
UNACCOMPANIED AND SEPARATED CHILDREN IN SERBIA



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Summary: *All children, regardless of any personal characteristics and legal status, have certain rights guaranteed by numerous international instruments. The fundamental principles for the protection of children are the respect of the child's best interest in all activities that concern them and an absolute prohibition of discrimination on any and all basis. This document identifies the position of unaccompanied and separated refugee and migrant children in Serbia, which is usually merely a stop on the route towards the countries of Western Europe. Furthermore, this document provides an overview of the most important legal regulations, both international and national, and presents the greatest flaws and problems which occur in practice, as well as the recommendations for the improvement of the position of unaccompanied and separated children in Serbia.*

Key words: *Human rights, refugees, migrants, unaccompanied children, separated children*

I INTRODUCTION

The Belgrade Centre for Human Rights (BCHR) implemented the “Making a Difference for Refugee Children in Europe” project from July 2016 to May 2017, with the support of the International Rescue Committee and funding of the Department for International Development (DFID/UK Aid). The document in front of you was created through the direct legal aid provision to the unaccompanied and separated children refugees and migrants, with special attention to the children who did not enter the asylum system, and through a series of training and counselling sessions across Serbia with more than 100 representatives of government institutions, international organizations and the civil sector.

Serbia’s treatment of migrants and refugees, including a significant number of children, was influenced by international circumstances and policies of neighboring countries and the political decisions brought in the European Union. The most important among these decisions was reaching the political agreement with Turkey, known as the “EU-Turkey Statement”,¹ whereby Turkey committed to stop the flow of refugees and migrants towards the member states of the European Union in exchange for visa liberalization. This agreement brought increased border control along the so-called Balkan route and thereby its “closing”, wherefore a large number of persons who did not see Serbia as their destination country remained “stuck” within its borders. Some of them decided to seek asylum in Serbia after several months of waiting for the situation to change, whereas others tried to continue their journey. Although the official statistics on the number of people who enter Serbia on a daily basis do not exist, the situation in the field, the number of people in 18 state asylum and reception centres and the UNHCR reports, point out that the number of refugees and migrants in Serbia has remained unchanged during a longer period.²

In the previous period, Serbia undertook several important steps, aiming to provide reception and minimal protection to the increased number of

1 “EU – Turkey Statement: Questions and Answers”, Brussels, 19 March 2016, available at: http://europa.eu/rapid/press-release_MEMO-16-963_en.htm.

2 These reports are available at: <http://data2.unhcr.org/en/situations/mediterranean>.

unaccompanied and separated children. In line with providing them with accommodation, Serbia managed to initiate a program of encouraging specialized foster care, to provide relatively good access to health care and it even made first steps towards resolving the issue of access to education and effective use of leisure time of refugee children. In 2017, a certain number of children residing in the asylum centres in Krnjača and Bogovada have been included in the formal system of education with the UNICEF support. However, a systematic approach has been lacking and the participation of schools in this process was based mostly on the readiness of the school administration to participate in the project rather than on broad state support. In other places, the education of children took form of informal workshops and language acquisition within certain asylum and reception centres, and was conducted by civil sector organizations. Nevertheless, there is still considerable room for improvement of the existing situation in the field of protection of unaccompanied and separated children in Serbia.

All children, regardless of any personal characteristics and legal status, have certain rights guaranteed by numerous international instruments, and considering that they are particularly vulnerable, should not be denied access to a territory, regardless of the reason of their arrival. The Ministry of Interior data shows that 5,390 children expressed the intention to seek asylum in Serbia in 2016, 3,708 out of which were boys and 1,628 girls. Among them, there were 177 unaccompanied and separated children (165 boys and 12 girls). During the first four months of 2017, 35 unaccompanied and separated children sought asylum in Serbia (33 boys and two girls). In the past two years, the majority of unaccompanied and separated children came from Afghanistan, Syria and Iraq, countries with wide-spread violence. However, unaccompanied children also came from other countries such as Pakistan, Somalia, Palestine, Algeria, Morocco, Ghana and Libya. Based on the interviews that the BCHR conducted with more than 300 unaccompanied children in the period from July 2016 to May 2017, it became apparent that the vast majority of those children did not seek asylum, which is the only way to formalize their stay in Serbia.

In the years of 2016 and 2017, Serbia underwent two important processes: consideration of the report on the application of the Convention on the Right of the Child in front of the Committee on the Rights of the Child, and consideration of the report on the application of the International Covenant on Civil and Political Rights in front of the Human Rights Committee. The BCHR was included in these processes, through advocacy in front of both Committees, which resulted in some of the BCHR comments being included in the Concluding Observations, published in February and March 2017. Apart from the advocacy, together with a group of civil society organizations, the BCHR created an alternative report on

the application of the Covenant, in the areas of torture, application of the *non-refoulement* principle, restriction of the collective expulsion and approach to the asylum procedure and protection of the child's best interest. The report was presented at the 119th Assembly of the Human Rights Committee in Geneva in February 2017, when Serbia's Third Periodic Report on the Application of the Covenant was discussed. The BCHR representatives attended the Assembly.

Numerous international organizations have presented a series of recommendations for the enhancement of the rights of unaccompanied children refugees and migrants on the regional and European level. At the end of this document, specific recommendations are made for the enhancement of five areas identified as key in the Republic of Serbia. These areas are: the initial contact with unaccompanied children and standards for action, intersectoral cooperation, alternative care and identification and treatment of victims of human trafficking and all forms of violence, and integration and the right to education. Aside from these, it was concluded at the very beginning of the process of formulation of recommendations that special attention should be given to durable solutions. Therefore, local integration and the access to education was assessed and recommendations were made in order to improve the situation in this field as well.

This document was written by researchers of the Belgrade Centre for Human Rights: Bogdan Krasić, Nikolina Milić and Vlada Šahović. They had the support of dr Nevena Vučković Šahović, member of the Committee for the Rights of the Child (2003–2009).

II SITUATION AND CHALLENGES

1. GENERAL OVERVIEW

The rights of the child, like all human beings, are guaranteed by the Universal Declaration of Human Rights,³ the European Convention on Human Rights and Fundamental Freedoms,⁴ the International Covenant on Civil and Political Rights,⁵ the Convention on the Elimination of All Forms of Discrimination of Women,⁶ International Covenant on Economic, Social and Cultural Rights,⁷ the International Convention for the Protection of All Persons from Enforced Disappearance,⁸ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

With the ratification of the Convention on the Rights of the Child⁹ and the optional protocols with the Convention (Protocol on the Sale of Children, Child Prostitution and Child Pornography¹⁰ and Protocol on the Involvement of Children in Armed Conflict)¹¹ Serbia took the responsibility of special care of all children under its jurisdiction, be them its citizens, children without citizenship, children refugees or children migrants. The rights of the child contained in the Convention are additionally elaborated on through twenty General Comments of the Committee on the Rights of the Child,¹² where the most important comments

3 The Universal Declaration of Human Rights adopted at the UN General Assembly, Paris, 10 December 1948, A/RES/217, available at: <http://www.refworld.org/docid/3ae6b3712c.html>.

4 *Official Gazette of the Serbia and Montenegro – International Agreements*, 9/03.

5 *Official Gazette of Socialist Federal Republic of Yugoslavia – International Agreements*, 7/71.

6 *Ibid.*

7 *Official Gazette of RS*, 1/11.

8 *Official Gazette of Socialist Federal Republic of Yugoslavia – International Agreements*, 11/81.

9 *Official Gazette of Socialist Federal Republic of Yugoslavia – International Agreements*, 15/90 and *Official Gazette of Socialist Federal Republic of Yugoslavia – International Agreements*, 4/96 and 2/97.

10 *Official Gazette of Socialist Federal Republic of Yugoslavia – International Agreements*, 7/02,

11 *Ibid.*

12 The Committee on the Rights of the Child is a contracting authority, provided by the Convention on the Rights of the Child, consisting of 18 independent experts from member states. The main role of the Committee is to oversee the application of the Convention in member states.

for the children out of the country of origin are General Comment no. 6 on the treatment of unaccompanied and separated children outside their country of origin (2005),¹³ General Comment no. 12 on the right of the child to be heard (2009)¹⁴ and General Comment no. 14 on the right of the child to have his or her best interests taken as a primary consideration (2013).¹⁵ The Republic of Serbia has ratified numerous other international documents for the protection of the rights of the child, among which the most important are the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children,¹⁶ which contributed to the enhancement and standardization of the practice of protection of children in international circumstances, the International Labour Organization (ILO) Convention no. 182 on the Worst Forms of Child Labour and Recommendation of ILO no. 190 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,¹⁷ Convention of the Council of Europe on the Protection of Children against Sexual Exploitation and Sexual Abuse¹⁸ and the Revised European Social Charter,¹⁹ which states that children have the right to special protection against physical and moral risks they are exposed to.²⁰ The most important document for the protection of persons in need of the international protection is the UN Convention Relating to the Status of Refugees from 1951²¹ with the accompanying Protocol from 1967.²²

Furthermore, the Committee adopts general comments on certain articles of the Convention, so as to ease the process of fulfilling obligations undertaken by the Convention to the member states.

- 13 UN Committee on the Rights of the Child, *General Comment No. 6 (2005): Treatment of unaccompanied and separated children outside their country of origin*, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html>.
- 14 UN Committee on the Rights of the Child, *General Comment No. 12 (2009): The right of the child to be interviewed*, 20 July 2009, CRC/C/GC/12, available at: <http://www.refworld.org/docid/4ae562c52.html>.
- 15 UN Committee on the Rights of the Child, *General Comment No. 14 (2013): The right of the child for his or her interests to be of utmost importance*, 29 May 2013, CRC/C/GC/14, available at: <http://www.refworld.org/docid/51a84b5e4.html>.
- 16 *Official Gazette of RS – International Agreements*, 20/15.
- 17 *Official Gazette of Socialist Federal Republic of Yugoslavia – International Agreements*, 2/03.
- 18 *Official Gazette of RS – International Agreements*, 1/10.
- 19 *Official Gazette of RS – International Agreements*, 42/09.
- 20 Part I, item 7 of the Charter.
- 21 *Official Gazette of the Federal People's Republic of Yugoslavia – International Agreements and Other Conventions*, 7/60.
- 22 Decree on the ratification of the Protocol on the Convention on the Status of Refugees, *Official Gazette of SFRY – International Agreements and Other Conventions*, 15/67.

The Convention on the Status of Refugees does not have special references to children, but in Article 22 prescribes the right to education in the same manner as citizens of the host country, and preferably with additional benefits.

The Article 64 of the Constitution of the Republic of Serbia²³ recognizes the child's "right to exercise human rights in accordance with the age and maturity" as well as protection against all forms of violence and abuse, while Article 66 prescribes special protection for children without parental guardianship. Aside from the Constitution, around eighty laws directly or indirectly refer to the children. However, there is no law which contains a generally valid definition of the term "child", as it is described in the Convention on the Rights of the Child, rather it is deduced from the definition of the term of capacity to exercise rights. In Serbia, the capacity to exercise rights is gained with becoming of age, and it entails the ability to make independent decisions on taking certain rights and responsibilities and engaging in legal relationships.

The provisions of the Asylum Law are applicable to refugee and asylum seeking children.²⁴ They prescribe the principle of special care of particularly sensitive categories of asylum seekers, including children, and the principle of representing unaccompanied minors.²⁵ The Asylum Law defines an unaccompanied minor as a foreigner who has not become 18 years of age and who, at the time of entering the Republic of Serbia, does not have, or has upon arrival lost the company of parents or guardians.²⁶ However, the Asylum Law does not separately prescribe the obligation of giving priority and effective action of the authority deciding on the asylum request when the person submitting the request is an unaccompanied child, although the UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum prescribe that procedures with underage asylum seekers should be handled by officials and interpreters specially qualified and trained for children and refugee matters.²⁷

Since the Asylum Law entered into force in 2008, there has not been a single case of an unaccompanied or separated child who was granted refugee or subsidiary protection in Serbia, and only few stayed in Serbia long enough for the

23 *Official Gazette of RS*, no. 98/06.

24 *Official Gazette of RS*, no. 109/07.

25 Art. 15 and 16 of the Asylum Law.

26 Art. 2 of the Asylum Law.

27 *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, UNHCR, February 1997, Para. 5.13, available at: <http://www.refworld.org/docid/3ae6b3360.html>.

asylum application submission or the interview in the asylum procedure. One of the reasons for this is the fact that the majority of migrants and refugees still do not perceive Serbia as a country of asylum, rather a country where they reside briefly on their way to countries with a functional asylum system and effective integration programmes for persons with granted international protection. Although according to the legal framework of the Republic of Serbia, government bodies are bound to enable the social inclusion of persons who were granted right to asylum, flaws and gaps in the Law largely complicate this process. Many persons in need of international protection, who are in the asylum process, do not see Serbia as a country of asylum wherefore they either express intention to seek asylum solely for the purpose of legalizing their residence in Serbia, or do not seek asylum in Serbia at all, although they are staying in Serbia for several months on occasion. Due to all this, Serbia is currently facing numerous challenges to provide suitable protection for this category of migrants.

In the last several years, there has been a massive increase in the number of unaccompanied children who, fleeing wars or poverty, arrive to the territories of European countries and seek international protection. According to the data of the Ministry of Interior of the Republic of Serbia, over the course of the last four years, 17,653 unaccompanied children expressed the intention to seek asylum in Serbia. Similarly to other countries on the so-called Balkan refugee route, the Republic of Serbia has encountered numerous challenges in the provision of appropriate protection to these children and procedures with them. Since 2015 when the refugee crisis reached its peak,²⁸ the practice of the authorities in regard to unaccompanied and separated children has gradually changed. At the very beginning of the refugee crisis in 2015, migrants stayed in Serbia for several days on average, so the actions of the authorities and non-governmental and international organizations consisted of providing urgent humanitarian assistance. Due to the policy changes of the countries on the so-called Balkan refugee route²⁹ and the tightening of border-crossing conditions,³⁰ the average

28 Fleeing war and general violence conditions, tens of thousands of refugees from Africa and the Middle East arrived to the Greek coast every month since May 2015, and continued their journeys to Western Europe seeking refuge. Only in the first five months that year, the number of recorded asylum seekers in Serbia exceeded the total number recorded in the whole previous year, and by the end of 2015, 577,995 persons sought asylum in Serbia.

29 See more in: *The Right to Asylum in the Republic of Serbia in 2015*, Belgrade Centre for Human Rights, April 2016, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2016/05/Azil-2016-ENG.pdf>.

30 The changes in the Hungarian Law on Asylum and Law on the Protection of the State Border were put into effect on 5 July 2016. Inter alia, they provided that the Hungarian border police would have the right to automatically expell all persons found without valid documents with

period of stay in Serbia for the majority of migrants increased to several months by the end of 2016.

Migrants were faced with a different scope of problems while exercising their rights in Serbia, and one of the greatest challenges was exercising the child's right to education. Although all international standards and national regulations provide that all children, regardless of their legal status, should immediately be included in the educational system, the Republic of Serbia has been facing an extremely large number of migrants since the enforcement of the Asylum Law in 2008, and has not institutionally included children in the educational system until 2017. Therefore, many organizations started acting in the direction of the inclusion of refugee and migrant children in the educational system, at first in informal,³¹ and later formal education.³² However, although some schools were involved in the project of educating children, this was based on the school administration enthusiasm to include the refugee and migrant children in the programme, whereas a systematic approach was left out.

2. SPECIFIC AREAS

There are several topics in this section, which the BCHR team identified as particularly important areas, of special importance for the position of the unaccompanied and separated children migrants and refugees in the Republic of Serbia. As part of the training and counselling sessions organized by the BCHR in the period from July 2016 to May 2017, the topics illustrated below were discussed in group sessions. Based on the perceived flaws, the participants created proposals and recommendations for the improvement of practice.

2.1. INITIAL CONTACT WITH UNACCOMPANIED CHILDREN REFUGEES AND STANDARDS FOR ACTION

Article 3 Paragraph 1 of the Convention on the Rights of the Child³³ stipulates that “in all actions concerning children, whether undertaken by public or private

a visa from the Hungarian territory, up to eight kilometres from the border with Serbia and Croatia, without leaving them a possibility to seek asylum in Hungary.

31 “Our Story: an informal school in Presevo”, *SOS Children's Villages*, 14 March 2017, available in Serbian language at: <http://www.sos-decijasela.rs/nasa-prica-neformalna-skola-u-presevu/>.

32 “A School on the Road for Children Migrants,” *RTS*, 27 March 2017, available in Serbian language at: <http://www.rts.rs/page/stories/sr/story/125/drustvo/2681009/skola-na-putu-za-decu-migrante.html>.

33 *Official Gazette of Socialist Federal Republic of Yugoslavia – International Agreements*, 15/90 and *Official Gazette of Socialist Federal Republic of Yugoslavia – International Agreements*, 4/96 and 2/97.

social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” All these actions should aim at finding a permanent solution in accordance with the needs of the child. The prerequisite for performing the initial estimate is providing the child access to territory of the country and for countries to apply the *non-refoulement* principle, which is the basis of international law; Article 33 of the Convention on the Status of Refugees³⁴ proscribes expulsion and forceful return of refugees from the border of the territory where their life or freedom would be at threatened on account of their race, religion, nationality, membership of a particular social group or political opinion, and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³⁵ binds countries not to expel, return or extradite a person to the territory of another state where there are substantial grounds for believing that he would be in danger of being subjected to torture. This provision is precised with Articles 27 and 28 of the CRC General Comment no. 6 which state that children cannot be returned to the territories of countries where they could potentially be recruited to participate in armed conflicts or where they could be inflicted irreparable harm. This certainly also refers to the obligation of *non-refoulement* to the territories which cannot be deemed safe under the criteria for determination of a safe third country. Fundamentally, these are all countries which cannot guarantee with certainty the rights provided in the 1951 Convention on the Status of Refugees, primarily countries in which persons in need of international protection are not enabled to submit asylum applications, and where they could be exposed to persecution, forced return (*refoulement*), or actions opposed to Article 3 of the European Convention on Human Rights and Fundamental Freedoms, which proscribes torture. Regarding the national legislation, the Law on Foreigners³⁶ provides that returning a minor to the country of origin or the third country is conditioned with the provision of appropriate reception, but the Law does not define the term of appropriate reception. Due to such inconclusiveness, a gross violation of children’s rights can occur in practice, so it is necessary to regulate this matter additionally, in accordance with international standards. The Committee on the Rights of the Child also pointed out this problem in the Concluding Observations on the second and third reports of the Republic of Serbia on the application of the Convention on the Rights of the Child from 3 February 2017

34 Official Gazette of the Federal People’s Republic of Yugoslavia – International Agreements and Other Conventions, no. 7/60.

35 Official Gazette of Socialist Federal Republic of Yugoslavia – International Agreements, 9/91.

36 Official Gazette of RS, 97/08.

(hereinafter: Concluding Observations),³⁷ whereby it was underlined as worrisome that some unaccompanied or separated children in the process of readmission, were returned from Serbia to another country without an assessment of the child's best interest and without informing the child that they have the right to seek asylum in Serbia in the language they understand.

In misdemeanour proceedings, conducted for the illegal state border crossing or illegal residence in the territory of the Republic of Serbia, foreigners who do not express the intention to seek asylum can be imposed the protective measure of removal or expulsion as a security measure. In regard to the practice of misdemeanour courts in Serbia, it can be noticed that certain proceedings involving unaccompanied children were conducted without appropriate procedural guarantees (e.g. right of the child to follow the proceedings in a language they understand, to be assigned a temporary legal guardian in misdemeanour proceedings) and that they were concluded with convictions which included financial fines, protective measures of removal³⁸ or prison (not juvenile detention).³⁹ Similar to previous years, in 2016 courts continued the practice of misdemeanour convictions for children, and the most commonly imposed measure was reprimand.⁴⁰ In some cases the principle of impunity was applied and the misdemeanour proceedings were terminated, and the border police department, who submitted a request, was directed to the public prosecutor's office for possible undertaking of investigative actions for determination of the existence of elements of human trafficking.⁴¹

According to international standards, the actual process of the child's best interest assessment should be completed in a friendly and safe atmosphere

37 Concluding Observations on the combined second and third periodic reports of Serbia, *UN Committee on the Rights of the Child*, 7 March 2017, CRC/C/SRB/CO/2–3, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/SRB/CO/2–3&Lang=En.

38 See more in: Dragičević – Dičić R. et al *Application of the Principle of Impunity of Refugees in Misdemeanour Proceedings*, Belgrade Centre for Human Rights, 2016, available in Serbian language at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2016/11/Primena-nacela-nekaznjavanja-izbeglica-u-preksajnom-postupku-sa-koricama.pdf>.

39 Decision 2 – Dec. no. mal. 20/16 of Misdemeanour Court in Prijepolje, from 4 July 2016.

40 A reprimand is imposed on an underage person when there is no need for taking disciplinary measures, and especially when their attitude towards the misdemeanour and the readiness not to make such deeds in the future suggests that the imposed corrective measure will achieve its purpose (Art. 75 of the Misdemeanour Law).

41 Decisions of the Misdemeanour Court in Pirot 1 PRM 22/16 from 2 March 2016 and 2PRM 65/16 from 8 May 2016.

and should be performed by qualified professionals, trained for conducting interviews with children. In order to ensure procedural guarantees to respect their best interest, the child is assigned a guardian. In the case where children are directed to the asylum procedure, they must additionally be awarded a legal representative.⁴² Apart from the urgent appointment of a guardian, in this initial phase, children must be introduced to the risks they might face, and it is necessary to establish measures for periodic review of their treatment and other circumstances relevant to the placement of children under a great degree of risk.⁴³

Furthermore, national legislation protects and guarantees the principle of respect of the child's best interest in all proceedings. Article 6 of the Family Act⁴⁴ determines the obligation of all persons to be governed by the child's best interest in all activities referring to them, as does the Social Protection Act.⁴⁵ The actual procedure of the determination of the child's best interest is defined in the Rule Book on Organization, Norms and Standards of the Centre for Social Work.⁴⁶ The Rule Book defines the estimate of the child's best interest as an "organized process of data collection, recognition and estimate of the problems, needs, strengths and risks, situation and persons involved, which develops gradually in order to determine the goals of working with the child,"⁴⁷ and it is conducted by the competent Centre for Social Work. Since the initial contact and initial assessment children must fully be included in the whole process, and have to be presented with all facts that can help them make the decision in the language they understand.

If we analyze the treatment of children in practice, Serbia does not have procedures for age determination of a child, whereas only the child's statement is taken as valid information. Therefore, in practice, it often happened that when expressing their intention to seek asylum, adults claimed to be under age in hope they would receive better treatment from the authorities, whereas many children wishing to continue their journey as soon as possible, registered as adults. Such practice lead to irregularities with accommodation at asylum and reception centres which have separate rooms or buildings for unaccompanied children, i.e. adults were placed in the same premises as children. In order to remove

42 Paragraphs 19–22 of the CRC General Comment no. 6.

43 Art. 24 of the CRC General Comment no. 6.

44 *Official Gazette of RS*, 18/05, 72/11 – other law and 6/15.

45 *Official Gazette of RS*, 24/11.

46 *Official Gazette of RS*, 50/08, 37/10, 39/11 – other rule book and 1/12 – other rule book.

47 Article 2, Paragraph 8 of the Rule Book on Organization, Norms and Standards of the Centre for Social Work.

this irregularity, it is necessary to establish a humane and dignified system for age determination, which would include psychological maturity assessment along with the physical appearance analysis. Such estimate would have to be undertaken in a professional and safe manner, taking care of the needs and gender of the child, avoiding every risk of violation of the child's integrity.⁴⁸

Keeping in mind these difficulties to identify unaccompanied children, along with the fact that since April 2016 and after the start of the application of the political agreement between the EU and Turkey,⁴⁹ the Ministry of Interior has made record only of the persons who have expressed the intention to seek asylum,⁵⁰ it can be concluded that the number of unaccompanied children on the territory of Serbia is significantly larger than the number of these children recorded by the police. This is confirmed by the data of the Commissariat for Refugees and Migration, according to which at the end of January 2017, 3,055 children were accommodated in reception centres in Serbia, quarter of which, that is 747, were unaccompanied by parents, guardians or relatives,⁵¹ which is several times more than 191 unaccompanied children who were registered by the Asylum Office⁵² from the beginning of 2016 to the end of January 2017.⁵³ The unaccompanied children in Serbia who are not registered by the Asylum Office are without adequate legal status, which is why they are practically invisible in the system and deprived of a whole set of rights. This problem was also recognized by the Committee on the Rights of the Child in the recent Concluding Observations stating that appropriate procedures for their identification do not

48 Paragraph 31 of the CRC General Comment no. 6.

49 The Agreement, among other things, implies the return of all irregular "migrants" to Turkey; that for each Syrian refugee returned to Turkey, another Syrian refugee in Turkey will be resettled to an EU country and that Turkey will undertake all measures to prevent opening of a new route towards the EU. More at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/07-eu-turkey-meeting-statement>.

50 From November 2015 to the beginning of the implementation of the EU-Turkey deal in March 2016, the Ministry of Interior issued all persons likely in need of international protection a *Certificate of the entry to the territory of the Republic of Serbia for migrants arriving from countries where their lives are in danger*, or so-called transit certificate, which enabled them legal residence on the Serbian territory for the duration of 72 hours from the moment of issuance, the use of bank services, hostels, hotels and urgent medical assistance.

51 "Destroyed Childhood: 747 unaccompanied children stayed in Serbia", B92, 31 January 2017, available in Serbian language at: http://www.b92.net/info/vesti/index.php?yyyy=2017&mm=01&dd=31&nav_category=12&nav_id=1225680

52 The Asylum Office is a body within the Ministry of Interior, which conducts the first instance asylum procedure in Serbia.

53 Data obtained from the Asylum Office via UNHCR.

exist nor enough interpreters in the border areas, which increases the risk of unaccompanied children entering the country's territory not being identified as such and remaining deprived of special protection they are entitled to.

One of the problems in practice was that an unaccompanied child would often be assigned several different persons as temporary guardians until the asylum request submission. Upon entering the territory of the Republic of Serbia they are assigned a temporary guardian on the territory of the municipality where the child was found. Afterwards, if the child is directed to one of the three institutions determined for accommodating unaccompanied children, they are assigned a new guardian. Finally, when the child expresses the intention to seek asylum and is accommodated at one of the asylum centres, they are assigned a new guardian on the territory of the municipality where that centre is located. Centres for Social Work do not employ interpreters directly, rather the guardians communicate with the children with the help of interpreters whose services are funded by non-governmental organizations who engage in the protection of refugees. Such practice, with the existing cultural barriers, additionally impedes establishing a relationship of trust between the child and the guardian.⁵⁴ According to the position of the Committee on the Rights of the Child expressed in General Comment no. 6, for continuity of care and protection of the child's best interest to be ensured, the change of accommodation for unaccompanied and separated children must be restricted only to those cases where such change is in fact in the child's best interest.⁵⁵ Accommodating a child in the asylum centre, where a system of special care for child does not exist cannot be deemed as acting in their best interest.

2.2. RECEPTION AND ALTERNATIVE CARE

Article 20 of the Convention on the Rights of the Child prescribes the responsibility of the country to provide special protection and assistance to a child temporarily or permanently deprived of a family environment, or in whose own best interests cannot be allowed to remain in that environment. The same article defines modalities of alternative care which include foster placement, kafalah of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. The CRC General Comment no. 6 describes the conditions for care and accommodation of unaccompanied children, with respect to the child's age and gender, the cultural, ethnic, language and religious identity, and special

54 The Belgrade Centre for Human Rights reached this conclusion based on its long-term experience working with children refugees, asylum seekers and migrants.

55 Paragraph 40 of the CRC General Comment no. 6.

vulnerability of a child who not only lost the connection to a family environment, but is outside their country of origin (Paragraph 40). In the Guidelines for the Alternative Care of Children from 2010,⁵⁶ the United Nations called the member states to consider adoption only if all attempts for finding the child's parents, extended family or regular care providers have been exploited. Furthermore, the use of institutionalized protection should be limited to the cases where such an environment is particularly appropriate, necessary and constructive for a particular child, so it is in its best interest.⁵⁷ In order to provide guarantees for the respect of the rights of the child, Article 25 of the Convention on the Rights of the Child prescribes, a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

At the national level, the Family Law prescribes the obligation of the state to provide protection in a family environment to a child without parental guardianship on the territory of the Republic of Serbia, whenever that is possible (Art. 6, item 6). The rights of the child, modalities and standards of alternative care of the unaccompanied children stem from a series of other laws and bylaws, the most important of which for this document are the Social Protection Act,⁵⁸ the Discrimination Act,⁵⁹ the Education System Law,⁶⁰ Special Protocol for the Protection of Children and Students from Violence, Abuse and Neglect in Educational Institutions, the General Protocol on Protection of Children from Abuse and Neglect, the Rule Book on Foster Care,⁶¹ etc.

However, even with the existing legislative framework, with the great influx of persons in need of intentional protection in 2015, a need arose for additional guidelines of the competent ministry to give clear instructions to all actors in the social protection system, so that they could provide appropriate care to unaccompanied refugee and migrant children. Therefore, in July 2015, the Ministry of Labour, Employment, Veteran and Social Affairs issued the Instruction on procedures of the Centres for Social Work and institutions for social protection for the accommodation of users in the provision of care and

56 *Guidelines for the Alternative Care of Children: resolution / adopted by the General Assembly, 24 February 2010, A/RES/64/142, Para. 152, available at: <http://www.refworld.org/docid/4c3acd162.html>.*

57 *Ibid.* para.21.

58 *Official Gazette of RS, 24/11.*

59 *Official Gazette of RS, 22/09.*

60 *Official Gazette of RS, 72/09, 52/11, 55/13, 35/15 and 62/16 – authentic interpretation, 68/15 and 62/16 – decision of the Constitutional Court.*

61 *Official Gazette of RS, 36/08.*

accommodation of unaccompanied children.⁶² The Instruction provides that Centres for Social Work are to appoint temporary guardians to unaccompanied children as soon as the Border Police Administration or the Commissariat for Refugees and Migration notify them about a child being found in the territory of their jurisdiction,⁶³ and to accommodate the children in social residential institutions that have separate units for the temporary accommodation of and care for unaccompanied refugee and migrant children.

There are no specialized bodies or authorities in the social care system of Serbia which would handle only unaccompanied migrant and refugee children. Reception of unaccompanied minor foreigners is performed at the Institute for Education of Children and Adolescents “Vasa Stajić” in Belgrade and the Institute for Youth Education in Niš,⁶⁴ as well as the Home for Children and Youth with Developmental Disabilities “Kolevka” in Subotica and the Centre for the Protection of Infants, Children and Youth in Belgrade. There are twelve places for unaccompanied or separated refugee and migrant children at “Vasa Stajić”, the Institute for Youth Education in Niš can accommodate up to 19 children, and the “Kolevka” opened a new section which can accommodate 20 children; however capacities of “Kolevka” are still not in use. Accommodation at the institutions in Belgrade and Niš is provided only for children older than ten, whereas younger children are accommodated at the Centre for the Protection of Infant, Children and Youth in Belgrade. In addition, all the abovementioned institutions do not have permanently employed interpreters for the languages that refugee and migrant children can understand. Therefore, even with the best intentions of the staff, the scope of the care provision is limited to the satisfaction of basic needs. It should be mentioned that the institutes in Niš and Belgrade are corrective institutions of a semi-open type where local children aged 15 to 18 are referred after having been imposed with corrective measures, and as such these institutions are not in fact suitable for accommodation of unaccompanied refugee children. In the long term it is necessary to establish new, specialized institutions with adequate levels of care and protection for unaccompanied refugee and migrant children and where children could reside until durable, alternative solutions are found.

The abovementioned Instruction also provides that the duration of the stay of an unaccompanied child at the institution of social protection lasts until the

62 Number: 110-00-00469/2015-14, from 10 July 2015.

63 Guardianship does not necessarily include immediate child care, but mainly legal representation and provision of various activities for child care in accordance to their best interests.

64 Placement of unaccompanied juvenile migrants in these two institutions is provided in the Regulation on the Network of Social Protection, *Official Gazette of RS*, no. 16/12.

moment when the child expresses the intention to seek asylum at which point he or she is directed to one of the five asylum centres, in Krnjača, Bogovađa, Banja Koviljača, Sjenica or Tutin. Although the Regulation on the Provision of Housing and Basic Living Conditions at the Asylum Centre⁶⁵ stipulates that the accommodation conditions and the provision of basic living conditions at an asylum centre must be in line with the principles of non-discrimination, family unity, gender equality and care of persons with disabilities, in accordance with the law and possibilities of individual centres (Article 6), many centres do not have separate units or buildings for accommodation of unaccompanied children, and in some asylum centres, due to the lack of space, children are accommodated in the same rooms as adult men. The situation in asylum centres is very much similar to the one in reception centres. The latter have been established in mid-2015 with the purpose of providing urgent reception to increased number of refugees and migrants. It is a general impression that the accommodation capacities at the largest number of asylum and reception centres are not suitable for the accommodation of unaccompanied children, since they do not have separate units for children, nor do they have enough professional staff members who could take care of children. Services available at the centres largely depend on the donations and actions of civil society organizations, which are not equally present at all centres.⁶⁶ Furthermore, children are assigned a guardian immediately upon the reception at the centre only in a certain number of centres.

The best interest assessment of children without parents or legal guardians in Serbia can have four final outcomes: uniting the child with family in the third country, resettlement to the third country with the assistance of the UNHCR, initiating the asylum procedure and local integration, and return to the country of origin. In the majority of cases in 2016, the estimate of the child's best interest lead to the decision of the authority, that is the guardian, for the child to be included in the asylum procedure in Serbia. In addition, three resettlements to a third country were made whereas, two children were reunited with their families in Bulgaria and one child was returned to the country of origin.⁶⁷ It is important to mention that a large number of unaccompanied children, who expressed the

65 Official Gazette of RS, 31/08.

66 See more in: *The Right to Asylum in the Republic of Serbia in 2016*, Belgrade Centre for Human Rights, March 2017, pp. 75–96, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2017/03/Right-to-Asylum-in-the-Republic-of-Serbia-2016-2.pdf>.

67 Information obtained from Mr. Miroslav Budimir, field social worker, at the "Standards in the Procedures of the Return of Unaccompanied Migrants" Workshop, from 16 January 2017 in Belgrade.

intention to seek asylum in Serbia, and who met the BCHR legal team in the field, left Serbia before submitting asylum requests. Therefore, there have still not been cases of local integration as a form of durable solution for an unaccompanied child, which would be happening along with the asylum procedure. Moreover, since there has yet not been a single case of a completed procedure which would unite persons who were provided international protection with family members in Serbia,⁶⁸ it is not possible to analyse the application of this institute.

Discovering family members⁶⁹ and finding possibilities for family reunion is surely of utmost importance for an unaccompanied and separated child, and until that time it is important that the child resides in the least restrictive surroundings, which resembles a family environment the most. The UN Guidelines for the Alternative Care for Children recognize formal and informal forms of care for children. Formal forms of alternative care for children are legally defined and imply accommodation based on the family (kinship care, non-kinship foster care and adoption accommodation), residential accommodation (small dormitory communities, reception centres or institutions), and accommodation in a community, as a form of supervised independent living arrangement. Informal forms of care for children are performed without including the state, and they imply informal kinship accommodation, informal networks, community support and other informal family arrangements.

Regarding health care, children are guaranteed this right by international and local regulations. In the General Comment no. 15⁷⁰ the Committee on the Rights of the Child emphasizes the importance of the access to the highest standards of medical protection and nutrition from early childhood. The European Committee of Social Rights holds a similar position, determining in one decision that the refusal to provide medical care to undocumented children migrants is a breach of Article 17 of the Revised European Social Charter.⁷¹ It was stated in the decision that irregular migrants have the right not only to urgent health care, but to primary and secondary protection, including psychological support.

68 The right to joining family is regulated by Articles 48, 49 and 50 of the Asylum Law.

69 During the refugee crisis, the Red Cross of Serbia provided services of tracing family members and restoring family links.

70 UN Committee on the Rights of the Child, *General Comment No. 15 (2013): Right of the child to enjoy the highest possible standard of health care*, 17 April 2013, CRC/C/GC/15, available at: <http://www.refworld.org/docid/51ef9e134.html>.

71 European Committee of Social Rights, *Defence for Children International v. Belgium*, application no. 69/2011, 23 October 2012, available at: [http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/EN – ESCR%2C Defence for Children International \(DCI\) v. Belgium%2C Collective Complaint No. 69_2011.pdf](http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/EN – ESCR%2C Defence for Children International (DCI) v. Belgium%2C Collective Complaint No. 69_2011.pdf).

The Law on Health Care⁷² prescribes the rights and obligations of patients, including the health care of foreigners. Urgent medical help is provided to persons with unknown place of residence as well (Art. 8) and the principle of righteousness implies restriction of discrimination in the provision of health care services (Art. 20). It is determined as a human right and value that every child up to 18 years of age has the right to the highest available standard of health and health care (Art. 25). A child who is capable of sound judgement and has become 15 years of age has the right to have an insight into their documentation and give consent for a medical measure (Art. 35 and 36). The Republic of Serbia has, since the beginning of the refugee crisis, largely fulfilled its international obligations in terms of health care provision to unaccompanied refugee and migrant children, whereas free medical protection was also provided by civil society organizations, which procured medicine and medical supplies.⁷³

In 2016, Serbia undertook pioneer steps in the development of specialized, urgent foster care accommodation⁷⁴ for unaccompanied children, as an alternative means of care. Urgent foster care is a special form of foster care which is, in accordance with the Foster Care Regulation,⁷⁵ applied in urgent situations when children have been abandoned by their parents, harshly neglected and abused or when the parents are prevented from taking care of the child. All cases of urgent foster care were realized on the territory of the Šid municipality. In 2016 a total of 19 children used this form of alternative accommodation.⁷⁶ Such positive practice needs to be additionally encouraged through the sensibilisation and strengthening of the current foster families, and the training of potential ones, which could accommodate unaccompanied children refugees and migrants. The role of the Centre for Foster Care and Adoption⁷⁷ in this process has been

72 Official Gazette of RS, 107/05, 72/09 – other law, 88/10, 99/10, 57/11, 119/12, 45/13 – other law, 93/14, 96/15 and 106/15.

73 Amongst others, the Danish Refugee Council, Humedica International Aid, *Médecins Sans Frontières* and *Médecins du Monde*.

74 Foster care is a form of family-like accommodation where Centres for Social Work place children within a family who was trained to care for and raise children they are not related to biologically.

75 Official Gazette of RS, 36/08.

76 Information obtained from Mr. Sasa Caculovic, social worker at the Centre for Social Work in Šid, 29 March 2017.

77 Centres for Foster Care and Adoption operate in Belgrade, Novi Sad, Kragujevac, Niš, Bela Crkva, Velika Plana, Subotica and Čuprija. Among other things, centres complete the preparation, estimate and training of future foster families and adoptive parents, and provide support to foster families and families who provide the service of family accommodation and adoptive parents.

indispensable, and in accordance with the Law, they perform the preparation, estimate and training of future foster families and provide support to them in the completion of the role of foster families, report to the Centres for Social Work on the activities of the foster families and propose measures to remove potential oversights.⁷⁸

It can be concluded that, even with the existing normative framework and examples of good practice in some cities, there is no uniform practice on the treatment of children. In order to remove this insecurity and provide equal level of protection to all unaccompanied children, regardless of the municipality they reside in, it is necessary to improve the monitoring system over the application of international and national regulations, and accordingly, offer practical solutions for removing irregularities.

2.3. VICTIMS: IDENTIFICATION AND TREATMENT

Unaccompanied children who pass through Serbia on their way to a safe third country should be provided additional protection because of their particularly vulnerable position and risk of exposure to various forms of violence, exploitation and abuse. Serbia has undertaken the obligation to protect children from abuse having ratified the Convention on the Rights of the Child. Provisions of the Convention refer to the protection of the child from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (Art. 19); all forms of sexual exploitation and sexual abuse (Art. 34); abduction of, the sale of or traffic in children (Art. 35); all forms of exploitation prejudicial to any aspects of the child's welfare (Art. 36); and torture or other cruel, inhuman or degrading treatment or punishment (Art. 37). In addition, the state has the obligation to provide physical and psychological recovery and social reintegration to children who were victims of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts in the conditions which fosters the health, self-respect and dignity of the child (Art. 39).

The Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁷⁹ provides practical steps and guidelines for cases where children were victims of torture. It is necessary that, during the initial estimate, the child

⁷⁸ Article 131 of the Social Security Law, *Official Gazette of RS* 24/11.

⁷⁹ *The Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, The Office of the UN High Commissioner for Human Rights, 2004, available at: <http://www.refworld.org/docid/4638aca62.html>.

feels safe and that they receive all the support from people who can provide care for them. In case there is a need for medical examination, the Istanbul Protocol emphasizes that the child should not be examined more than once, to avoid re-traumatization.⁸⁰

The right to inviolability of physical and mental integrity is proclaimed by the Constitution of the Republic of Serbia as one of the most important principles. The National Action Plan for Children,⁸¹ a strategic document which the Government of the Republic of Serbia adopted in 2004 for the period of ten years, provides for the establishment of a comprehensive system for the protection of children from abuse and neglect, through the establishment of an effective, operative and multi-resource network for the protection of children from abuse, neglect, exploitation and violence; harmonization of the legal framework with international standards, adoption of a comprehensive national strategy for the protection of children from all forms of violence and neglect and raising awareness of all citizens on the forms of violence and rights of the child.

In accordance with the National Action Plan for Children, the Government of the Republic of Serbia adopted the General Protocol on Protection of Children from Abuse and Neglect in 2005 (hereinafter: the General Protocol),⁸² which defines various forms of ill treatment and abuse of children (physical, emotional, negligence and careless actions, exploitation) and which presents a guidelines for their prevention. The General Protocol refers to all children who are victims or are at risk of abuse and negligence without discrimination based on their family status, ethnic background or any other characteristics of the child and its family. The General Protocol foresees Centre for Social Work as the coordinator in the process of child protection. Particular attention in this process should be directed at the recognition of cases of abuse and negligence, reporting to the authorities or services, risk assessment, state and needs of the child and family and planning of services and measures for the protection of family.⁸³ In order to provide an efficient, operative and multi-resource network for the protection of children from abuse and negligence, special protocols on actions have been created within the state institutions (social protection institutions, police, educational and corrective institutions, health care system, legislative

80 *Ibid*, paragraphs 310–315.

81 *The National Action Plan for Children*, Government of the Republic of Serbia, February 2004, available in Serbian language at: <http://minoritycentre.org/sites/default/files/nacionalni-plan-deca-srbija.pdf>.

82 Government Conclusion 05 no: 5196/2005 from 25 August, 2005.

83 The General Protocol, p. 11.

bodies). In terms of the protection of children migrants, Special Protocol on the Conduct of Police Officers in the Protection Minors and Young Persons from Abuse and Neglect⁸⁴ is of particular importance since police officers are most frequently the first ones to establish contact with these children upon their entry to the territory of Serbia, as well as the Special Protocol for the Protection of Children and Students against Violence, Abuse and Neglect in Educational Institutions⁸⁵ since the care for unaccompanied refugee children is under the authority of the social protection system. An important role of these special protocols is reflected in the fact that it provides practical guidelines on the treatment in cases of abuse and neglect of children to the employees of the Ministry of Interior and the social protection system, at all levels. It also envisages special trainings for officials with the aim of a more efficient conduct of these procedures.

In terms of treatment on the part of police officials, the Instruction on the Conduct of Police Officers towards Minors and Young Adults⁸⁶ issued in 2006 by the Ministry of Interior is also of significance as it refers to the treatment of children who were impaired by a misdemeanour or criminal act, or who were contacted by the authorities on a different account, without the presence of parents or guardians. The Instruction provide that the child should be treated by authorized officials who have gained necessary knowledge in the field of the rights of the child, to treat them with care, keeping in mind their maturity and other personal characteristics, and be guided by the principle of legality, professionalism, humanity, respecting international norms and standards. Furthermore, it is prescribed that the facilities in which juvenile persons are dealt with would be equipped with suitable contents, brochures, posters and signs should be displayed in the aim of informing them of children's rights and responsibilities.⁸⁷ The Belgrade Centre for Human Rights documented one case where a group of 24 refugees from Afghanistan, among whom were children, were intersected by the police upon their entry in Serbia, taken into custody and

84 Available in Serbian language at: http://www.paragraf.rs/propisi/posebni_protokol_o_postupanju_policijskih_sluzbenika_u_zastiti_maloletnih_lica_od_zlostavljanja_i_zanemarivanja.html.

85 Available in Serbian language at: https://www.unicef.org/serbia/Posebni_protokol_-_socijala.pdf.

86 The Instruction of the Ministry of Interior 01 number 4898/06 from 1 May, 2006, available in Serbian language at: <http://www.minrzs.gov.rs/files/doc/porodica/zlostavljanje/Uputstvo%20postupanje%20policija.pdf>

87 General provisions of the Instruction on the Conduct of Police Officers towards Minors and Young Adults.

kept detained for twelve hours, in conditions which without a doubt were not in line with the above mentioned provisions.⁸⁸

Standard Operative Procedures for the Protection of Refugee/Migrant Children,⁸⁹ created under the auspices of The Ministry of Labour, Employment, Veteran and Social Affairs, were presented in April 2016, and contain clear guidelines for all actors present on the field for the timely discovery and identification of vulnerable unaccompanied children, and adequate referral to the relevant institutions so that these children could enjoy the protection and rights they are entitled to. The Guidelines are intended for all relevant organizations which perform their activities in the field⁹⁰ and they are based on the adjustment of the existing regulations and procedures of the Serbian protection system to international regulations and standards on the protection of children and adoption of good practices of UN agencies, international and local organizations specialized for working with children. However, it is not clear if there is a mechanism for adequate monitoring of the Guidelines implementation, nor whether they are implemented at all by relevant institutions in the child protection system.

Unaccompanied children, whom the Belgrade Centre for Human Rights lawyers have encountered in the field since 2015, often used the services of smugglers for the purpose of the organization of their journey, which exposed them to the additional risk of ill treatment and trafficking. Since the beginning of 2016, the personnel of the Institute for Youth Education in Niš suspected that 42 out of 143 unaccompanied children who were accommodated there were victims of trafficking, and they informed the Centre for Human Trafficking Victims Protection accordingly.⁹¹ However, looking at the statistical data of the Centre for Human Trafficking Victims Protection for 2016, it can be concluded that these proceedings were not finalized either because the child had left Serbia,

88 See more on this case in: *The Right to Asylum in the Republic of Serbia – Report for the period January – March 2017*, Belgrade Centre for Human Rights, April 2017, pp. 21–26, available at: <http://azil.rs/en/wp-content/uploads/2017/05/periodic-report-january-may-2017-fin.pdf>.

89 *Standard Operative Procedures: Protection of Refugee/Migrant Children*, IDEAS, 2016, available in Serbian language at: http://www.udruzenjesz.rs/images/PDF/SOP_SER_6.5.pdf.

90 These are: local police stations, local health centres, local Centres for Social Work, social protection institutions which provide accommodation services, family accommodation and adoption centres, Centre for Human Trafficking Victims Protection, Commissariat for Refugees and Migration of the Republic of Serbia, Red Cross, UNHCR, UNICEF and other international organizations, as well as local non-governmental organizations focused on child and youth protection in emergency situations.

91 Information was collected during the BCHR visit to the Institute for Youth Education in Niš on 30 September, 2016.

or it was determined that they were not victims of human trafficking.⁹² Only in one case in 2016 was it determined that a citizen of Afghanistan was a human trafficking victim in the country of origin.

With the tightening of the conditions for border crossing and access to the asylum procedure in the countries of the EU that Serbia borders with,⁹³ children have more frequently been deciding to reach their target country with the help of smugglers. Having in mind that many of them were without financial means to pay for that dangerous journey, it is reasonable to assume that they were in grave danger to become victims of forced labour or other kind of child exploitation, including sexual, upon entering the country of destination. In the cases when the Belgrade Centre for Human Rights team expressed reasonable suspicion that the children they had contact with were victims of any form of violence, these children were, with the support of the non-governmental organization Atina⁹⁴ and with the approval of the Centre for Social Work, removed to the safe houses, or accommodated at the Maternal Home in Belgrade or one of the asylum centres and reception centres, which provided suitable conditions. Children were also provided other kind of protection, mainly free legal aid and assistance in the social inclusion and integration process.

2.4. INTERSECTORAL COOPERATION

Providing protection to unaccompanied and separated children in migration is a complex and dynamic process, which requires cooperation and coordination of different actors, from state bodies and institutions to civil society organizations. Intersectoral cooperation is necessary in terms of fulfilling international obligations that Serbia took by ratification of different international instruments, but it is also important for the establishment of an effective protection system in line with domestic law. Intersectoral cooperation has been recognized as an important aspect of child protection by the Committee on the Rights of the Child, especially with regards to respect of Article 19 of the Convention on the Rights of the Child, which refers to the protection of children from all forms of physical

92 Data is available in Serbian language at: <http://www.centarzztlj.rs/images/stat/16/Statisticki%20izvestaj%20za%202016%20godinu.pdf>.

93 See more at: *Right to Asylum in the Republic of Serbia 2016*, Belgrade Centre for Human Rights, Belgrade, March 2017, available on: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2017/03/Right-to-Asylum-in-the-Republic-of-Serbia-2016-2.pdf>.

94 Atina is an association of citizens that combats against human trafficking and all forms of gender based violence, founded in 2004, which provides temporary accommodation to victims as part of their support programmes.

and mental violence.⁹⁵ Cooperation between state actors and civil society organizations is crucial also in terms of the implementation of the recommendation of the treaty bodies, namely the Committee on the Rights of the Child and Human Rights Committee.

In order to make intersectoral cooperation efficient, it is important to include all actors, therefore also civil society organizations, in the process. However, research aimed at determining the existence and functionality of intersectoral cooperation on child protection from violence and negligence and to present guidelines⁹⁶ for the improvement thereof, which was recently presented by the Network of Organizations for Children of Serbia and UNICEF, shows that civil society organizations and media are rarely signatories of local agreements.⁹⁷

In practice, problems arose also on the level of cooperation between different state institutions which are in some way included in the protection system and the care of unaccompanied refugee and migrant children. All participants in the working meetings organized within the project *Making a Difference for Refugee Children in Europe* agreed that networking and cooperation of all actors in the protection system is crucial for the establishment of a comprehensive and sustainable child protection system. This is necessary in order to encourage intersectoral cooperation on national and local level through formalizing existing and creating new forms of cooperation.

2.5. INTEGRATION AND RIGHT TO EDUCATION

Local integration is the primary goal of child protection in cases where the return of the child to the country of origin is not possible due to legal or factual obstacles. The process of integration can be initiated only after a child has been

95 UN Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13, para. 7(g), available at: <http://www.refworld.org/docid/4e6da4922.html>.

96 *Guidelines for the Improvement of Intersectoral Cooperation on Child Protection from Violence and Negligence*, Network of Organizations for Children of Serbia, February 2017, available in Serbian language on: <http://mapa.zadecu.org/wp-content/uploads/2017/01/Smernice-za-unapredjenje-medjusektorske-saradnje-na-zastiti-dece.pdf>.

97 Research was conducted in 147 municipalities in Serbia and included the analysis of 134 local protocols relating to prevention and protection from violence. It showed that there are only nine protocols on the protection of children; *Intersectoral Cooperation on the Protection of Children from Violence and Negligence in Local Governments – Analysis of Local Agreements*, Network of Organizations for Children of Serbia, February 2017, available in Serbian language on: <http://mapa.zadecu.org/wp-content/uploads/2017/01/Analiza-lokalnih-sporazuma-za-zastitu-dece-od-nasilja-1.pdf>.

ensured with adequate legal status,⁹⁸ i.e. it is necessary that for the child to be an asylum seeker or a beneficiary of international protection in Serbia. In Serbia, the process of integration of persons who were granted international protection is prescribed by Article 46 of the Asylum Law and it is additionally regulated by the Law on Migration Management.⁹⁹ The central actor of this process is the Commissariat for Refugees and Migration. For asylum seekers and persons who have been granted international protection integration is equally important as the asylum procedure and inclusion in society should start as early as possible, hence during the very asylum procedure.

In terms of refugee children, one of the most important questions is the access to the formal educational system, as a prerequisite for exercising a variety of other rights. In its General Comment no. 13 (1999),¹⁰⁰ the Committee on Economic, Social and Cultural Rights states in Paragraph 1 that education is “the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.” The Convention on the Rights of the Child stipulates the right of each child to education, where the aim of education is smooth development of the personality, talents, mental and physical capabilities of the child to the fullest possible extent. In the General Comment no. 6, the Committee on the Rights of the Child provides several measures which should be taken, as soon as possible, with the aim of easy access to formal and informal education of children affected by migration. This primarily means enabling registration with appropriate educational institutions, and issuing of school reports and other documents which confirm the level of gained knowledge, especially upon relocation, move or return to the country of origin (para. 42).

By the adoption of the New York Declaration¹⁰¹ in September 2016, UN member states expressed determination in the intention to provide access to education for all children, namely within a few months upon arriving at their territory. The ultimate goal is to create an environment which will provide for the complete exercise of rights and personal abilities of children refugees and migrants. Additionally, in December 2016, by recognising children in irregular

98 Paragraph 89 of the CRC General Comment no. 6.

99 *Official Gazette of RS*, no. 107/12.

100 UN Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, available at: <http://www.refworld.org/docid/4538838c22.html>.

101 UN General Assembly, *New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly*, 3 October 2016, A/RES/71/1, available at: <http://www.refworld.org/docid/57ceb74a4.html>

situation as a particularly vulnerable group, the Committee on the Rights of the Child pointed out in the General Comment no. 20¹⁰² that all children within one country's borders, including those with irregular status, have the right to acquire an education.

It was almost impossible for unaccompanied children to exercise the right to education at the time when refugees and migrants passed through the countries on the so-called Balkan Route much faster, having in mind that the average stay of these children in Serbia lasted only a few days. A change occurred in April 2016, wherein an increased number of persons likely in need of international protection remained in Serbia for several months due to the increasingly complicated journey to the destination country. Civil society organizations conducted educational activities at the asylum and reception centres, but the need for asylum seeking children, both unaccompanied and accompanied, to become included in the formal educational system nevertheless arose.

Laws in Serbia in terms of education have largely been in line with the Convention of the Rights of the Child. The Education System Law¹⁰³ in Article 3 defines general principles which help realize education. The most important of those principles are: equal right and access to education without discrimination, equal possibilities for education at all levels and for all types of education, effective cooperation with the family by inclusion of parents or guardians for successful accomplishment of set goals of education, various forms of cooperation with local community and wider social environment to achieve full harmony between the individual and social interest in education.

Under Article 6 of the Education System Law, everyone is entitled to education on an equal footing and without discrimination, while article 100 of that Law states that for children "who do not know the language of tuition or parts of the curricula of relevance to continuing their education, the schools shall organise language lessons, additional and catch-up classes pursuant to separate instructions enacted by the Minister". Primary education of students and adults, education in the year before starting school and secondary education of full time or part-time education is conducted free of charge in an institution founded by the Republic of Serbia, an autonomous province or a local government unit.¹⁰⁴

102 UN Committee on the Rights of the Child, *General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence*, 6 December 2016, CRC/C/GC/20, available at: <http://www.refworld.org/docid/589dad3d4.html>.

103 *Official Gazette of RS*, no. 72/2009, 52/2011, 55/2013, 35/2015 – authentic interpretation, 68/2015 and 62/16 – decision of the Constitutional Court.

104 Article 91 of the Education System Law.

The right to free primary and secondary education of children asylum seekers and children who were approved asylum in Serbia is also included in the Asylum Law,¹⁰⁵ and children who are seeking refuge in Serbia are also guaranteed education with the Decree on the Integration of Foreigners Granted Asylum in the Social, Cultural and Economic Life of the Republic of Serbia,¹⁰⁶ which has not been enforced yet. The Decree provides that the children who were granted right to asylum will be provided assistance upon inclusion in the educational system at all levels of education (preschool, primary and secondary),¹⁰⁷ in terms of the provision of textbooks and school supplies, assistance with the initiation of the procedure of recognition of foreign school certificates, provision of learning assistance, and financial aid for the inclusion in extracurricular activities.¹⁰⁸

On the other hand, many children with irregular status did not have the opportunity to be included in any programmes which would enable them access to at least informal education while they reside on the territory of Serbia, which would include language learning, gaining various skills, psychosocial strengthening and similar. Children who did not seek asylum in Serbia are not recognized as vulnerable categories in national education strategies adopted until 2020,¹⁰⁹ but are recognized as such by the National Strategy for Prevention and Protection from Discrimination (2013).¹¹⁰ Furthermore, the Rule Book on detailed criteria for the recognition of forms of discrimination by an employee, child, student, and a third person in the institution of education¹¹¹ in Article 2 lists migration status¹¹² as the basis for discrimination of children and discriminatory actions in education. The Rule Book defines that discrimination exists if, regardless of their personal characteristics, each child is not provided conditions to accomplish standards and outcomes of education. It should be mentioned that the Education System Law provides that children from vulnerable social groups, which migrants are surely part of, are to be enrolled in schools without complete documentation (Art. 98, para. 3). Even if the Law

105 Article 41 of the Asylum Law.

106 *Official Gazette of RS*, 101/16.

107 Art. 6 of the Decree on Integration.

108 Assistance is provided in cooperation with schools and associations.

109 There are several such strategies: National Strategy for Education 2012–2020 (*Official Gazette of RS*, 107/12), Strategy for the Education of Adults in the Republic of Serbia (*Official Gazette of RS*, 1/07), and Strategy of Scientific and Technological Development of RS for the period of 2016–2020 – Research for Innovation (*Official Gazette of RS*, 25/16).

110 *Official Gazette of RS*, 55/05, 71/05-correction 101/07, 65/08, 16/11, 68/12 – decision of the Constitutional Court and 72/12.

111 *Official Gazette of RS*, 22/16.

112 Including regular and irregular migrants, asylum seekers and persons with refugee status.

defines the facilitated procedures, in practice, the problem at enrolment appears to be the inability to submit evidence on gained education. The beneficiaries of international protection are very frequently not able to obtain this kind of evidence, since they come from war inflicted and dilapidated areas.

With the efforts of the field social workers in Belgrade, and the support of UNICEF and their partners, 22 out of the total of 65 unaccompanied children at the secondary school age who resided at the Krnjača Asylum Centre in December 2016, were enrolled in the primary school “Branko Pešić” in Zemun.¹¹³ Five of these children soon enrolled into the Agricultural High School with the boarding home “PKB”. Children from families have since February 2017 been enrolling in seven¹¹⁴ primary schools on the territory of Belgrade, and two¹¹⁵ primary schools on the territory of Lajkovac which joined the project by March 2017. The enrolment of refugee and migrant children in schools is enabled with the support of UNICEF and their partners through the project “Support to educational institutions with the integration of migrant students and children, refugees and asylum seekers.” The participation of schools in the programme was based on the enthusiasm and willingness of the school administration to join. Even though these programmes gave positive results, it should be pointed out that only the State has clear jurisdiction and obligation to enable the inclusion of all children without discrimination in the educational system. A complete inclusion of refugee and migrant children will only be possible when the education of refugee and migrant children, regardless of their status and personal characteristics, is not left as choice to the schools on the territories where the children reside, but when all actors in the system are automatically enrolling all children in the system, without discrimination.

In order to achieve this, the Ministry of Education, Science and Technological Development has issued mandatory technical instruction¹¹⁶ on the modalities of teaching, in order to enable children who do not know the language to follow the classes without obstacles. Instruction foresees for children who do not have the evidence to prove previous education to be enrolled in schools on the basis of the evaluation of a competent team, in cooperation with persons who

113 This school is accredited to implement the so-called “second chance” program, which allows it to educate older pupils who did not complete primary school.

114 Primary schools Jovan Cvijić, Jovan Ristić, Zaga Malivuk, Rade Drainac, Olga Petrov, Branko Pešić, Filip Filipović (for children residing at the Institute for Education of Children and Adolescents “Vasa Stajić”).

115 Primary schools Dimitrije Tucović and Mile Dubljević.

116 Technical instruction for the inclusion of refugees/asylum seekers in the education system, no. 601-00-00042/2017–18 from 05 May 2017.

know the pupil and with the assistance of a translator. Based on the evaluation, an individual support plan is to be created, containing a program for adaptation and stress management, intensive course of Serbian as a second language, individualization of teaching activities and enrollment in extracurricular activities. As the Instruction has not yet started to be implemented, it remains to be seen in which extent it will contribute to the improvement of the rights of refugee and migrant children to education and enable schools to contribute to that goal.

In April 2017, the Belgrade Centre for Human Rights visited “Branko Pešić” primary school, which is included in the aforementioned project of the refugee and migrant children education, and met their unique method of work, developed at the school level. Upon enrolment, children go through an evaluation process, so as to measure their cross-curricular competences in the lack of evidence of previous education, and to adequately include them in their continued schooling. The instruction is organized in eight classes (from fifth to eighth classes, depending on their age) where refugee and migrant children are in the same classes with children of Serbian nationality. With the use of informational technologies, children can learn Serbian language in a separate group and through integrated curriculum where they are gaining knowledge of science, humanities, biology etc. They attend other classes along with the local children, and at the end of each month the school issues individual statements on acquired knowledge to them, including a description of activities they were included in that month. By mid-May 2017, 59 refugee and migrant children went through the “Branko Pešić” primary school.¹¹⁷

117 Information was obtained from Ivana Ceneric, project coordinator in the Centre for Education Policy.

III CONCLUSION

As it was previously stated, according to the provisions of the Convention on the Rights of the Child, all children, regardless of their or their parents' legal status, have the right to special protection, which primarily refers to the respect of the child's best interest in all activities that concern them and the absolute prohibition of discrimination on any grounds. The current situation of children who were separated from parents as primary guardians for any reason shows that they are particularly exposed to dangers of different forms of abuse and exploitation, so they need to be provided with additional protection.

We have seen that unaccompanied children who are residing in Serbia face numerous difficulties in exercising their fundamental rights and that, in some cases, this does not happen because of the lack of systemic solutions, but due to insufficient familiarity of the child with their guaranteed rights or due to the small number of guardians who could effectively dedicate to each suffering child in person. Unaccompanied children who did not seek asylum in Serbia and are in an irregular situation are in an especially difficult position. These children have experienced greater difficulties in exercising their fundamental rights, and the right to education and social inclusion were practically unattainable. Due to the commitment of the state to provide the humanitarian care of all migrants, the accommodation at one of the reception or asylum centers was usually available to the unaccompanied children, with or without having expressed the intention to seek asylum. However, the majority of those centres do not have separate facilities, not even rooms, for the accommodation of unaccompanied children, nor do they have a comprehensive protection system and guardianship monitoring and referral to activities which would enable exercising of their rights. Alternatively, a certain number of unaccompanied children were accommodated at a social protection institution which is not primarily specialized for taking care of unaccompanied refugee and migrant children and where, due to the lack of interpreters, there were difficulties for basic communication, while the capacities of one of the institutions were not used enough due to financial reasons.

Considering the analysis of the legal framework and situation in the practice of the protection of unaccompanied children, it has been established that even

in cases where a whole set of guaranteed rights exists in the laws in force, there are numerous obstacles in exercising these laws in practice. The number of unaccompanied children refugees and migrants in Serbia grows month after month, and the period of time they spend in Serbia is increasing as well. Taking into consideration general situation and politics of the neighboring countries, it is reasonable to expect that this trend will continue in the upcoming period as well. Therefore, it is necessary to establish an effective system of protection for these children in the shortest possible time, especially in terms of health care including psychological support, education, social protection and care, in accordance with international standards. It should not be forgotten that this is, primarily, an obligation of the State but that civil society organizations should not be left out of the entire process, since they can contribute largely and support the state bodies and institutions in the improvement of the practice of protection of unaccompanied children.

It is the general impression that all actors in the field of protection of rights of unaccompanied children are facing a lack of effective intersectoral cooperation, both between the government and non-governmental sector and between various state institutions which cover different aspects of child care. Therefore, additional efforts need to be invested in the aim of enhancement of cooperation between state bodies and institutions which has already been determined by law and bylaw acts, and through the creation of new networks which would include government and non-governmental actors. That way it would be possible to build an effective system with joined forces, which would result in the improvement of the position of unaccompanied children migrants, asylum seekers and refugees in Serbia and enable them to exercise a series of guaranteed rights to the fullest.

Finally, aiming to recognize the achievements and also to identify shortcomings, below we offer a list of recommendations for the improvement of the position of unaccompanied and separated children in the Republic of Serbia. We hope that all sectors of society will take these recommendations into consideration and build them into their strategies and measures for the fulfillment of their activities and plans.

IV RECOMMENDATIONS FOR THE IMPROVEMENT OF PRACTICE

Numerous international organizations have presented a series of recommendations for the enhancement of the rights of unaccompanied children refugees and migrants on the regional and European level. The recommendations presented in this document were created in the process of conducting several working meetings and counselling sessions across the country. During these sessions, the participants identified key problems in the protection of unaccompanied and separated children in practice and, on the basis of this, offered solutions for the improvement of this area.

THE INITIAL CONTACT WITH UNACCOMPANIED CHILDREN REFUGEES AND STANDARDS FOR ACTION

- Preliminary identification and registration of all children should be conducted during the initial contact with children, be they asylum seekers, refugees or migrants.
- A humane and dignified system should be established for age determination, that would take into account psychological maturity along with physical appearance, in line with the CRC General Comment no. 6.
- Continuous trainings should be organized for all officials who come in contact with unaccompanied children, in order to familiarize them with the rights of the child and help them develop sensitivity for working with this exceptionally vulnerable group of migrants.
- During identification and registration, officials of the Ministry of Interior, Commissariat for Refugees and Migration, Centres for Social Work, Health Care Centres and the judges of Misdemeanor Courts should provide basic information to children on their rights in Serbia and the situation that they are in, so that the children could adequately participate in the decision-making process.
- Standard operative procedures should be established for acting in specific situations, which would be binding for all relevant actors in the system for child protection, establishing also a clear line of

responsibility and impose sanctions for public officials for the violation of rights of refugee and migrant children.

- Ministry of Labor, Employment, Veteran and Social Affairs should empower and strengthen the capacities of the Centres for Social Work, through engaging additional staff and additional professional trainings.
- The principle of *non-refoulement* must be fully respected, as regards to the proscription of returning refugees and migrants to the states in which they could be subjected to treatment contrary to the principle of the prohibition of torture and inhumane or degrading acts.

INTERSECTORAL COOPERATION

- Clear rules of conduct should be established among different state institutions, included in the system of migrant protection, to create a coordinated system, uniform practice and enable compatible action and increased accountability for mandated responsibilities.
- Intersectoral cooperation should be formalized between governmental, non-governmental and international organizations and bodies in all segments of unaccompanied child protection, whereas the state should undertake the role of the coordinator of the entire process.
- All relevant providers of services to unaccompanied children should be mapped and, in accordance with that, a universal database of contacts should be maintained, in order to ease the assignment system on the field.
- A network of different local actors should be created, and their capacities should be strengthened to provide adequate protection, both legal and psychosocial, to unaccompanied children.
- International organizations should plan longer term projects aimed at the protection of unaccompanied children, to ensure continual protection and act with the aim of finding permanent and viable solutions.

CARE AND ALTERNATIVE CARE

- Specialized accommodation and reception centres designated only for unaccompanied children with enough trained staff, including permanently employed interpreters should be established, and at

the same time alternative forms of care for unaccompanied children should be developed and advocated.

- When deciding upon a solution, it is necessary to take into consideration characteristics of each individual child, and to appreciate the child's own opinion when making the decision.
- The Ministry of Labour, Employment, Veteran and Social Affairs should invest efforts in strengthening local communities for foster care and training as many potential foster families across the country as possible, especially in local communities where there are no foster parents.
- Targeted campaigns for the promotion of foster care should be continued and at the same time support to the existing foster parents should be maintained while providing them with additional sensibilization for taking care of this vulnerable group of children.
- Developing supported housing modalities for unaccompanied children older than 16 years of age should be considered, in order to enable them to gain full independence and become integrated in the community.

VICTIMS: IDENTIFICATION AND TREATMENT

- It is necessary to establish teams for urgent psychological interventions, both at the civil society organizations level and at the state level, which would be available 24 hours per day.
- Trainings for psychologists and social workers who could provide psychosocial support to unaccompanied children on the territory of their local units should be organized across the country, especially in border areas.
- It is necessary to organize psychological trainings for interpreters, who often serve as a bridge between care providers and unaccompanied children, with the aim of preventing additional trauma.
- The state should ensure that the first individuals who unaccompanied children encounter upon entering Serbia are not uniformed and armed persons. The initial contact with unaccompanied children should be made by a person trained to work with victims and persons who have suffered trauma.
- Upon employment of persons providing psychological support to unaccompanied children, civil society organizations should decide

on certified experts, in the aim of preventing additional trauma to children and provision of adequate protection.

- It is necessary to invest additional effort into establishing an adequate system of timely identification of abuse and human trafficking victims, and provide practical instructions about the services children recognized as victims should be directed to. This should be established in the form of standard operative procedures. Furthermore, all relevant actors in the protection system of unaccompanied children should provide supervision over the application of the existing standard operative procedures, and establish and advocate new, improved solutions.

INTEGRATION AND THE RIGHT TO EDUCATION

- Unaccompanied and separated children who are granted international protection in Serbia must be enabled to reunite with their families.
- A systemic application of the right to education for all children on the territory of the Republic of Serbia must be applied, regardless of their legal status, their parents' legal status or the length of their stay in the country.
- Informative campaigns aimed at the prevention of discrimination that could prevent asylum seeking, refugee and migrant children from integrating in the education system should be launched.
- Programmes for assessing the level of a child's knowledge and skills before the special commissions within the Ministry of Education should be established, with the aim of acknowledging previous education in the country of origin and enabling children to continue their education in line with international and national standards.

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