead of passing the draft bill on its changes and amendments, adopt a single comprehensive Law on Asylum of the Republic of Serbia, which will define the status of refugees and standards of

protection, regardless of their country of origin

- Adopt a specific law on integration, as a foundation for housing and social provisions for refugees and internally displaced who have opted for this form of durable solution
- Also involve representatives of the civil society in the process of developing these laws, as well as in the implementation of concrete protection measures.

*(This statement was issued in mid- May 2006)*

### A Possible Approach to Resolving the Refugee Issue in Serbia

The number of refugees in Serbia has been varying substantially over time, primarily depending on the intensity of armed conflicts in the former Yugoslavia and the gradual resolving of the crisis, coupled with the change of status of refugees through repatriation, integration or resettlement to a third country.

According to the data from the Serbian Commissariat for Refugees, in 1997 there were 705.667 registered refugees, of which 10% were residing in 700 collective centres. The latest refugee census, conducted between November 2004 and January 2005, has registered 106 931 persons with refugee status in the Republic of Serbia.

Gradual closure of collective centres has drastically reduced their number, from 700 centres in 1996 to 388 collective centres in 2002, housing a total of 26.863 persons. Since the beginning of 2006, there are 112 remaining collective centres accommodating 9.546 individuals, of which 95 centres with 8.616 people in Serbia proper and 17 centres with 930 people in the province of Kosovo and Metohija.

The key reason for this substantial decrease in the number of refugees and collective centres is the fact that the majority of displaced have opted for a long term solution of their status, either through integration/citizenship or repatriation. Besides, the closure of collective centres is a strategic choice of the state and responsible institutions.

Although the latest refugee census was conducted meticulously, the real number of people with formal refugee status is in fact much lower. Namely, registered refugees often do have Serbian citizenship, but do not initiate

the formal change of status (i.e. they have an official resolution on acceptance into citizenship, but do not ask for the citizenship certificate), possibly expecting certain status-related benefits from the state or humanitarian agencies during integration or in access to health care and social welfare.

These estimates indicate that the real refugee caseload in Serbia does not exceed 30.000 people. This group includes persons unable to earn an income or take care of themselves and their interests.

Bearing in mind the real number of refugees who have not yet applied for Serbian citizenship, as well as the fact that there are many citizens with a refugee past, it is necessary to change the current legislation in accordance with international standards, yet adapted to the specific situation of displacement in Serbia.

Before the breaking out of hostilities in former Yugoslavia, Serbia had a law regulating asylum and rights of refugees. However, at the beginning of the refugee crisis, in 1992, the authorities decided to adopt a special law (*lex specialis*) on refugees, giving special rights to refugees from the republics of former Yugoslavia.

In the context of the future accession to the EU, where specific requirements exist with regard to legislation in the field of migration, the proposed amendments to the current Law on Refugees in Serbia cannot bring about positive change: it is our opinion that a law regulating the status and protection of refugees cannot by its nature contain provisions on, e.g. housing of refugees outside collective centres, property issues regarding



real property built by donations, or the procedure by state bodies in these cases.

Although there is a consensus that systemic legislative changes regarding refugee issues are necessary, there is no agreement on the vision and strategy on how this should be done.

There are undoubtedly various possibilities for regulating the issues of displacement in Serbia. One of such possibilities would be to revoke the existing Law on Refugees instead of amending it with new provisions; if amended in the proposed way, this law would be related to refugees only by its title, rather than contents.

With the view of finding an effective and durable solution to the refugee issue, two laws should be put in place: a Law on Asylum - to regulate the status and protection of refugees and a Law on Integration - to ensure special rights for refugees from former Yugoslavia who have decided to remain in Serbia, especially as concerns housing, social welfare and health care.

A consequence of such legislative framework would undoubtedly be the redistribution of responsibilities among existing state bodies and institutions: the issue of status would be regulated according to the Law on Asylum and

through a dedicated department of the Ministry of Interior, while integration and social welfare would be handled via the Ministry of Labour, Employment and Social Policy.

In addition, in line with the current practice elsewhere in the world, specialised NGOs could take an active role in dealing with refugee problems, since they already have the expertise, human resources and abundant experience. This role would focus on organising various alternative services for refugees, or taking specific responsibilities from the state institutions currently dealing with refugees; for this the NGOs could be funded by the state itself. Such cooperation between the government and NGO sectors would not only ensure a better and more varied assistance for refugees, but would also substantially contribute to the development of local communities.

At any rate, the legislation, policy and practice from the countries of former Yugoslavia, as well as from other Balkan states, could serve as good examples for a comprehensive solution to the issues of displacement and asylum in Serbia.

(Siniša Soro - IAN)

### Comment by *Praxis* on the proposed Law on Changes and Amendments to the Law on Refugees

*"What is born crooked, time cannot mend"*  
Valtazar Bogišić

The Law on Refugees (hereinafter: the Law), as well as the proposed Law on Changes and Amendments to the Law (hereinafter: the Amendment) contain a number of substantial shortcomings, which render them inadequate for the achievement of the purpose that laws of such type and title should have, both from the aspect of domestic context and international legal standards.

In breach of the 1951 Convention on the Status of Refugees and its 1967 Protocol, both binding for Serbia, **Article 1** of the Amendment (to the same article of the Law) persists in the blatantly incomplete definition of a refugee, with additional inadequate modifications. The target group is still defined in a slightly discriminatory manner ("Serbs and people of other nationalities...") in the sense of a specific category of the overall refugee caseload (in the internationally recognised sense of the term), which has originated in a

very precise time and area ("from 1991 to 1998... from the republics of former Yugoslavia"). This type of temporal and geographical restrictions in determining the status of refugees has been annulled with the adoption of the 1967 Protocol and is therefore unacceptable as an element of the definition of a refugee in domestic legislation of countries signatories of the Protocol.

There is an undisputable intention of the legislator, despite the unfortunate choice of title of the Law on Refugees, to regulate the issues of the so-called "post-Dayton" refugees as quickly and efficiently as possible by adopting this *lex specialis*. Nevertheless, the fact cannot be ignored that both the Law and the proposed Amendment are, as domestic legislation, in contravention to the ratified international agreements and Serbia's obligation to implement them. In case of collision, the applicable international law supersedes the domestic one; hence both the Law and the Amendment are in their core



parts - the definition of the target group - at least theoretically subject to annulment. The concept of a refugee, in the present circumstances, must be uniquely defined in keeping with accepted international standards. In its key sections, the Amendment shows a substantially more restrictive approach to the rights of refugees on one hand and the obligations/responsibilities of those mandated for protection of refugees on the other. For example, **Article 6** of the Amendment (on Art. 8 of the Law) establishes a discretionary approach regarding provision of temporary accommodation and food aid to refugees in collective centres. By introducing a loose formulation "can be provided" into the important segment of the state bodies' responsibilities for protection of refugees, it opens a path to an official and legalised neglect of substantial numbers of vulnerable people. Moreover, **Article 14** of the Amendment (on Art.16 of the Law) introduces a more restrictive approach to the provision of material and other assistance for refugees: it prescribes reduction or discontinuation of aid in cases when at least one of the stipulated conditions related to improved conditions for a refugee and/or a members of his/her family has been met. While the proposed solution does have a largely legitimate purpose, the problem lies in the *extremely wide definition of the refugee's "family member" category*. Bearing in mind the essential importance of aid, formal completion of stipulated conditions for its discontinuation due to a changed situation of a member of (extended) family, could in practice lead to manifold harmful consequences. Although such a restrictive approach may be well founded, it is necessary that the circle of people directly affecting the eligibility for aid be narrowed down to the members of the refugee's immediate family.

Moreover, the Amendment does not even attempt to change the Article 18 of the Law, regulating the *loss of rights stipulated by the Law* (refugee status), despite the fact that it is in obvious contravention to the explicit provisions of the 1951 Convention and that the practice has shown serious problems in its implementation. This, among other things, includes the practice (in first and second instance) of administrative cancellation of refugee status during 2005, based solely on unfounded arguments that a person has not reported the changes in his/her refugee status that are of significance for realisation of rights,

or on factually groundless judgment that a person has returned (even without intention to permanently settle) to his/her country of former residence. Given the shortcomings of this and other immediately related articles, it is necessary to establish unequivocal criteria for the discontinuation and cancellation of refugee status in keeping with the Convention, which would disallow the currently limitless possibilities for arbitrary decisions.

An example of divergence with the purpose of a "real" law on refugees is contained in the rationale of **Article 15** of the Amendment (on the Art. 19 of the Law), which intends to regulate the housing needs of "refugee(s) and members of their family household who *have obtained citizenship* of the Republic of Serbia, for the purpose of their integration" (italics by author). If we take into consideration that, according to the existing principles of refugee law, the refugee status ends, *inter alia*, with adoption of a new citizenship, the question remains if the grounds for such dual status (refugees with citizenship) and preferential treatment of a specific group of Serbian citizens is in fact tenable. The establishing of a *prima facie* general assumption about the need for positive discrimination of an entire category of Serbian citizens and/or members of their families against other vulnerable citizens carries a certain risk in practice. The same goal could be achieved by adopting a specific law, more appropriate in name and content. Such a law could provide a far more equitable solution (for refugees) to the issues of ownership rights over real property procured with the view of meeting the housing needs of refugees, compared to the current, under-balanced **Article 16** of the Amendment on the categorical primacy of *state ownership* over such property, and the modalities of further use/transfer of these rights.

Having in mind the ultimate likely effect of the Amendment in terms of overcoming the purpose and maintaining the shortcomings of the present Law, the idea of "changes and amendments" of this obsolete Law on Refugees should be abandoned as a waste of precious time and resources. Adopting new laws in relevant fields, above all comprehensive laws on asylum and social housing, would be the only rational approach to the overall issue and the precondition for its successful solution.

(MA Jelena Madžarević, Legal Councillor, *Praxis*)



## - Related News -

### Laws on Asylum and Refugees in South-Eastern Europe – A Comparative Overview

#### Are South-East European asylum legislations in line with international and European standards?

At a time when discussions in Serbia about the amendments to the Law on Refugees are at the heart of the debate, it is useful to have a look at the experiences from neighboring countries. As the issue of asylum is a regional issue, positive experiences and practices from the surrounding countries can contribute to a better understanding of asylum in Serbia. This article will hence cover the region of South-Eastern Europe, primarily looking at states constituted after the break-up of former Yugoslavia: Slovenia, Croatia, Bosnia and Herzegovina and the Former Yugoslav Republic of Macedonia. It will also overview the asylum policies of some of Serbia's immediate neighbors such as Romania, Bulgaria and Albania, as well as include Greece in the analysis. The final part will focus on the asylum legislation of the newly independent State of Montenegro.

According to the UNHCR statistical report, Greece and Slovenia had most of the asylum applications lodged in 2005, followed by Bulgaria and Romania, leaving Serbia towards the bottom of the list. It is important to note that both Slovenia and Greece are EU Member States, while Bulgaria and Romania have a status of acceding country.

<i>Asylum applications received in country of asylum in 2005</i>	
Greece	9050
Slovenia	1834
Bulgaria	822
Romania	594
Croatia	186
Bosnia and Herzegovina	150
Serbia and Montenegro	85
Former Yugoslav Republic of Macedonia	73
Albania	25

*Statistical data based on UNHCR 2005 Global Refugee Trends*

Greece, Bulgaria and Romania have a large number of refugees and asylum seekers from distant countries such as Iraq, Afghanistan,

Pakistan and Bangladesh. Unlike them, most ex-Yugoslav states still have the predominant caseload of refugees from the region of former Yugoslavia.

#### The Alignment of National Asylum Regimes with International Standards

All these countries adhered to the 1951 Geneva Convention relating to the Status of Refugees (hereinafter 1951 Convention) and the 1967 Protocol relating to the Status of Refugees (hereinafter 1967 Protocol)<sup>1</sup>. Greece became a State Party to the 1951 Convention in 1960, as well as the then Socialist Federative Republic of Yugoslavia. The states that emerged after the fall of communism and the disintegration of former Yugoslavia in the nineties, adhered to the 1951 Convention right away.

National legislations on asylum in line with the 1951 Convention and the 1967 Protocol, conversely, have been adopted at a different speed. After the Greek Asylum Law came into force in 1992<sup>2</sup>, Albania's Law on Asylum in keeping with the 1951 Convention, entered into force in 1998<sup>3</sup>. Slovenia was next in 1999<sup>4</sup>, followed by Bulgaria in 2002<sup>5</sup>, the Former Yugoslav Republic of Macedonia<sup>6</sup> and Bosnia and Herzegovina<sup>7</sup> in 2003, and Croatia<sup>8</sup> and Romania in 2004. In the case of Romania, it had passed its first Law on Refugees in 1996: its discrepancies with the 1951 Convention, particularly concerning the definition of a refugee, were gradually remedied by Government Ordinances until they were aligned with the 1951 Convention<sup>9</sup>.

Therefore, all stated laws on asylum refer to the 1951 Convention and the 1967 Protocol.

<sup>1</sup> States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, <http://www.unhcr.org>

<sup>2</sup> Alien's Act 1975/1991

<sup>3</sup> Law on Asylum in the Republic of Albania

<sup>4</sup> Law on Asylum, no. 61/1999

<sup>5</sup> Asylum and Refugee Act, no. 54/ 31 May 2002

<sup>6</sup> Law on Asylum and Temporary Protection, no. 49/ 25 July 2003

<sup>7</sup> Law on Movement and Stay of Aliens and Asylum, no. 79/03

<sup>8</sup> Law on Asylum, 12 June 2003

<sup>9</sup> <http://www.un.ro/unhcr.html>



Equally, they comprise the constituent elements of the definition of a refugee as stipulated in article 1, paragraph A(2) of the 1951 Convention. That is primarily a well-founded fear of persecution and secondly, the fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. In the third place, a refugee must be outside of the country of his/her nationality. Finally, a refugee is unable or, owing to his/her fear, unwilling to return to his/her country.

As regards the obligation of non-refoulement, which provides for the prohibition of forced return of persons to a country where they fear persecution, some countries such as Slovenia, the Former Yugoslav Republic of Macedonia, Bosnia and Herzegovina and Albania declare it without exceptions mentioned in article 33, paragraph 2 of the 1951 Convention. This is in line with article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter 1950 European Human Rights Convention). It states that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". In this sense, forced return to a country where a person may be subject to torture, inhuman or degrading treatment or punishment is allowed under no circumstances whatsoever.

The scope of protection granted by each state differs. Through their present national legislations, most of them (Greece, Slovenia, the Former Yugoslav Republic of Macedonia, Bulgaria and Romania) provide refugee protection, as well as temporary and subsidiary protection. The laws on asylum of Croatia, Bosnia and Herzegovina and Albania all grant temporary protection but do not include subsidiary protection, which is the offering of protection for reasons other than those stated in the Convention. Albania's legislation comprises, if not subsidiary protection, temporary protection on humanitarian grounds.

#### **Amendments to the Laws on Asylum and Incorporation of EU Legislations into National Law**

The original asylum laws of Albania, Bosnia and Herzegovina, Croatia and the Former Yugoslav Republic of Macedonia have not been amended since they came into force. Conversely, the asylum laws in Greece, Slovenia, Romania and Bulgaria have been

subject to various amendments that largely reflect the general evolution of asylum systems in Europe.

**Greece** has amended its 1991 Law on Asylum in 1996 by the Law 2452/1996. The articles 1 and 2, besides determining the requirements and procedure for assisting recognized refugees as well as asylum applicants, also comprise provisions regarding temporary and humanitarian protection<sup>10</sup>. In addition to a Presidential Decree in 1999<sup>11</sup>, which is implementing the Law on Asylum, the Dublin II Regulation is directly applicable. However, none of the EU Directives (on temporary protection, reception, family reunification, qualification and minimum standards on procedures in Member States for granting and withdrawing refugee status) have been implemented into national law so far<sup>12</sup>.

In **Slovenia**, the Law on Asylum was amended several times. The latest amendment in February 2006 aimed at aligning national legislation with the Dublin II Regulation, the Qualification and the Reception Directive. Boštjan Zalar, a Slovenian High Court Judge, underlines that all major changes negatively affect the procedural rights or entitlements of asylum seekers<sup>13</sup>. The amendments contain a sort of pre-asylum procedure at the border in the framework of which the police already issues decisions on asylum applications. This provision could thus lead to refoulement at the border. Furthermore, the standards of socio-economic entitlements of asylum applicants and refugees are lowered such as the right to work (asylum seekers cannot look for work immediately as they used to) or the right to financial aid (no pocket money is distributed to asylum seekers any more)<sup>14</sup>. UNHCR aired its disappointment over Slovenia viewing the minimum standards of the Qualification

<sup>10</sup> Mid-term Evaluation of the European Refugee Fund, Country Report – Greece, December 2003, pp. 5-6

<sup>11</sup> Presidential Decree No. 61/1999, Refugee Status Recognition Procedure, Revocation of the Recognition and Deportation of an Alien, Entry Permission for the Members of his Family and Mode of Cooperation with the United Nations High Commissioner for Refugees, <http://www.unhcr.org/cgi-bin/texis/vtx/rsd>

<sup>12</sup> Greek Council for Refugees, July 2006 (by facsimile)

<sup>13</sup> ZALAR Boštjan, The Experiences and Challenges for Adjudication on Refugee Law in Slovenia, *International Journal of Refugee Law* 2006, Vol. 18, No. 1, pp. 118-181, p. 132

<sup>14</sup> Public Relations and Media Office of the Republic of Slovenia, *Government Wants to Prevent Abuse of Asylum Procedures*, 24 November 2005



Directive as maximum standards and hence downgrading the existing Law on Asylum<sup>15</sup>.

When **Bulgaria** amended its Asylum Law in April 2005<sup>16</sup>, UNHCR approved of the changes applied in general but criticized a few articles that still fall short of European and international standards. This concerns particularly the definition of manifestly unfounded asylum applications as well as the reasons for cessation and rejection of asylum applications<sup>17</sup>. In the latest amendment that entered into force in July 2006<sup>18</sup>, these articles remained unchanged. In 2005, Bulgaria maintained its decrease on annual asylum applications, dropping from over 1000 to around 800. In the 2004 ECRE Country Report<sup>19</sup> this trend is accounted to the tougher border control measures, which have been introduced in the framework of further EU alignment. The downgrading of standards concerning refugee protection in order to meet the EU *acquis* is deplored.

**Romania's** latest amendment on the Law on Asylum<sup>20</sup> comes into force in mid-August 2006. Its main purpose is the transposition of the EU Directives on temporary protection, reception, family reunification and qualification. Henceforth, family reunification is also offered to beneficiaries of subsidiary and temporary protection<sup>21</sup>. While increasing the range of protection in this regard, the Law on Asylum explicitly stipulates the exclusion from the principle of non-refoulement for reasons of involvement in terrorism (article 6, para 1).

#### **Tendencies of the National Asylum Legislations**

All the states have a law on asylum in line with the 1951 Convention and the 1967 Protocol. Thus of the states in consideration, all eight of them do have an asylum law with a definition of a refugee according to the 1951 Convention and the 1967 Protocol. The principle of non-

refoulement is anchored in every law on asylum, yet some countries regard it as a peremptory norm, which cannot be derogated from under any circumstances, whereas some countries do include the exceptions stated in the 1951 Convention. Every state offers refugee protection in the sense of the 1951 Convention as well as temporary protection. The national legislations of only three states do not contain subsidiary protection.

Most of the states that have amended their laws on asylum have also incorporated the majority of EU Directives into national legislation, albeit to a double-edged effect. On the one hand, the EU guidelines on asylum have encouraged countries such as Romania to bring their national asylum laws in line with international and European standards. On the other hand, EU minimum standards have been interpreted rather as maximum standards and national legislations such as the Slovenian and partly the Bulgarian one have been downgraded and have therefore lowered the quality of protection offered in the given state.

#### **Montenegro's Law on Asylum**

After Montenegro held a referendum on independence in May 2006, formal independence was proclaimed on 3 June 2006. On 10 July 2006, the Montenegrin Parliament adopted a comprehensive Law on Asylum. Concerning the definition of refugees, it does not only refer to the 1951 Convention and its 1967 Protocol as the other national legislations but also specifically to the 1950 European Human Rights Convention. Hence, the principle of non-refoulement is stated with exceptions, however, it is added that in cases of risk of torture, inhuman or degrading treatment or punishment, the prohibition of refoulement is absolute and non-derogable (article 6). Various international and European Conventions, Directives, Regulations and Recommendations were taken into account at the time of drafting. Thus, in line with the Qualification and Temporary Protection Directive, subsidiary and temporary protection are granted in the following cases: if return would imply a risk of torture, inhuman or degrading treatment and punishment or if one's life, security or freedom would be endangered by indiscriminate violence, foreign aggression, internal conflict, mass violations of human rights or other circumstances posing a threat to one's life, security and freedom. The Montenegrin Law on Asylum offers therefore a wide range of

<sup>15</sup> UNHCR News, *UNHCR disappointed with new Slovenian asylum law*, 10 February 2006

<sup>16</sup> Asylum and Refugees Act, amended and supplemented SG No. 31/8.04.2005

<sup>17</sup> UNHCR Background Note on the Protection of Asylum Seekers and Refugees in Bulgaria, February 2006

<sup>18</sup> Asylum and Refugees Act, amended SG No. 30/11.04.2006

<sup>19</sup> European Council on Refugees and Exiles - Country Report 2004 - Bulgaria

<sup>20</sup> Law no. 122/2006 on Asylum in Romania

<sup>21</sup> Romanian National News Agency ROMPRES, *Romania has a new, clear and fair asylum law that complies with European standards*, 14 June 2006



protection to refugees and asylum seekers, which makes it one of the most progressive laws on asylum in the region.

Montenegro's independence confronted the state with around 16.000 internally displaced persons from Kosovo who overnight became refugees. According to the Coordinator of the Montenegrin Commissariat for refugees and displaced persons, Ivanka Kojić, of the three solutions offered to refugees and asylum seekers, namely return, resettlement in a third country or integration in the Montenegrin State, integration will be the most likely one<sup>22</sup>.

<sup>22</sup> Danas, *Povratak, odlazak ili integracija*, 24 July 2006

### Conclusion

All mentioned countries have asylum legislations in line with the 1951 Convention and the 1967 Protocol. Besides refugee protection, most of them also include temporary and subsidiary protection, the Montenegrin law being particularly advanced in that respect. Serbia could most certainly benefit from these good practices when harmonizing its own comprehensive asylum legislation with international and European standards.

(Christina Alfiev, SRC)

## - Coming Up -

### ECRE Seminar on Asylum Law in Belgrade in Early September 2006

From 7 to 10 September 2006, ECRE organizes a European Legal Network on Asylum (ELENA) course in Belgrade.

For further information: [www.ecre.org](http://www.ecre.org)

### Events organized by SRC members up to November 2006

#### SDF:

- Round table on IDPs in September
- Round tables on repatriation and asylum in October

- Press conference on repatriation to Croatia in October
- Visit of municipality representatives from Croatia in October

Further information: Drago Kovačević  
([dragok@sdf.org.yu](mailto:dragok@sdf.org.yu))

#### Protecta:

- Round table on asylum in September
- Round table on repatriation in September

Further information: Miloš Stojadinović  
([milos@protecta.org.yu](mailto:milos@protecta.org.yu))

The *Serbian Refugee Council* is an alliance of six local refugee and IDP assisting NGOs established with the view of enhancing their role and influence in the process of finding durable and sustainable solutions for refugees and internally displaced persons in Serbia and the Western Balkans, through joint advocacy and lobbying on decision-making and public policy level.

SRC is a non-governmental, non-profit organisation with a vision to create a fairer world for refugees, displaced persons and other forced migrants, as well as to improve tolerance, equality and prosperity in the society.



Group 484



Hi Neighbour



International  
Aid Network  
IAN



Novi Sad  
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Serbian  
Democratic  
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