IDEAS
identity of positive change

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SUBMISSION OF THE CENTER FOR RESEARCH AND SOCIAL DEVELOPMENT IDEAS TO THE HUMAN RIGHTS COMMITTEE'S 140th SESSION RELATED TO EXAMINATION OF THE FOURTH PERIODIC REPORT OF SERBIA

By submitting this report, IDEAS aims to support the Human Rights Committee's review of Serbia's progress in upholding its obligations under the International Covenant on Civil and Political Rights and contribute to the improvement of the rights of refugees and asylum seekers in Serbia.

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1 Introduction

This report is prepared by the Centre for Research and Social Development IDEAS (IDEAS) for the United Nations Human Rights Committee, following the Fourth periodic report submitted by Serbia under the International Covenant on Civil and Political Rights (ICCPR) and the subsequent adoption of a list of issues on that report by the Human Rights Committee[1].

IDEAS is a non-profit, non-governmental organisation based in Serbia, established in 2014 with the objective of promoting social inclusion and human rights. Through service provision, advocacy, and capacity building, IDEAS actively works to protect vulnerable groups, including migrants, refugees and asylum seekers, LGBTQI+ persons, children, persons with disabilities, older persons, and women. This report specifically focuses on the rights of asylum seekers and refugees in Serbia, addressing issues raised in paragraphs 32 and 33 of the Concluding observations on the third periodic report of Serbia.[2] The report examines issues related to the access to territory and asylum procedure in Serbia, respect, protection and fulfilment of the principle of non-refoulement in the context of boder control and credibility assessments in asylum procedure Additionally, the report presents shortcomings in assessing and addressing the special reception needs of vulnerable groups, as well as challenges faced by unaccompanied and separated children (UASC), such as age assessment, guardianship, and capacity of Serbian authorities to ensure that best interest of children is protected.

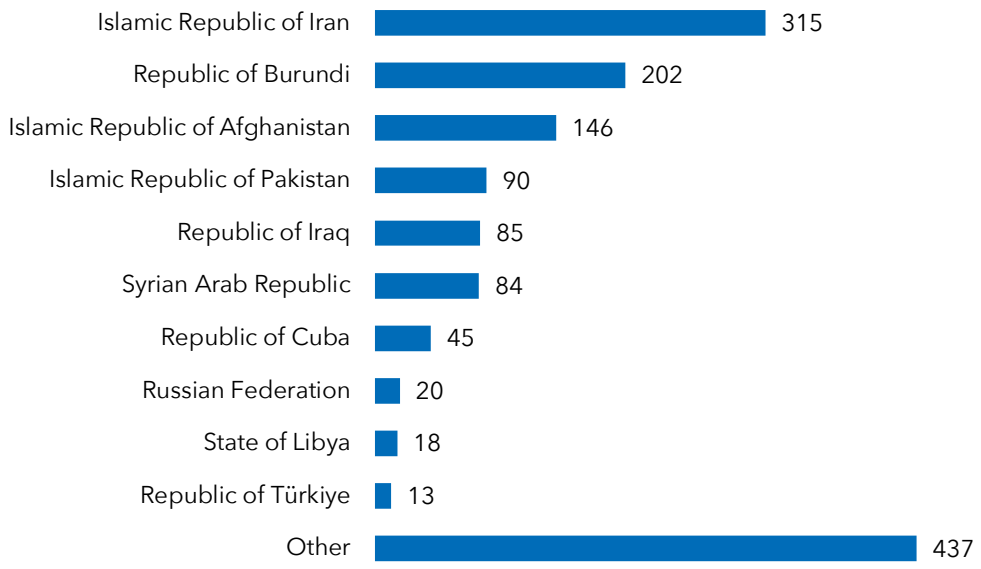
[1] Hereinafter: HRC.

[2] HRC, *Concluding observations on the third periodic report of Serbia*, 10 April 2017, CCPR/C/SRB/CO/3, available at: https://www.refworld.org/docid/591e9c4b4.html [accessed 2 February 2024], paras. 32-33, hereinafter: CC 2017

The methodology includes legal analysis, a literature review of relevant publications, primary data collected from interviews with refugees and asylum seekers about their personal experiences, and secondary data gathered through the provision of services.

According to the AIDA database, from 2017 to 2022, 36,859 persons expressed intention to seek asylum in Serbia and were issued registration certificates (which is not considered to be asylum application, but mere condition to lodge it)[3] However, only 1,455 persons, approximately 4%, formally lodged asylum application over that period. The most frequent countries of origin of asylum applicants were the Islamic Republic of Iran, the Republic of Burundi, and the Islamic Republic of Afghanistan (Graph 1). Other countries from which most of the asylum applicants come are the Islamic Republic of Pakistan, the Republic of Iraq, and the Syrian Arab Republic.

Graph 1. The number of individuals seeking asylum categorised by their country of origin for the period 2017 -



Since 2008, at least 2,1 million refugees, asylum seekers and migrants have transited through Serbia, out of which 658,543 were registered in line with the Asylum Act[4] and only 4,216 lodged their asylum application. In the period from 1 April 2008 to 31 December 2023, the asylum authorities in Serbia rendered 164 decisions granting asylum (refugee status or

[3] European Council of Refugees and Exiles, *Asylum Information Database. Country Repot: Serbia,* available at: http://bit.ly/3Uy9be9 [accessed 2 February 2024]
[4] Registration in Serbia is not considered as asylum application.

subsidiary protection) to 235 persons from 26 different countries. Out of these 235 persons, half of them at least left Serbia, indicating also the problem related to integration.

The data indicates thatsignificant efforts are still required to develop the Serbian asylum system and align practices with international human rights law and standards.

By submitting this report, IDEAS aims to support the Human Rights Committee's review of Serbia's progress in upholding its obligations under the International Covenant on Civil and Political Rights and contribute to the improvement of the rights of refugees and asylum seekers in Serbia.

2 Asylum procedure

Denial of access to territory and asylum procedure though informal and forcible removals where risks of *refoulement* and *chain-refoulement* are not examined at all – the so-called 'pushback practices' – Articles 7, 9 and 29 of the ICCPR

In its latest Concluding Observations (CCPR/C/SRB/CO/3, 10 April 2017), the Human Rights Committee expressed its concerns on '**reported cases of efforts to deny access to Serbian territory and asylum procedures, of collective and violent expulsions [...] despite concerns regarding conditions in some of those countries'.**[5] The Committee issued a recommendation to Serbian authorities to refrain **'from collective expulsion of aliens and ensuring an objective assessment of the level of protection when expelling aliens [...]'**[6]

Unfortunately, the issue of violent and collective expulsions to North Macedonia and Bulgaria intensified over the years, and what is more concerning is that this practice implies the resort to violence, use of modern technologies provided by the EU and other international donors and complete lack of responsibility for those who order and execute such acts -

[5] CC 2017, paras. 32-33
[6] *Ibid*.

impunity. Since the latest reporting period, more than 227,183 instances of collective removal of refugees, asylum seekers and migrants have been reported by the official State authorities and media.

Table 1. Number of prevented 'illegal entries' to Serbia in the period 2016-2022

Year	No. of persons
2016	(at least) 18,000[7]
2017	(at least) 21,000[8]
2018	(at least) 23,000[9]
2019	20,221[10]
2020	38,226[11]
2021	14,806
2022	45,965
2023	NA
Total	(at least) 227,183

In the landmark decision of the Constitutional Court from 25 December 2021, it was determined that in February 2017, 17 refugees from Afghanistan (including 9 children) were collectively expelled to Bulgaria, but to this date, no one was held responsible.[12]

This kind of practice implies that contrary to the safeguards derived from Articles 7, 9 and 29 of the ICCPR, foreign nationals are subjected to the

[7] Danas, 'Migrants unhappy with conditions of life', 27 December 2016, available in Serbian at: http://bit.ly/2koDcN7.

[8] Alo, 'Da nije vojske i policije - Vulin: Sad bi bilo u Srbiji 20.000 migranata, zamislite to!', 22 July 2017, available in Serbian at: http://bit.ly/2DGDgRx.

[9] Serbian Army, 'Престанак ангажовања Заједничких снага Војске Србије и МУП', 2 April 2018, available in Serbian at: https://bit.ly/2EolHoI.

[10] BETA, 'MUP: Na dnevnom nivou spreči se ilegalni ulazak 2'0 do 50 ilegalnih migranata', 26 November 2019, available (in Serbian) at: http://bit.ly/2TdLuYL.

[11] Danas, 'Vučić: There are currently 3,977 migrants in Serbia, last year we prevented more than 38,000 illegal crossings', 17 June 2021, available (in Serbian) at: https://bit.ly/3koFNV0 and Ministry of Interior, Извештај о спровођењу Стратегије супротстављања иррегуларним миграцијама за период 2018-2020. година, available at: https://bit.ly/3Dtss4r, 10.

[12] See more at: DW, *Serbian court confirms illegal pushbacks,* 22 January 2021, available at: https://bit.ly/37UjHTD and ECRE, Serbian Constitutional Court finds that a removal of a group of Afghan nationals amounts to collective expulsion, EDAL, available at: https://bit.ly/3Ssy8or.

clusters of human rights violations where refugees, asylum seekers and migrants are:

1. Arbitrarily deprived of their liberty outside any legal framework which would govern detention, grounds for detention, length, extension and abolition of detention
2. Not issued with an individual decision on deprivation of liberty, which can be challenged with an effective remedy before the judicial authority
3. Not allowed to enjoy 3 safeguards against ill-treatment (right to a lawyer, right to inform third person on their situation and right to medical examination), including against *refoulement* and *chain-refoulement*
4. Not informed in a language they understand on their rights, responsibilities and applicable procedure verbally nor through the multi-lingual leaflet
5. *Incommunicado* deprived of their liberty, which is not covered with individual custody records, which proves the clandestine nature of such operations
6. Denied access to territory outside any legal procedure
7. Denied access to asylum procedure or other residential procedure in which they can outline risks *refoulement* or *chain-refoulment* in their countries of origin or third countries, especially if they might be in need of international protection
8. Informally (outside any legal procedure such as readmission, for instance) and forcibly expelled back to Bulgaria and North Macedonia without having their individual circumstances examined in a procedure in which they are provided with the possibility to attain a lawyer and contest removal in a language they understand and where they would be allowed to lodge remedy with automatic suspensive effect in case of the first instance decision which does not go in their favour
9. Expelled without any health care screening or screening of their vulnerabilities (SGBV, LGBTQI+, human trafficking, elderly, unaccompanied and separated children, torture survivors, families with small children, etc.)
10. Expelled in a manner which amounts to ill-treatment because of:
    - The circumstances in which removal is happening (in the forest and mountain area, at night in harsh weather conditions, deprived of food and water and sentenced to destitute)
    - Individual circumstances of pushback survivors - children, sick and exhausted people, pregnant women, people with traumatic refugee and transit country experiences which involve violence and exploitation and other
    - Acts of physical ill-treatment such as slaps, kicks, hits with rifles, forcing of people to kneel, to stay wet in cold conditions, etc.

- Acts of psychological ill-treatment threats, swears, humiliating language

11. Expelled to countries in which ill-treatment can easily materialise or where they can potentially face the risk of *chain-refoulement* to other third countries or countries of origin
12. Denied access to justice because perpetrators of these acts are protected and are not criminally and disciplinary prosecuted and punished, and Serbian authorities deny the existence of such practice, contributing to the atmosphere of impunity

For all of the above-said, we recommend that the Committee outline in its Concluding Observations to the Republic of Serbia the following recommendations:

- MoI should align its practising of sovereignty to control entry, stay and expulsion from its territory, in line with the ICCPR and right to liberty and security, prohibition of ill-treatment including the *non-refoulement* principle and prohibition of collective expulsions;
- MoI should secure that all refugees, asylum seekers and migrants arriving at the border of Serbia undergo identification, registration, health care and vulnerability assessment;
- MoI and other border authorities should treat all intercepted refugees, asylum seekers and migrants as persons deprived of their liberty and afford them all the layers of the right to liberty and security and especially the right to attain a lawyer and inform the person of their choice on their situation;
- MoI should establish and keep detailed and individualised custody records of all refugees, asylum seekers and migrants deprived of their liberty in the context of border control;
- MoI should inform refugees, asylum seekers and migrants on their rights, responsibilities and applicable procedures, with a special emphasise on the right to apply for asylum or other suitable residential procedure where risks of *refoulement* can be thoroughly and independently assessed;
- MoI should refrain from removing refugees, asylum seekers and migrants from one country to another outside formal legal procedures (e.g. readmission or refusal of entry) before rigorous assessment of the risks of *refoulement* and detailed examination of individual circumstances of each and every foreigner in the procedure, which is concluded with individual decision against which they can lodge a remedy with automatic suspensive effect;
- MoI, Ministry of Defence and other actors operating in the border are of Serbia (such as Frontex) should refrain from utilizing modern technology for violation of the ICCPR;

- MoI, relevant public prosecutor offices and Ombudsman should secure that the members of the border force who violate human rights of refugees, asylum seekers and migrants are discovered, criminally and disciplinary prosecuted and sanctioned proportionately to the gravity of their crimes;
- MoI should secure that border control activities are recorded so they prevent ill-treatment and provide suitable ground for effective investigation into all arguable claims of ill-treatment committed by the hands of border authorities
- MoI should secure that border police or other state officers display visible identification numbers or tags on their uniforms.

Unlawful and arbitrary deprivation of liberty of refugees, asylum seekers and migrants at the airport Nikola Tesla and practices which fall outside the scope of the *non-refoulement* principle and in relation to the refusal of entry practice - Articles 7, 9 and 29 of the ICCPR

The treatment of refugees, asylum seekers and migrants who might face *refoulement* or *chain-refoulement* to third countries or countries of origin and who are refused entry at Nikola Tesla airport remains a serious concern and basically unchanged since the last findings of the Committee in 2017[13] in terms of the Article 7 and Article 9 of the ICCPR. HRC recommended in its latest Concluding Observations that border authorities must ensure that '**access to formal procedures for asylum applications is available at all border points, notably in international airports and transit zones [...]'.**

The only notable change is of legislative nature, meaning that the new Foreigners Act, which came into force on 1 October 2018,[14] has officially introduced the institute of **the decision of refusal of entry**. Until 1 October

[13] CC 2017, paras. 32-33.
[14] Serbia. Foreigners Act, *Official Gazette of the Republic of Serbia*, no. *24/2018, 31/2019 i 62/2023*, available at: https://bit.ly/485cQDh, Article 15.

2018, the refusal of entry was executed daily but without a formal decision since one was not envisaged in the old Foreigners Act. However, the manner in which refusal of entry practice is applied remains unchanged, falling outside the scope of Article 7 of the ICCPR and safeguards against *refoulement* and *chain-refoulement*.[15]

Foreign nationals who are refused entry are automatically served with the refusal of entry decision drafted in Serbian Cyrillic and English. This decision is rendered in the procedure in which the foreigner in the case has not been allowed to outline reasons against their forcible removal (including potential risks of *refoulement or chain refoulement*) with the assistance of the interpreter and legal representative.

Thus, the procedure and the manner in which the refusal of entry decision is rendered is deprived of any risk assessment of *refoulement* or *chain-refoulement*.[16] Even if foreign nationals would understand the content of the decision, they would not be able to challenge it with an appeal due to the following reasons:

1. They are arbitrarily deprived of their liberty in detention premises at the airport transit zone, and it is impossible for them to appeal that situation (locked in the cell and cut from the outside world);
2. Their arbitrary arrest implies that they are denied access to lawyers or civil society organisations which provide assistance to people on the move;
3. They are not informed in a language they understand on the reasons for their deprivation of liberty, length of detention, their rights, responsibilities and applicable procedures, which would give them a better understanding of how to challenge the refusal of entry;
4. From the detention cells, they cannot pay the fee of around 140 EUR, which is a pre-condition to lodge the appeal, and obtain the certificate confirming the payment (which should be lodged as annex to the appeal), and it is questionable if refugees can afford to pay for the appeal fee;
5. They are not provided with paper, pen, envelope or access to the post office, so they cannot even draft and send the appeal;
6. In most cases, they are legally incompetent parties, sometimes illiterate, and if not provided with the template for the appeal and in a language they understand, it is reasonable to assume that they would not be able to draft it properly or draft it at all;
7. In the best-case scenario, the foreigner could lodge an appeal in English. Still, in most cases, these languages could range from French,

[15] ECRE, *AIDA Country Report: Serbia – 2022 Update*, available at: https://bit.ly/3Wmq0aD, pp. 14, 40-48 and 68-71.
[16] *Ibid*.

Turkish, or Spanish to Arabic, Farsi, and Kirundi. This would further mean that the content of the appeal, which would contain handwriting in foreign language, will have to be delivered to the court interpreter and then to the second instance authority to decide, and due to the lack of automatic suspensive effect, this would not be possible to be done before forcible removal;

8. Even if lodging of the appeal would not be theoretical and illusory, the appeal does not have an automatic suspensive effect, and it is impossible for foreigners to stay in the transit zone before the MoI decided upon the appeal[17]

This practice is particularly problematic in cases in which a refusal of entry decision is issued in relation to foreign nationals who might be in need of international protection and who arrived at Serbia from third countries or countries of origin in which they face persecution, irreparable harm or other human rights risks for which they should be allowed to access territory, asylum procedure and avoid forcible removal. These people are automatically served with the refusal of entry decision, denied access to territory and asylum procedure and boarded back to the plane, very often with the use of force.[18]

Another issue which is relevant for foreigners who are refused entry at Nikola Tesla airport is that they are deprived of their liberty in terms of Article 9 of the ICCPR.[19] They can be locked up in the transit zone from several hours to several days or weeks, waiting for their place on the flight of the air carrier with whom they arrived in Serbia.[20] This detention can only be described as arbitrary for the following reasons:

1. They are placed in the transit zone without a formal decision rendered in the legally prescribed procedure by the legally competent body and for an unknown period of time.
2. There are no legal provisions which govern the length of detention, grounds for detention, grounds for extension and abolition of detention;
3. There is no possibility of appealing the detention order and asking for a judicial review.
4. People are not treated as being deprived of their liberty and thus are denied access to a lawyer or interpreter, the possibility to inform a third party of their situation and whereabouts and independent medical examination.

[17] *Ibid*.
[18] See the examples *AIDA Country Report: Serbia – 2022 Update* on pages 44-47.
[19] HRC, General comment No. 35 Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35, available at: https://bit.ly/3SvkRvu, paras. 3,5 and 7.
[20] *Ibid*.

One of the main reasons for such a state of affairs is the lack of provisions within the Foreigners Act, which does not govern the status of persons within the transit zone who are refused entryThe numbers from 2022 indicate that almost 9,000 persons were refused entry at the airport in an above-described manner, including citizens of Turkey, Cuba, Burundi, Iran, Syria, Afghanistan, and Somalia – countries from which people almost always flee in fear of persecution, or can fell due to their political activism, ethnic origin (Turkey), etc.

Table 2. Refusal of entry at the Belgrade 'Nikola Tesla' airport in the period from 1 January 2022 to 31 December 2022

Nationality	No. of persons	Country of Removal
India	4,516	mainly Türkiye
Tunis	2,787	mainly Türkiye
Turkey	573	mainly Türkiye
Cuba	262	mainly Russia
Guinea Bissau	126	mainly Türkiye
Burundi	84	mainly Türkiye
Iran	29	mainly Türkiye
Syria	23	mainly Qatar
Afghanistan	4	3 Türkiye and 1 the Netherlands
Somalia	3	Türkiye
Others	275	Mainly countries of origin
Total	8,682	

Thus, treatment of refugees, asylum seekers and migrants at Nikola Tesla airport is a two layered problem which should be observed from the perspective of both Article 7 and Article 9 of the ICCPR. The Human Rights Committee should recommend to Serbian Government to amend the Foreigners Act and introduce provisions which would recognize the status of persons deprived of liberty to all refugees, asylum seekers and migrants refused entry at the airport and placed in transit zones in a manner in which the law would clearly:

1. Prescribe procedure in which detention order is rendered and will introduce the possibility for foreign nationals to actively, with the help of interpreter and lawyer, dispute their detention;
2. Prescribe competent authority for imposing detention;
3. Prescribe the form of the decisions, mandatory reasoning and mandatory translation of the main parts of decision to the language that foreign national in case understands;

4. Prescribe grounds for imposing of detention, extending and abolishing of detention, as well as length of detention;
5. Stipulate the responsibility which would imply that border police has to serve detained foreign nationals with multi-lingual leaflets which would enlist their rights (lawyer, informing third person, medical examination, reasons for detention), responsibilities and applicable procedures;
6. Introduce possibility to lodge effective remedy to the judicial body which would examine the legality of detention;

As for the amendments which are related to the refusal of entry decision, the Foreigners Act should be amended by the Government so it clearly stipulates:

1. Automatic suspensive effect of the appeal against refusal of entry decision;
2. Active participation of foreign national in the procedure in which refusal of entry decision is rendered and with the assistance of lawyer and interpreter for the language which foreigners understands, so he or she can outline reasons against forcible removal.

Asylum procedure – Credibility assessment from the perspective of Article 7 of the ICCPR and the non-refoulement principle – lack of rigorous scrutiny and the capacity to apply in dubio pro reo principle

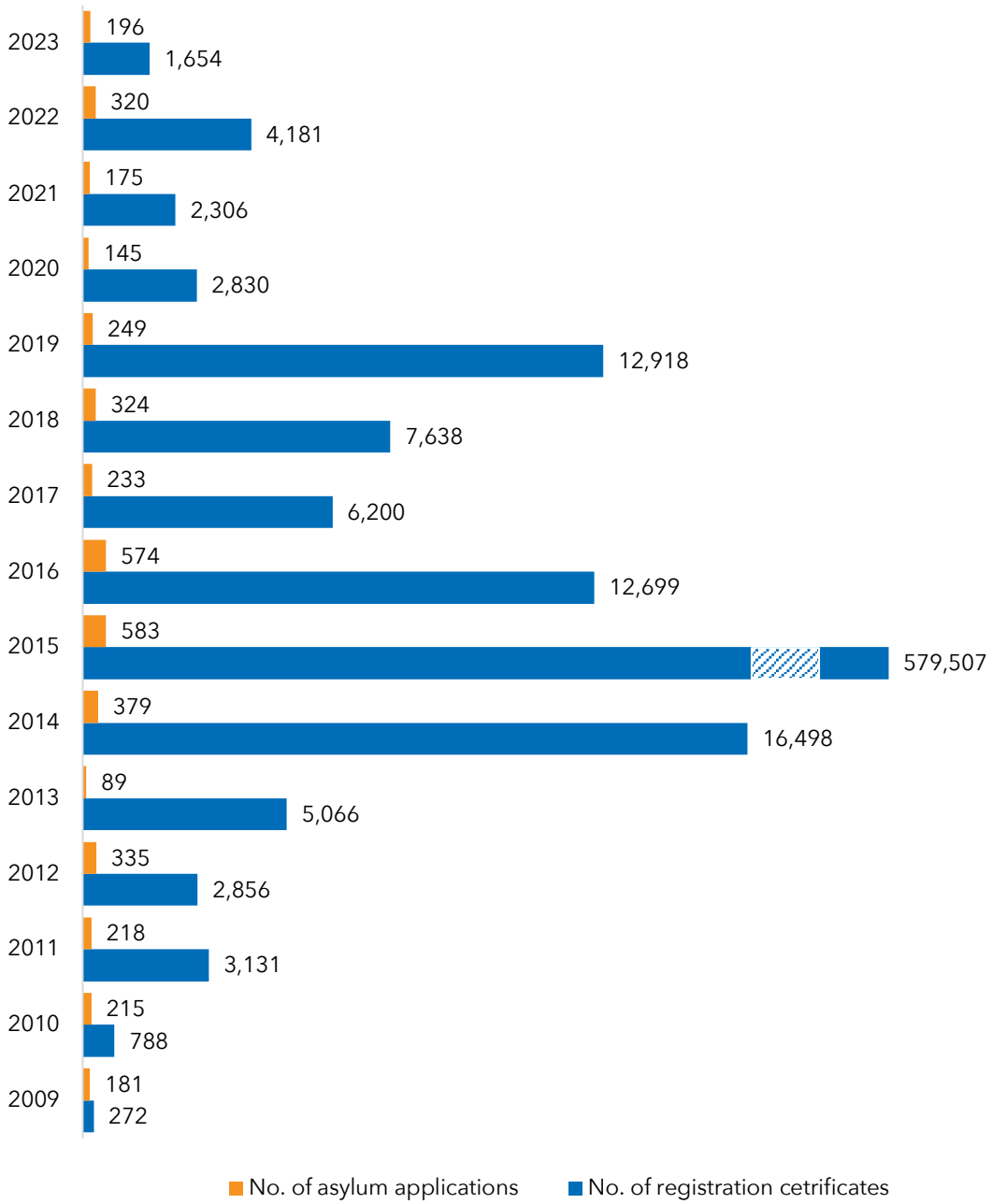
In its latest Concluding Observations, the Committee was '**concerned about the existence of significant obstacles and delays in the process [...] interviewing and providing identification for asylum seekers and the low number of asylum claims granted**' and recommended to Serbia authorities to ensure '**that all asylum applications are assessed promptly on an individual basis with full respect for the principle *of non-refoulement*'**.[21]

Unfortunately, since the latest reporting period, or more precisely, establishment of Serbian asylum system in 2008, asylum procedure can only be described as unfair, unreasonably long, ineffective and disregarding of individual circumstance of the applicants in terms of the safeguards against *refoulement*. Credibility assessment of the asylum claims by Asylum Office, Asylum Commission and Administrative Court (three instances in Serbian asylum procedure) is inadequate and unfairly burdens applicants with impossible tasks to prove beyond reasonable doubt acts of persecution. All of these issues are the reason why persons in need of international protection are not willing to apply for asylum because even those who have attempted are in many instances rejected in a manner which lacked rigours scrutiny in assessing the risk of treatment contrary to the Article 7 of the ICCPR.[22]

Since 2008, at least 2,1 million refugees, asylum seekers and migrants have transited through Serbia, out of which 658,543 were registered in line with the Asylum Act[23] and only 4,216 lodged their asylum application (Graph 3). In the period from 1 April 2008 to 31 December 2023, the asylum authorities in Serbia rendered 164 decisions granting asylum (refugee status or subsidiary protection) to 235 persons from 26 different countries. Out of these 235 persons, half of them at least left Serbia, indicating also the problem related to integration.

[21] CC 2017, paras. 32-33.
[22] See more in AIDA Country Report: Serbia, pp. 72-121.
[23] Registration in Serbia is not considered as asylum application.

Graph 3. Number of persons registered and asylum applications from 2009 – 2023 (Statics are extracted from the AIDA Country Report and complemented with the data from 2023)



The Graph above displays clearly that only 0,7% of foreign nationals who were registered lodged their asylum application (4,216), while 0,04% was granted asylum (235). If these numbers would be measured in relation to the total number of persons who transited through Serbia but were not registered, the outcome would be even more devastating. These striking numbers indicate the failure of Serbian authorities to:

1. Establish asylum system infrastructure in which Asylum Office would have enough human, financial and logistical resources to facilitate asylum procedure which would not last for more than a year on average.
2. Select qualified members for the Asylum Commission with the proven record in International Human Rights Law and International Refugee Law, and not bureaucrats selected from different ministries who lack even the most basic knowledge on asylum law;
3. Establish special department in Administrative Court with trained judges who would apply asylum and migration law.

Asylum Office – first instance authority: The practice of **the Asylum Office** remains contradictory, unfair and excessive in terms of the length, and one of the major problems detected in the reporting period is the lack of capacity of asylum officers to apply the principle of in *dubio pro reo* (the principle of the benefit of the doubt) and to establish uniform practice in similar or identical cases. In other words, the burden of proof threshold has been set extremely high, leaving the space for international protection only for those who have survived the most violent forms of acts of persecution and who are able to provide direct evidence of acts of persecution (such as torture, sexual violence including rape, harmful traditional practices, etc.). For that reason, asylum applications of ill-treatment survivors such as LGBQTI+ asylum seekers, SGBV survivors and others are rejected even if they provide evidence in terms of the medical, psychiatric and psycho-social reports drafted in line with the Istanbul Protocol.

Table 3. Asylum Office practice in the reporting period

First instance decisions by the Asylum Office: 2017-2022							
Type of decision	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**
Grant of asylum	6	17	26	19	12	20	6
Rejection on the merits	11	23	54	51	39	46	40
Dismissal as inadmissible	47	38	10	2	4	0	0
Rejected subsequent applications	0	0	0	0	6	2	2
Rejected the request for age assessment	0	0	0	0	2	0	0
Discontinuation	112	128	133	89	51	180	81
Total	176	206	223	161	114	248	129

Asylum Commission – the second instance authority: The practice of the second instance authority – Asylum Commission, continues to lack corrective influence on the work of the Asylum Office. For instance, in 2022 the Asylum Commission took 44 decisions regarding 59 persons, which is a significant decrease in comparison to 2021 when 74 decisions were rendered regarding 80 persons. No decision was taken after hearing of the appellant, nor did any recognise international protection to the appellant. Notably, in the history of the body, there were only three positive decisions granting asylum to 4 applicants, the last one in 2019.

Table 4. Statistical Overview of Asylum Commission practice 2009-2022

Year	Decision rejecting an appeal	Decision upholding an appeal	Decision dismissing an appeal	Decision on discontinuing of asylum procedure	Other decision	Total
2009	28	14	1	0	0	43
2010	6	16	0	1	9	32
2011	29	7	2	1	0	39
2012	16	4	0	0	2	22
2013	10	2	0	0	0	12
2014	10	3	0	0	6	19
2015	8	24	1	0	1	34
2016	6	6	0	0	0	12
2017	11	15	0	0	0	26
2018	6	10	0	0	0	16
2019	28	14	1	0	0	43
2020	52	10	0	0	0	62
2021	51	19	0	4	0	74
2022	36	5	0	0	3	44
Total	261	144	5	6	18	434

Administrative Court – the third instance authority: The Administrative Court does not have a department or panel specialised in reviewing asylum cases and it rules on the lawfulness of a final administrative act in three-member judicial panels. Thus, the same conclusion can be drawn from the jurisprudence of the Administrative Court as it is from the practice of the Asylum Commission. In the past 15 years, this third instance body has failed to establish itself as the corrective authority in relation to the Asylum Commission and the Asylum Office.

In the same period, this body has failed to conduct a single hearing of asylum seekers and to render a single positive decision. In 2022, the Administrative Court delivered 26 decisions regarding 41 persons from the following nationalities: Iran (19), Jordan (4), Bulgaria (3), Türkiye (2), Tunis

(2), Syria (2), Libya (2) and 1 from BiH, Pakistan, Burundi, Cuba, Somalia, Afghanistan and 1 unknown country. Out of that, 21 complaints were rejected encompassing 36 persons, while 4 complaints were upheld in relation to 4 persons and 1 case was discontinued. What is common for Asylum Commission and the Administrative Court is the fact that decision makers comprising these bodies have failed to develop the necessary expertise in international refugee and human rights law. **Thus, the most developed practice in Serbian asylum system is the one originating from the first instance authority – Asylum Office** – whose capacities should be increased as the priority.

Table 5. Statistical Overview of the Administrative Court Practice 2009-2022

Year	Decision rejecting a complaint	Decision upholding a complaint	Decision dismissing a complaint	Decision on discontinuing of asylum procedure	Total
2009	11	2	0	0	13
2010	1	1	0	1	3
2011	10	1	0	0	11
2012	9	0	1	0	10
2013	9	0	0	0	9
2014	5	4	0	0	9
2015	1	6	0	1	8
2016	8	1	0	0	9
2017	20	5	0	3	28
2018	15	9	2	0	26
2019	14	4	1	1	20
2020	22	0	3	2	27
2021	10	9	1	2	22
2022	20	1	0	2	23
Total	155	43	8	12	218

For all of the above said, we ask the Committee to provide the following recommendations to Serbian Government, Ministry of Interior and Ministry of Justice:

1. At least 20 case workers should be assigned to the Asylum Office who will be trained to timely, thoroughly and independently assess asylum applications, taking in consideration the principle of *in dubio pro reo* as the standard of proof expected in relation to asylum seekers;
2. Abolish Asylum Commission as the second instance body which has failed to display its purpose in 16 years of Serbian asylum system;
3. Introduce effective second instance judicial control through Administrative Court with the specially established department and

trained judges in the field of International Human Rights Law and International Refugee Law;

4. train all asylum case workers on the credibility assessment techniques, including the use of expert opinions of medical professionals, psychologist, social workers, anthropologists and other professionals which will be budgets by the Government of Serbia;
5. train all asylum case workers on the principle *in dubio pro reo* as the cornerstone of the credibility assessment in asylum procedure.

2. Adequate reception conditions

Improving reception conditions for asylum seekers

Reception standards for asylum seekers should be such to uphold their fundamental rights and dignity, mitigate trauma, facilitate meaningful participation in status determination procedures, foster integration pending decisions, and effectively plan durable solutions. HRC expressed concern in its last Concluding Observations about **"inadequate conditions in reception centres, including when unaccompanied minors are placed with adults, and the absence of care for individuals outside of reception centres [...]"**, and recommended that Serbia must ensure that **"adequate conditions both inside and outside reception centres for all refugees and asylum seekers [...]'.** Despite recommendations, reports show reception conditions remain inadequate with ongoing challenges in meeting the international standards. The persistence of these issues underscores the need to intensify efforts to address them.

In Serbia, the Commissariat for Refugees and Migration is in charge of governing asylum and reception centres in Serbia[24]. There are 7 Asylum Centres (AC) and 12 Reception Centres (RC) that have been used for the accommodation of refugees, asylum seekers and other categories of

[24] Serbia: Law on Asylum and Temporary Protection, "*Official Gazette of the Republic of Serbia", no. 24/2018* (Asylum Act) article 23.

people on the move in 2022. The conditions in AC and RC greatly vary among centres[25].

Testimonials from the clients of IDEAS provide a glimpse these varying reception conditions, with some centres like Bogovađa and Sjenica receiving praise for cleanliness and quality of food, while others like Krnjača and Preševo are criticised for poor hygiene and inadequate nutrition:

> *Bogovađa is clean, they have nice food, and sometimes, when you are not satisfied with it, you can say, or they can give you more. The place where we slept, the bathroom, everything was good.*
>
> *In Sjenica it was clean and the food was very good, the meat was good, and they also gave me food in my room. In Sjenica, we had different food, every day was different.*
>
> *Food in Krnjača was very bad, the same as in Preševo. Beans, fish and rice. In the morning, only two eggs. Lunch is rice and beans. At night they give only bread. And when you are hungry you are not allowed to ask for another bread. Although food is bad, I am not allowed to cook. The rooms were dirty, and the bed I slept in had bad bugs.*

The same living conditions are provided to both individuals seeking asylum and those who are staying for short periods of time without proper documentation. Although it is acceptable to provide substandard living conditions to irregular migrants staying for less than a week, it is important to designate specialised centres that meet EUAA standards for asylum seekers. Additionally, reception facilities do not currently meet the standards outlined in the United Nations Guidelines for the Alternative Care of Children, putting children at risk while in these facilities.

In improving reception conditions, guidance adopted by EUAA should be instructive[26]. While Serbia is not yet a member state, aligning with these standards remains highly relevant, given ongoing accession negotiations.

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[25] See the examples *AIDA Country Report: Serbia – 2022 Update* on page 150.

[26] European Union: European Asylum Support Office (EASO), *EASO guidance on reception conditions: operational standards and indicators*, September 2016, available at: https://www.refworld.org/docid/586cab3d4.html [accessed 5 February 2024]

Recommendations:

- The Commissariat for Refugees and Migration should establish an asylum centre in line with EUAA standards that will be designated just for asylum seekers. The centre should be located near an urban area, with adequate access to common and specialised services;
- The Government of Serbia should amend the Law on Asylum and Temporary Protection and introduce standards for the locations of asylum centres;
- The Government of Serbia should amend the Law on Asylum and Temporary Protection to harmonise legislation governing social protection and reception in a way that gives clear priority to CSWs in making decisions about the placement of children and introduce standards for reception facilities of children in line with the EUAA Guidance on reception conditions for unaccompanied children and the Guidelines for the Alternative Care of Children.

Addressing special reception needs of vulnerable persons

To uphold the right to asylum and provide equitable access to international protection for vulnerable applicants, states must ensure that systems are in place to identify applicants with special needs and address the special needs of those applicants in a timely manner.

Although Serbian legislation envisages the assessment of special reception needs, the absence of a defined legislative procedure for this assessment leads to its inconsistent application. Namely, article 17 of Law on Asylum and Temporary Protection[27] prescribes that "*In the asylum procedure, special consideration is given to the specific situation of persons in need of particular procedural or reception guarantees [...] The competent authorities shall carry out the identification process of the personal circumstances of the persons referred to in paragraph 1 of this Article on an ongoing basis, at the earliest within a reasonable time after the initiation of the asylum procedure or after the expression of intent to submit an application for asylum at the border or in the transit area*". The Law on Asylum and Temporary Protection also prescribes that in the provision of material reception conditions, special attention should be given to special reception needs, but it does not operationalise that further[28]. The only measure that the law prescribes is the

[27] Asylum Act, article 17.
[28] Ibid. article 50.

placement of children and persons with a "specific psycho-physical state" in social protection institutions. Nonetheless, the law does not specify any adjustments or measures at the reception level. The assessment procedure during reception is more closely defined in the Rulebook on House Rules in Asylum Centres and Other Accommodation Facilities for Asylum Seekers[29]. In line with this rulebook, the admission procedure encompasses a check of the registration certificates and luggage checks, as well as provision of information about house rules, referral for medical examination and distribution of personal hygiene items[30]. Although the legal framework mandates the reception authorities to evaluate the special reception needs of asylum seekers, considering their individual circumstances and vulnerability factors, the lack of operational guidelines and standards for conducting assessments, linking cases to services, and enacting reasonable adjustments have resulted in ambiguous and inconsistent implementation in practice. The lack of screening of the needs in terms of the special reception guarantees is also recognised in AIDA report[31].

The lack of assessment of special protection needs and measures has been determined in the qualitative research with LGBTIQ+ applicants conducted by IDEAS in 2023.

> Citations from interviews:
> *When I entered the asylum centre, they asked about my passport. They took my picture to make a camp card. I had a paper from the police - they checked that too. They didn't ask many questions, and I didn't ask either because I was stressed. They didn't provide me with any information.*
>
> *There was someone who received us. She took the police paper and then showed me the room. She didn't talk about anything, only the time limit to return if I went out - I think it was 6 or 7, I don't remember. There was no general information provided all at once, I learned everything myself since nobody told me.*
>
> *They took me to the Commissariat, took my picture, took my passport and everything. They registered me, gave me a room and that was it.*

[29] Serbia: Rulebook on House Rules in Asylum Centres and Other Accommodation Facilities for Asylum Seekers, *"Official Gazette of the Republic of Serbia", No. 96/2018*
[30] *Ibid*. articles 3 – 4.
[31] See the examples *AIDA Country Report: Serbia – 2022 Update* on page 129.

No special reception measures were identified for LGBTIQ+ persons, except placement in individual rooms.

Recommendations

- The Government of the Republic of Serbia should propose amendments to the Law on Asylum and Temporary Protection to establish procedures for the assessment of special reception needs and support.
- The Commissariat for Refugees and Migration of the Republic of Serbia should provide expert advice to the Government on how to introduce a procedure for assessing the special reception needs of asylum seekers, including a time frame, scope of the assessment, qualifications needed to conduct assessment, coordination with other institutions, outcomes of the assessment and measures on the level of reception to respond to special reception needs.
- Establish the position of dedicated social protection worker in asylum centres to conduct an assessment of special reception needs and coordinate support on the level of reception.

3. Child protection

Identifying the age of unaccompanied and separated children

With a view to securing effective access to the rights set out in the Convention on the Rights of the Child (CRC) and the 1951 Refugee Convention, it is essential to ensure that a child is properly identified, especially when an asylum-seeking child is separated or unaccompanied. The CRC mandates that states uphold a child's right to their identity, which includes their age[32]. It is important to note that according to General Comment No. 6, an age assessment should be conducted as soon as authorities become aware of a child's presence in the country if there is any uncertainty about their age, and it should be a part of a comprehensive assessment.[33] The assessment must consider not only the physical appearance of the individual but also their psychological maturity. It is essential to conduct these assessments in a scientific, safe, child-friendly, gender-sensitive, and fair manner without any risk of violating the child's physical integrity. In addition, in response to the large number of unaccompanied and separated children who arrived in Europe during the refugee crises of 2015 and 2016 and the differences in age assessment between states, the Council of Europe adopted a resolution on the age assessment of migrant children who arrive unaccompanied[34]. The need to

[32] CRC, article 8.

[33] UN Committee on the Rights of the Child (CRC), *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: https://www.refworld.org/docid/42dd174b4.html [accessed 20 January 2024], paragraph 31 (i).

[34] Council of Europe: Parliamentary Assembly, *Resolution 2195 (2017) Child-friendly age assessment for unaccompanied migrant children*, 24 November 2017, available at: http://bit.ly/48c96ju [accessed 20 January 2024]

ensure that **"appropriate protocols are in place for identifying the age of unaccompanied minors [...]"** was recommended in the Concluding observations on the third periodic report of Serbia[35] but not implemented.

In the Republic of Serbia, there are still no clearly established procedures for age assessment that comply with international standards. The law referencing procedures for determining date and place of birth, which may be interpreted as age assessment, is the Civil Procedure Law[36]. However, in 2020, the Ministry of Justice confirmed that courts do not have the authority to conduct age assessments of refugee and migrant children, as stated in an opinion issued to IDEAS.[37] Although age assessment is not explicitly mentioned, police officers are responsible for establishing the identity of a person through forensic records, criminal investigation tactics and forensics, medical or other examinations.[38] Age is considered a part of one's identity, so police officers are required to assess age as well. The identification is conducted *ex officio*, but it may also be initiated upon request of state bodies. However, there are no legal documents that establish age assessment procedures on the Ministry of Interior (MoI) level, nor are there any guidelines. In practice, police officers determine the age based on the statement of the person.[39] To make things more confusing, although the social protection system does not have any jurisdiction in the matters of age assessment, the Instruction on the conduct of the centres for social work-guardianship authority on determining the realisation of the accommodation of unaccompanied and separated refugee/migrant children states that a child is considered "minor" based on the statement that he or she is a minor, and the observation of a field worker[40]. However, the Instruction does not offer any further guidance regarding observation, and neither is the assessment of the field worker a valid ground for age assessment.

The absence of a well-established age assessment procedure poses serious challenges for state authorities, as, despite the lack of clear procedures,

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[35] CC 2017, paragraph 33

[36] Serbia: Civil Procedure Law, *"Official Gazette of RS", no. 72/2011, 49/2013 - decision of the CC, 74/2013 - decision of the CC, 55/2014, 87/2018, 18/2020 and 10/2023 - other law* (CPL), articles 71a-71lj.

[37] Ministry of Justice of the Republic of Serbia, number 011-00-125/2020-05, opinion dated September 16, 2020.

[38] Serbia: Law on Police, *"Official Gazette of RS", no. 6/2016, 24/2018 and 87/2018* (LoP), article 77.

[39] European Council on Refugees and Exiles, *Country Report: Serbia 2022, May 2023*, available at: https://bit.ly/3Uy9be9 , [accessed 22 January 2024]

[40] Ministry of Labour, Employment, Veteran and Social Affairs, *Instruction 019-00-19/2018-05 (2018): Conduct of the centres for social work-guardianship authority on determining the realisation of the accommodation of unaccompanied and separated refugee/migrant children, 12 April 2018.*

officials must determine if individuals should be treated as children. IDEAS, as a provider of guardianship services from 2018-2019 in cooperation with the Ministry of Labour, Employment, Veteran and Social Affairs (MoLEVSA) and the UNHCR.,[41] identified numerous instances where individuals who were not really children were placed under guardianship due to their identification by police as children. Conversely, there was also a case identified where, based on the identification card issued by the Commissariat for Refugee and Migration, a child was removed from guardianship yet was still registered by the police as a minor. Due to the absence of a legal guardian, this child was unable to submit an asylum application as a child for more than a year. To provide guidance to national stakeholders on establishing the age assessment procedure, IDEAS has developed an Analysis of age assessment standards for unaccompanied and separated refugee and migrant children in 2021, as well as a Protocol for health and social workers in 2022.

Recommendations:

- The Government of the Republic of Serbia should establish an official age assessment procedure through legislative changes. The procedure should be independent of the migration management system or any other system that may have a vested interest in the results of the assessment. The procedure should have clear criteria for implementation in line with the best interests of children and in accordance with international standards.
- Until an age assessment procedure is established, the Government of the Republic of Serbia should enhance existing mechanisms and introduce safeguards, including treating individuals as children; defining mechanisms for collaboration and information sharing among relevant authorities, including police, social services, healthcare and migration authorities in order to assess age more accurately; using the least invasive, holistic methods by independent professionals prioritising interviews over medical exams; providing detailed, reasoned decisions; and ensuring access to an effective complaint mechanism.
- Authorities involved in identifying and interacting with unaccompanied and separated children, including police officers, social workers and healthcare professionals, should be trained on the age assessment framework and international child protection standards.

[41] Centre for Research and Social Development (IDEAS), (2020). *Good practices in the provision of guardianship to refugee children in Serbia*, https://bit.ly/4bt3S5J [accessed 20 January 2024]

Establishing effective guardianship for refugee and migrant children and protecting best interest

The Convention on the Rights of the Child (CRC) obliges states to ensure the protection of children who are permanently or temporarily deprived of his or her family environment for any reason[42]. This should be applied to each child within their jurisdiction without discrimination of any kind[43]. Assigning a guardian to support the child is a key element of that protection. International and European institutions[44] have developed a range of guidelines, standards and proposals since 2017, acknowledging the importance of guardianship for unaccompanied children. The Concluding observations on the third periodic report of Serbia request that Serbia should "**ensuring that they (UASC) receive appropriate guardianship and treatment that takes into account the principle of the best interests of the child [...]"**[45]. Serbia has made considerable progress in this area since 2017. However, it still needs to achieve legislative changes and full sustainability of implemented solutions.

The Family Law assigns guardianship to Centres for Social Work (CSW), which are local institutions of social protection with wide responsibilities[46]. The law sets out the fundamental structure for providing guardianship services, which includes the responsibilities of guardians, various types of guardianship, and the procedures for appointing, overseeing, terminating guardianship, and lodging complaints. However, there are no established standards for workload of guardians nor any official guidelines for carrying out guardianship duties. In the context where Serbia's social protection system face extremely high workloads, as recognized in EU progress report[47], lack of standardisation leads to low quality of guardianship. For example, as of 31 December 2022, there were 1,671 social protection

[42] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, (CRC) available at: https://www.refworld.org/docid/3ae6b38f0.html [accessed 20 January 2024], article 22(2).
[43] Ibid. article 2(1).
[44] European Union Agency for Asylum. *Key support for guardians protecting unaccompanied migrant children*: https://bit.ly/3uvxUF3 [accessed 21 January 2024]
[45] CC 2017, paragraph 33
[46] Serbia: *Family Law*, "Official Gazette of the Republic of Serbia", no. 18/2005, 72/2011 - other law and 6/2015, article 12.
[47] European Union: European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *Commission Staff Working Document Serbia 2023 Report, SWD(2023) 695 final*, 8 November 2023, available at: https://bit.ly/3OTcUiP [accessed 21 January 2024]

workers, of whom 1,183 were case managers, while at the same time, there were 569,961 beneficiaries,[48]. This led to a situation where one guardian had more than 100 UASC under guardianship before 2017.

To strengthen the guardianship system, IDEAS, in partnership with UNHCR and in cooperation with Belgrade City Centre for Social Work (BCCSW) and MoLEVSA, has piloted and implemented guardianship service for refugee and migrant children since 2017 – 2019. The model was based on the full-time engagement of guardians, who were extensively trained to provide services to refugee, asylum-seeking and migrant children and were under dual supervision of CSW and IDEAS. This model was recognised as a good practice both on national 49 and international levels 50 and has greatly improved the quality of guardianship to UASC. From 2020, the MoLEVSA has taken over the provision of the development model of guardianship and provided it with the support of EU funds in the whole territory of Serbia. In line with the number of children staying in Serbia, currently 3 guardians are engaged. However, for long-term sustainability, it's crucial to enact legislative reforms within the Family Law and associated regulations, as the current system is dependent EU funding.

Recommendations:

- The Government of the Republic of Serbia should amend the Family Law to improve guardianship provision and introduce full-time guardianship as a possibility;
- The Ministry for Family Care and Demography should propose amendments to the Family Law in line with the developed practice and enable full-time guardianship, establishing standards for the workload of guardians, qualifications and duties tailored to unaccompanied and separated children and other groups.
- The Ministry of Labour, Employment, Veteran and Social Affairs needs to set workload standards and expand the social protection workforce, empowering CSWs to meet beneficiary needs effectively.
- The Government of Serbia need to dedicate national funding for the provision of guardianship services to UASC, ensuring sustainable support independent of external funding sources.

[48] Republic of Serbia. Republic Institute of Social Protection, *Report on th Work of Centres for Social Work for 2022* (2023), available at: https://bit.ly/3uk40nk [accessed 21 January 2024]

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