



REPUBLIC OF SERBIA
OMBUDSMAN
Belgrade



Заштитник грађана
Zaštitnik građana

Reg.No. 3220

Dated 10. february 2014.

In accordance with Article 138, Paragraph 1, of the Constitution of the Republic of Serbia ("Official Gazette of RS," No. 98/06), and Article 2a of the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment ("Official Gazette of Serbia and Montenegro - International Treaties," No. 16/05 and 2/06 and "Official Gazette of the Republic of Serbia - International Treaties," No. 7/11), in the course of performing the activities relating to the National Mechanism for the Prevention of Torture in accordance with Article 19, Paragraph 1b, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, the Protector of Citizens (Ombudsman) hereby

C E R T I F I E S

The shortcomings have been identified in the work of the Ministry of the Interior and the Commissioner for Refugees and Migrations, relating to a large number of foreigners who have expressed their intention to seek asylum in the Republic of Serbia, as well as foreigners whose identity has not been established, who do not possess a passport or do not have legal residence the territory of the Republic of Serbia, i.e. who cannot be removed immediately from the Republic of Serbia in accordance with the applicable regulations and standards.

These shortcomings reflect *inter alia* in the failure to ensure timely identification and registration of the above persons, failures in the determination of their status and in the provision of support, which deprives these persons from the rights ensuing from the applicable regulations and international standards.

Based on the identified performance deficiencies, the Ombudsman hereby forwards to the Ministry of the Interior, the Police Directorate, the Border Police, and the Commissioner for Refugees and Migrations, the following

R E C O M M E N D A T I O N S

I

- 1) Any foreigner found in the territory of the Republic of Serbia without suitable identification documents,¹ any foreigner who has entered illegally into the territory of the Republic of Serbia,² as well as any other foreigner who cannot prove that he/she is staying in the territory of the Republic of Serbia legally,³ shall be escorted by the police officers to the nearest police**

¹ passport, identity card for foreigners, a special identification card or other official document containing a photograph.

² outside the place or time specified for border crossing; avoiding border controls; using someone else's, invalid or fraudulent travel or other documents; giving misleading information to the border police; for the duration of the protective measure of expulsion of foreigners from the territory of the Republic of Serbia, the security measure of expulsion from the country or the measure of cancellation of stay.

³ stay without a visa, residence permit or other legal basis.

station, which shall immediately proceed with his/her identity check, i.e. establishment,⁴ perform a search of his/her person in an attempt to find personal identification documents, and check the data and enter the data into the statutory records.

- 2) The foreigner shall be informed about his/her legal position, i.e. the rights and obligations related to his/her stay in the territory of the Republic of Serbia in a language and in a manner that he/she is able to understand.
- 3) When it is obvious or likely that a foreigner is a minor, i.e. a person under the age of 18, the police officials shall immediately invite the guardianship authority to take part in the proceedings relating to that person, perform its coordination function and the decision-making within its jurisdiction.

II

- 1) The police officers shall apply the police powers, as well as the measures and actions prescribed by the Law on State Border Crossing, i.e. the Law on Foreigners, to the person referred to in Paragraph I of this Recommendation, in order to remove him/her from the Republic of Serbia, i.e. to place him/her in the Centre for Asylum Seekers under Strict Police Supervision (Asylum Centre).
- 2) There is a need to increase the accommodation capacities of the Asylum Centre to the extent that would allow for the placement of and care for all foreigners who cannot be removed immediately, and whose identity has not been established or who do not have any identification documents, and for those purposes the appropriate funds shall be provided in the budget of the Republic of Serbia.
- 3) All foreigners escorted to the Asylum Centre shall be provided accommodation and support in accordance with the applicable regulations and standards, including specifically adequate accommodation conditions, nutrition, hygiene, communication in a language that they can understand, provision of health care and social support, cultural and religious needs, etc.
- 4) Foreign minors shall be placed in the Asylum centre together with the parent, unless the guardianship authority deems that other accommodation would be more suitable for them.
- 5) When the conditions stipulated by the Law on Foreigners are satisfied, a foreigner who is illegally residing in the Republic of Serbia shall immediately be removed, and the necessary funds for this purposes shall be provided in the budget of the Republic of Serbia.

III

- 1) Any foreigner who has expressed his/her intention to seek asylum in the Republic of Serbia, i.e. any foreigner who is to be removed to a territory where he/she may face persecution on the grounds of his/her race, sex, religion, national origin, nationality, membership of a particular social group or political opinion,⁵ and particularly if he/she is to be removed to a territory where there is a risk that he/she will be subjected to torture, inhuman or degrading treatment or punishment, shall be treated in accordance with the provisions of the Law on Asylum.
- 2) Any foreigner who has expressed his/her intention to seek asylum shall be registered, and, if needed, searched in an attempt to find his/her identification documents, and shall be issued a document certifying that he/she has expressed an intention to seek asylum. The certificate shall contain his/her photograph and other biometrical data.

⁴ *inter alia*: photographing, taking fingerprints, and taking other biometrical data.

⁵ unless there are justified reasons to believe that the foreigner poses a threat to the security of the Republic of Serbia or if he/she has been convicted for a serious crime, and therefore poses a threat to public order.

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- 3) Any foreigner who has expressed his/her intention to seek asylum shall be referred to an Asylum Centre⁶ (the Centre), and informed about his/her obligation to report to the authorised officer in the Centre, i.e. Asylum Office, within 72 hours, or shall be escorted by the police officers to the Centre if the relevant conditions specified in the Law on Asylum are satisfied.

IV

- 1) The Asylum Centres should be established and organised solely to ensure the efficient implementation of the asylum procedure.
- 2) There is a need to increase the accommodation capacities in the Asylum Centres to the extent that would allow for the placement of and care for all persons escorted, i.e. referred, to the Centre in accordance with the Law on Asylum, and the necessary funds for this purpose shall be provided in the budget of the Republic of Serbia.
- 3) All foreigners referred, i.e. escorted, to the Asylum Centre shall be provided accommodation and support in accordance with the applicable regulations and standards, including specifically adequate accommodation conditions, nutrition, hygiene, communication in a language that they can understand, provision of health care and social support, cultural and religious needs, etc.
- 4) Foreign minors shall be placed in the Asylum centre together with the parent, unless the guardianship authority deems that other accommodation would be more suitable for them.
- 5) The authorised persons in the Centre shall refrain from the practice of granting leave of absence from the Centre.
- 6) The Asylum Centres shall refrain from the practice of "keeping" rooms, i.e. beds, for the asylum seekers who have left the Centre on any grounds. The vacant capacities no longer occupied by their previous users shall be given without any delay to the newly arrived foreigners who have been referred, i.e. escorted, to the Centre.

V

- 1) The Police Directorate within the Ministry of the Interior shall establish the Asylum Office, as an independent unit outside the Border Police Administration, and ensure an adequate number of authorised officers, implement their comprehensive training, and provide the necessary funding for their operations.
- 2) The Asylum Office shall ensure that there are authorised Asylum Officer officers on duty in all the Asylum Centres on daily basis.
- 3) The authorised Asylum Office officer shall register in accordance with the Law on Asylum any foreigner who has expressed his/her intention to seek asylum immediately upon his/her receipt to the Centre, after which he/she shall issue the foreigner an identity card without any delay, assessing in each particular case the need to restrict the movement of such person.⁷
- 4) The foreigner shall be informed in a language and in a manner that he/she is able to understand about his/her obligation to submit within 15 days from his/her registration an asylum claim to the Asylum Office, i.e. authorised Asylum Office officer on daily duty in the Centre, who will inform him/her of the consequences of missing the deadlines, explain how the claim is to be submitted, and provide him/her assistance in compiling the claim.

⁶ The Centre to which a person who has expressed an intention to seek asylum will be referred shall be determined by the Ministry of the Interior in cooperation with the Commissioner for Refugees and Migrations.

⁷ by ordering his/her stay in the Asylum Centre under strict police surveillance or by prohibiting him/her to leave the Asylum Centre, a specific addresses or a specific area.

- 5) **The authorised Asylum Office officer shall interview immediately the foreigner who has applied for asylum in a language that he/she is able to understand, whereby the asylum procedure shall be implemented and completed as soon as possible.**
- 6) **The Asylum Office should approve a foreigner's request for stay outside the Asylum Centre unless there are reasons to restrict his/her movements prescribed by the Law on Asylum.**
- 7) **Any foreigner who fails so submit an asylum claim within the timeline specified by the Law on Asylum, any foreigner whose asylum claim has been rejected or denied, or it was decided to suspend the procedure, shall be removed from Republic of Serbia in accordance with the Law on Foreigners, unless he/she can be granted stay in the Republic of Serbia on other grounds.**
- 8) **Any foreigner whose removal from the Republic of Serbia is not possible immediately after the decision on his/her removal has been adopted, shall be placed in the Asylum Centre until the necessary conditions are satisfied.**
- 9) **The necessary funds for the removal of foreigners from the Republic of Serbia shall be provided in the budget of the Republic of Serbia.**

IV

- 1) **The Ministry of the Interior shall forward to the Government of the Republic of Serbia, i.e. the relevant Minister, within 15 days from the receipt of this Recommendation, draft regulations, i.e. revised regulations, that need to be adopted in order to ensure the full implementation of these recommendations, forwarding a copy of each regulation to the Ombudsman without any delay.**

The Ministry of the Interior and the Commissioner for Refugees and Migrations shall advise the Ombudsman on the follow-up on this Recommendation, and in the course of the following year, at intervals that cannot be shorter than 60 days, shall submit to him/her their periodic reports on the issues and activities aimed to improve the situation in the area to which this Recommendation refers.

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In the course of performing the activities relating to the National Mechanism for the Prevention of Torture, and in cooperation with the Belgrade Centre for Human Rights, in the procedure of the review of the legality and regularity of the treatment of and the application of the applicable standards to the irregular migrants and asylum seekers found in the Republic of Serbia, the Ombudsman noted that the Government of the Republic of Serbia has failed to establish a systematic approach that would enable efficient procedure in the areas of asylum and migrations in accordance with the applicable regulations and international standards.

In accordance with the official data, in 2013 there were 5066 registered foreigners who expressed their intention to seek asylum in the Republic of Serbia, of which only 154 applied for asylum, with the asylum granted to two persons, and subsidiary protection granted to three persons. It is estimated that the overall number of migrants who passed through the territory of the Republic of Serbia in 2013 was twice the number of the registered asylum seekers.

The disproportion between the number of persons who have expressed their intention to seek asylum and those who actually applied for asylum, and particularly those who participated in the asylum procedure, indicates that their final goal was not being granted asylum, but a way to ensure accommodation in the Asylum Centres and legalise their current stay in Serbia until they find a way to go over the border to the EU countries.

The fact that in January 2014 there were 943 registered foreigners who have expressed their intention to seek asylum in the Republic of Serbia clearly indicates the growing problem of the migrations over the territory of the Republic of Serbia.

That may be an indication of the existence of an informal system that plays an important role in the position of migrants and their transit over the territory of the Republic of Serbia to other countries.

In adopting this act, the Ombudsman was guided by the necessity of lawful conduct by the public authorities, in the belief that the addressed recommendations would serve as an incentive to the competent authorities to respect the current regulations, and thus promote their actions in the area of the protection of the rights of asylum seekers, i.e. irregular migrants, while ensuring the safety of all citizens, and implementing the international role of the Republic of Serbia in the area of migrations.

Article 1 of the Constitution defines the Republic of Serbia as a state of the Serbian people and all its citizens, based on the rule of law and social justice, the principles of civil democracy, human and minority rights and freedoms, and the commitment to European principles and values, while Article 17 stipulates that foreigners, in accordance with international treaties, enjoy all the rights guaranteed by the Constitution and the law, with the exception of the rights that in accordance with the Constitution and the law are enjoyed exclusively by the citizens of the Republic of Serbia. Article 39, Paragraph 1, stipulates that everyone has the right to free movement and residence in the Republic of Serbia, as well as the right to leave and return to the Republic of Serbia, while Paragraph 3 stipulates that entry and stay of foreigners in the Republic of Serbia is regulated by the law, and that a foreigner may be expelled only under decision of the competent authority, in a procedure stipulated by the law, and if time to appeal has been provided for him and only when there is no threat of persecution on the grounds of his/her race, sex, religion, national origin, citizenship, association with a social group, political opinions, or when there is no threat of serious violation of the rights guaranteed by this Constitution. Article 57 of the Constitution stipulates that any foreigner who has a reasonable fear of prosecution on the grounds of his/her race, gender, language, religion, national origin or association with some other group or his/her political opinions has the right to asylum in the Republic of Serbia.

I

In the course of the review of the legality and regularity of the work of the Ministry of the Interior, it has been noted that the police officers fail to establish the identity of the foreigners who are found in the territory of the Republic of Serbia without any identification documents that could be used to verify their identity (passport, identity card for foreigners, a special identification card or other official document containing a photograph), foreigners who have entered illegally into the territory of the Republic of Serbia (outside the place or time specified for border crossing; avoiding border controls; using someone else's, invalid or fraudulent travel or other documents; giving misleading information to the border police; for the duration of the protective measure of expulsion of foreigners from the territory of the Republic of Serbia, the security measure of expulsion from the country or the measure of cancellation of stay), as well as all other foreigners who cannot prove that they are staying in the territory of the Republic of Serbia legally (stay without a visa, residence permit or other legal basis). Those persons are usually not escorted to the police stations, they are not searched in order to find their personal documents, and the police officers usually do not perform data checks and entry of data into the statutory records, and, as a rule, they are only instructed orally to go to an Asylum Centre.

Article 30, Paragraph 2, Item 2, of the Law on Police ("Official Gazette of the Republic of Serbia," No. 101/05, 63/09 - decision of the Constitutional Court and 92/11) stipulates that the police powers include *inter alia* checking and establishing the identity of persons and objects. Article 54 stipulates that in case of detention in accordance with the provisions of the law or in the course of

the application of the state border control regulations, the person must be informed in his/her native language or a language that he/she is able to understand that he/she is being detained, stating the reasons for detention, and he/she must be advised that he/she is not required to make any statements, that he/she has the right to a suitable legal aid, i.e. legal counsel of his/her free choice, and that his/her closest relatives will be informed about the detainment order at his/her request.

Article 6, Paragraph 4, of the Rulebook on Police Powers ("Official Gazette of the Republic of Serbia," No. 54/06) stipulates that when verifying a person's identity, the police officer must prevent the person whose identity is being verified from fleeing. Article 7, Paragraph 3, stipulates that the police officer is obliged to explain the reasons for verifying the identity of a person if the person so requires. Article 8 stipulates that all foreigners prove their identity with a foreign passport, a travel document for foreigners, a *Laissez-Passer* document allowing entry into the country, a foreign identity card or other document with a photograph of the holder that can be used for verifying his/her identity. Article 9 stipulates that the establishment of a person's identity implies establishing his/her legal, actual and physical characteristics which differentiate him/her from other persons, and that the establishment of a person's identity is performed in cases when the identity cannot be established by a simple identity check, when there is doubt as to the authenticity of documents or statements or at the request of the court, the public prosecutor or other competent authority. Article 10 stipulates that the establishment of a person's identity is performed using the methods and means of forensic science and tactics, by applying medical and other appropriate procedures including: checking data on the person's status by accessing public documents, birth certificates, marriage certificates and death certificates, and other official records, taking fingerprints and comparing them with the fingerprints in the database, photographing and comparing the photographs with the photographs in the database, by way of statements of persons who can perform recognition - either directly or by showing pictures of clothing, shoes and other items that can be used to establish identity, with personal descriptions; performing DNA analysis; other available methods, such as handwriting interpretation, voice analysis, dental formula, etc.

Article 8 of the Law on Foreigners ("Official Gazette of the Republic of Serbia," No. 97/08) stipulates that any foreigner is obliged, when entering and exiting from the Republic of Serbia, to undergo border control, as well as that border control of foreigners is carried out in conformity with a special law, and that it encompasses also disclosure and prevention of unlawful entry in the Republic of Serbia, denial of entry into, i.e. exit from, the territory of the Republic of Serbia. Article 10 stipulates *inter alia* that an unlawful entry in the Republic of Serbia means an entry outside of the place and time determined for crossing of state border; avoiding border control; use of another person's unlawful, i.e. false, travel or other documents. Article 64 stipulates that a foreigner in the Republic of Serbia proves his/her identity with a foreign travel document, identity card for foreigners, a special identity card or other public document that contains the photograph of the holder.

Article 1, Paragraph 2, of the Law on Protection of State Border ("Official Gazette of the Republic of Serbia," No. 97/08) stipulates that the protection of the state border in terms of the law means border crossing control and border security, in order to ensure the inviolability of the state border, prevent and detect criminal actions and criminals, protect the lives and health of people and the environment, and prevent illegal migrations. Article 9 stipulates that border police can control persons, vehicles and objects, for which they are authorised by this law, on public roads and in the facilities of importance for border traffic in the place of border crossing and in other places between border crossings, on side-roads near the borderline, in order to prevent and discover illegal migration and suppress trans-border crime. Article 61 stipulates that in order to ensure the effective implementation of the state border protection, the border police is authorised to take personal data of the persons subject to border control and to enter and process such data in the records, that in order to ensure the maintenance of the records established by this Law, the border police is authorised to collect personal data using technical and other resources, as well as that the

technical and other resources include the equipment and other technical resources used in the course of search, verification of identity, and detection of the perpetrators of crimes and misdemeanours in the course of the protection of the state border, for photographing, recording, and video surveillance. Article 62 stipulates that the border police is obliged to maintain records *inter alia* of the persons subject to border control, persons who are forbidden to cross the state border, persons subject to the identification procedure, and persons who have violated the state border. Article 63 stipulates that the personal data from the records may be shared with other public officers in accordance with the law, and with foreign authorities under the conditions regulated by an international treaty.

The ombudsman believes that all foreigners found in the territory of the Republic of Serbia without any documents that can be used to verify their identity, all foreigners who have entered into the territory of the Republic of Serbia illegally, as well as all other foreigners who cannot prove that they are staying in the territory of the Republic of Serbia legally need to be escorted by the police officers to the nearest police station, which shall immediately proceed with their identity check, i.e. establishment, perform a search of their person in an attempt to find personal identification documents, and check and enter the data into the statutory records. In the course of the above actions, such persons shall have their freedom of movement restricted.

It is necessary that all foreigners are advised in a language they are able to understand about their legal position, i.e. the rights and obligations during the stay in the territory of the Republic of Serbia.

When it is obvious or likely that a foreigner is a minor, i.e. a person under the age of 18, the police officials need to invite immediately the guardianship authority to take part in the proceedings relating to that person, perform its coordination function and the decision-making within its jurisdiction.

II

In the course of the review of the legality and regularity of the work of the Ministry of the Interior, it has been noted that the police officers not only fail to establish the identity of the foreigners who are found in the territory of the Republic of Serbia without any identification documents that could be used to verify their identity, foreigners who have entered illegally into the territory of the Republic of Serbia, and all other foreigners who cannot prove that they are staying in the territory of the Republic of Serbia legally, they also fail to escort those persons to the police station, to search them in order to find their personal documents, and to perform data checks and data entries into the statutory records, and, as a rule, they only instruct the foreigners orally to go to an Asylum Centre on their own.

That means that the police officers do not implement the police powers, and the measures and actions specified in the Law on State Border Crossing, i.e. Law on Foreigners, in order to remove such persons from the Republic of Serbia, i.e. to place them in an Asylum Centre under strict police supervision. The failure to act in compliance with law results in only a few of the estimated large number of irregular migrants accommodated in the Asylum Centre.

Article 4 of the Law on Foreigners stipulates that a foreigner can enter and stay in the Republic of Serbia with a valid travel document containing a visa or residence permit, unless otherwise provided by the law or an international treaty. Article 5 stipulates that a foreigner is to be restricted or prohibited to move and stay in certain areas in the Republic of Serbia if that is requested by the reasons of public order or security in the Republic of Serbia and of its citizens or pursuant to an international treaty, Article 6 specifies that a foreigner is obliged, during his/her movement or stay in the Republic of Serbia, to comply with the regulations and decisions of the state authorities, Article 8 specifies that a foreigner is obliged, when entering and exiting from the Republic of Serbia, to undergo border control, while Article 10 stipulates that an unlawful entry in the Republic

of Serbia means an entry out of place and time determined for crossing of state border, avoiding border controls, using someone else's, unlawful, i.e. false travel or other document, giving misleading information to the border police, an entry in the course of the duration of the preventive measure of expulsion of foreigners from the territory of the Republic of Serbia, security measure of expulsion of foreigners from the country or the measure of cancellation of stay. Article 42 stipulates that an unlawful residence in the Republic of Serbia means any stay in its territory without a visa, residence permit or other legal basis, as well as that a foreigner who is staying in the Republic of Serbia illegally must leave its territory immediately or within the timeline that he/she would be specified. Article 46 stipulates that the competent authority shall remove immediately any foreigner who has been issued a preventive removal measure or a security removal measure, as well as any foreigner who is to be returned in accordance with an international treaty. Article 47 stipulates that a foreigner cannot be removed to a territory where he/she is threatened by prosecution on the grounds of his/her race, sex, religious or national affiliation, citizenship, belonging to certain social groups or his/her political opinion, and particularly that he/she cannot be removed to a territory where there is a risk that he/she would be subjected to torture, inhuman or degrading treatment or punishment. Article 49, Paragraph 1, stipulates that the competent authority shall grant stay in the Asylum Centre of the Ministry (under strict police supervision) to any foreigner who cannot be removed immediately and to any foreigner whose identity is not established or who does not have a travel document, as well as in other cases stipulated by law, while Paragraph 2 stipulates that any foreigner with health problems or other special needs shall be provided other appropriate accommodation. Article 50, Paragraph 3, stipulates that the overall stay in the Asylum Centre cannot exceed 180 days. Article 52 stipulates that a foreign minor is to be placed in the Asylum Centre together with his/her parent, i.e. other legal representative, unless the competent guardianship authority deems that another accommodation would be more appropriate for him/her, and emphasises that a foreign minor cannot be returned to his/her country of origin or a third country willing to receive him/her until an appropriate reception of the minor is ensured.

The Ombudsman believes that the police officers need to implement their police powers, as well as the measures and actions specified in the Law on State Border Crossing, i.e. Law on Foreigners.

There is a need to increase the accommodation capacities of the Asylum Centre to the extent that would allow for the placement of and care for all foreigners who cannot be removed immediately, and whose identity has not been established or who do not have any identification documents, and for those purposes the appropriate funds need to be provided in the budget of the Republic of Serbia. All foreigners escorted to the Asylum Centre need to be provided accommodation and support in accordance with the applicable regulations and standards, including specifically adequate accommodation conditions, nutrition, hygiene, communication in a language that he/she is able to understand, provision of health care and social support, cultural and religious needs, etc.

Foreign minors need to be placed in the Asylum Centre together with the parent, unless the guardianship authority deems that other accommodation would be more suitable for them.

When the conditions stipulated by the Law on Foreigners are satisfied, a foreigner who is residing in the Republic of Serbia illegally should be removed immediately, and the necessary funds for this purposes need to be provided in the budget of the Republic of Serbia.

III

In the course of the review of the legality and regularity of the treatment of the irregular migrants and asylum seekers found in territory of the Republic of Serbia, the Ombudsman has noted that the police officers fail to register foreigners who have expressed their intention to seek asylum in

the Republic of Serbia, they fail to search them in an attempt to find their personal identification documents, and only inform them orally that they should go to one of the Asylum Centres, failing to issue them the certificate certifying that they have expressed the intention to seek asylum.

It is incomprehensible that the authorities should allow thousands of migrants who do not possess any personal identification documents, without identity establishment and registration, to travel on their own throughout the territory of the Republic of Serbia.

The Law on Asylum ("Official Gazette of the Republic of Serbia," No. 109/07), in Article 4, stipulates that any foreigner staying in the territory of the Republic of Serbia has the right to submit an application for asylum in the Republic of Serbia, and that if the foreigner referred to in Paragraph 1 of that Article is not eligible to be granted asylum, the competent authorities shall consider *ex officio* whether the conditions for granting subsidiary protection are satisfied. Article 19, Paragraph 1, stipulates that with respect to asylum applications and the termination of that right, in the first instance, the proceedings are conducted and all decisions are made by the competent organisational unit of the Ministry of the Interior (Asylum Office), while Paragraph 2 specifies that the authorised officers who implement the asylum procedure in the Asylum Office must be specially trained for such activities. Article 22, Paragraph 1, stipulates that any foreigner may, verbally or in writing, express his/her intention to seek asylum to an authorised police officer of the Ministry of the Interior, Paragraph 2 stipulates that any foreigner who has expressed his/her intention to seek asylum is to be entered into the records and referred to the Asylum Office, i.e. the Asylum Centre, and that he/she is obligated to report within 72 hours to an authorised officer of the Asylum Office, i.e. the Asylum Centre, while Paragraph 3 specifies that if the authorised officer of the Ministry of the Interior, in the case referred to in Paragraph 1 of that Article, suspects that any of the reasons for the restriction of movement referred to in Article 51 of that Law apply to the case in hand, he/she must escort the foreigner to the Asylum Office or the Asylum Centre. Article 23, Paragraphs 1 to 4, stipulates that the authorised officer of the Ministry of the Interior to whom a foreigner has expressed an intention to seek asylum must enter him/her into the records, including the issuance of the prescribed certificate containing the personal data that the foreigner has provided about him/herself or that can be established on the basis of the identification papers and documents found on his/her person. It is also stipulated that the above certificate serves as a proof that the foreigner has expressed his/her intention to seek asylum and that he/she has the right to residence for 72 hours. The authorised police officer has the right to search the foreigner and his/her personal belongings in an attempt to find the identification papers and documents required for the issuance of the certificate. All identification papers and documents that have been found are to be recorded in the certificate.

The competent authorities need to undertake all available measures under their jurisdiction to ensure that all foreigners who have expressed their intention to seek asylum in the Republic of Serbia, i.e. foreigners who are to be removed to a territory where they are threatened by prosecution on the grounds of their race, sex, religious or national affiliation, citizenship, belonging to certain social groups or their political opinion, and particularly if they are to be removed to a territory where there is a risk that they would be subjected to torture, inhuman or degrading treatment or punishment, are treated in accordance with the Law on Asylum.

All foreigners who have expressed their intention to seek asylum in the Republic of Serbia need to be registered, and, if needed, searched in an attempt to find their personal identification documents, and issued a certificate certifying that they have expressed the intention to seek asylum. The certificate needs to contain the photograph of the holder and other biometrical data.

All foreigners who have expressed their intention to seek asylum need to be referred to one of the Asylum Centres, chosen in cooperation by the Asylum Office and the Commissioner for Refugees and Migrations.

All foreigners need to be advised that they should report to the authorised officer of the Centre, i.e. Asylum Office within 72 hours. If the relevant conditions specified in the Law on Asylum are satisfied, the police officers need to escort the foreigner without any delay to the Centre.

IV

Based on a large number of interviews with the police officials, asylum seekers, and irregular migrants, it appears that in addition to the above shortcomings in terms of their work, the officials also encourage the foreigners found in the Republic of Serbia to express their intention to seek asylum in the Republic of Serbia, as it would secure them a considerably more favourable status.

During a visit to the Asylum Centre in Bogovadja, it was noted that a large number of migrants arrived to the Centre without having obtained the confirmation from the Ministry of Interior certifying that they had expressed their intention to seek asylum, and that confirmation is the legal basis for their referral to and placement in the Centre. Considering that this relates to a couple of thousands of people, that can serve as an indicator of the existence of an informal system that has had an important role in the position of migrants in the Republic of Serbia.

It was noted that, at the time of the last visit of the Ombudsman, on 7 November 2013, 230 migrants lived in the surrounding forests in the vicinity of the Centre, which can accommodate 170 people. During the go-see tour of the accommodation capacities in the Centre, as well as during previous visits, it was observed that some beds in the rooms were not occupied at the time. The management explained that the beds belonged to the asylum seekers who had been granted temporary leave of absence for a few days.

The Ombudsman believes that it is inappropriate in a situation when there are hundreds of asylum seekers, i.e. migrants, living in the woods, waiting for the accommodation in the Centre to become available, that some beds belong exclusively to those who were admitted to the Centre before them.

The Law on Asylum, in Article 39, Paragraph 1, stipulates that the asylum seeker has the right to reside in the Republic of Serbia for the duration of the asylum procedure, and during that period, if necessary, he/she is entitled to accommodation at the Asylum Centre, while Paragraph 3 specifies that at the Asylum Centre all asylum seekers must be provided, in addition to accommodation, the basic living conditions: clothes, food, financial assistance, and other conditions, in accordance with the special regulations. Article 40 stipulates that all asylum seekers and persons who have been granted asylum in the Republic of Serbia have equal rights to health care, in accordance with the regulations governing health care for foreigners.

The Ombudsman believes that it is necessary to increase the accommodation capacities in the Asylum Centres to the extent that would allow for the placement of and care for all foreigners who cannot be removed immediately, and whose identity has not been established or who do not have any identification documents, and for those purposes the appropriate funds will be provided in the budget of the Republic of Serbia. All foreigners escorted to the Asylum Centre need to be provided accommodation and support in accordance with the applicable regulations and standards, including specifically adequate accommodation conditions, nutrition, hygiene, communication in a language that he/she can understand, provision of health care and social support, cultural and religious needs, etc.

Foreign minors need to be placed in the Asylum Centre together with the parent, unless the guardianship authority deems that other accommodation would be more suitable for them.

The Ombudsman believes that the authorised persons in the Centre need to refrain from the practice of granting leave of absence from the Centre to the foreigners accommodated in the Centre. In addition, the Ombudsman believes that the Centres need to refrain from the practice of "keeping" rooms, i.e. beds, for the foreigners who have left the Centre on any grounds. The

vacant capacities no longer occupied by their previous users need to be given without any delay to the newly arrived foreigners who have been referred or escorted, to the Centre.

V

The Law on Asylum entered into force on 6 December 2007, and it has been implemented from 1 April 2008. Although it has been more than 5 years from then, the Ministry of the Interior still has to establish the Asylum Office as an independent unit outside the Border Police Administration, and still has to provide an adequate number of authorised officials. The activities under the competence of the Office are currently performed by the Asylum Department, which is a unit within the Sector for Foreigners of the Border Police Administration, within the Ministry of the Interior of the Republic of Serbia, and which has only a couple of staff.

Inadequate human capacities of the Asylum Department and the growing number of asylum seekers prevent the efficient implementation of the asylum procedure in accordance with the provisions of the Law on Asylum. It can be concluded that the existing organisational arrangements of the Asylum Department cannot be an adequate response to the need of the asylum seekers for their claims to be resolved. A particular problem is the fact that the Asylum Department still has not established the rule of the daily presence of the authorised officials in the Centres. During the visits, it has been noted that the officials of the Asylum Department visited the Asylum Centre in Bogovadja once a month, on average. That resulted in considerable delays in the registration of foreigners who have expressed the intention to seek asylum, issuance of identity cards, conducting interviews, and the decision-making on the submitted asylum applications. The above actions of the Asylum Department are certainly not in accordance with the generally accepted standards for the reasonable duration of the procedure, and constant delays in taking actions in the first-instance decision-making procedure concerning the asylum claims must not result in a failure to exercise the statutory civil rights. In addition to the above stated, it has been noted that the need to adopt the measure of restriction of movement of the persons accommodated in the Centre by prohibiting them to leave the Asylum Centre or by ordering their placement in the Asylum Centre under strict police supervision has not been appreciated.

Article 10, Paragraph 1, of the Law on Asylum stipulates that any foreigner who has expressed his/her intention to seek asylum in the Republic of Serbia is entitled to be informed about his/her rights and obligations in the course of the entire asylum procedure, while Paragraph 2 specifies that all asylum seekers have the right to free legal aid and representation by UNHCR and the NGOs whose objectives and activities are aimed at providing legal aid to refugees. Article 11, Paragraph 1, stipulates that any asylum seeker who does not understand the official language of the procedure is to be provided with free interpretation services into the language of his/her country of origin, i.e. a language he/she is able to understand. Article 17 stipulates that all foreigners who have claimed asylum have the right to an oral and direct interview by an authorised officer of the relevant organisational unit of the Ministry of the Interior regarding all the facts relevant to the recognition of the right to asylum or granting subsidiary protection. Article 24, Paragraph 1, stipulates that the authorised officer of the Asylum Office shall register a foreigner and his/her family members, while Paragraph 4 specifies that upon the completion of the registration, a foreigner shall be issued an identity card for asylum seekers. Article 26, Paragraph 1, stipulates that the authorised officer of the Asylum Office is to interview an asylum seeker in person as soon as possible. An asylum seeker may be interviewed several times. Article 51 stipulates that the movement of asylum seekers may be restricted by a decision of the Asylum Office when it is necessary for the purposes of establishing identity; ensuring the presence of a foreigner in the course of the asylum procedure, if there are reasonable grounds to believe that an asylum application was submitted in order to avoid deportation, or if it is not possible to establish other essential facts on which the asylum application is based without the presence of the foreigner in question; and protecting national security and public order in accordance with the law.

The Ombudsman believes that it is necessary that the Ministry of the Interior establishes without any delay the Asylum Office within the Police Directorate, but outside the Border Police Administration, as an independent organisational unit that will be provided an adequate number of staff, who will be adequately trained and provided with the necessary funding for their operations.

The establishment of the Asylum Office would ensure the immediate implementation of the provisions of the Law on Asylum, the respect of one of the fundamental constitutional principles, the rule of law, as well as the improved and more effective implementation of the rights guaranteed by the Law on Asylum. In formulating this opinion, the Ombudsman has taken into account the Analysis of the position of the "Asylum Office in the Organisational Chart of the Ministry of the Interior," drafted by lawyer Aleksandar Veljkovic, which was provided to the Ombudsman by the UNHCR as an expert opinion.

In accordance with the current needs, it is necessary that the Asylum office introduces daily duty of the authorised officers in all the Centres. The authorised Asylum Office officer needs to register any foreigner who has expressed his/her intention to seek asylum immediately upon his/her receipt to the Centre, in accordance with the Law on Asylum, after which he/she must issue the foreigner an identity card without any delay, assessing in each particular case the need to restrict the movement of such person by prohibiting him/her to leave the Asylum Centre or by ordering his/her placement in the Asylum Centre under strict police supervision. The foreigner needs to be informed in a language and in a manner that he/she is able to understand about his/her obligation to submit within 15 days from his/her registration an asylum claim to the Asylum Office, i.e. authorised Asylum Office officer on daily duty in the Centre. The authorised Asylum Office officer needs to inform the foreigner of the consequences of missing the deadlines, explain how the claim is to be submitted, and provide him /her assistance in compiling the claim, and the foreigner who has expressed his/her intention to seek asylum must be interviewed in a language he/she is able to understand, taking into account that the asylum procedure is conducted and completed as soon as possible.

The Asylum Office should approve a foreigner's request for stay outside the Asylum Centre unless there are reasons to restrict his/her movements prescribed by the Law on Asylum. Any foreigner who fails to submit an asylum claim within the timeline specified by the Law on Asylum, any foreigner whose asylum claim has been rejected or denied, or it was decided to suspend the procedure, needs to be removed from Republic of Serbia in accordance with the Law on Foreigners, unless he/she can be granted stay in the Republic of Serbia on other grounds. Any foreigner whose removal from the Republic of Serbia is not possible immediately after the decision on his/her removal has been adopted, needs to be placed in the Asylum Centre until the necessary conditions for the removal are satisfied.

VI

The Ombudsman believes that the Ministry of the Interior needs to decide immediately upon the receipt of this Recommendation if there is a need for legal changes or amendments which would ensure the full implementation of this Recommendation.

In case there is a need for legal changes or amendments to ensure the full implementation of this Recommendation, the Ministry of the Interior needs to forward to the Government of the Republic of Serbia, i.e. the relevant Minister, within 15 days from the receipt of this Recommendation, draft regulations, i.e. revised regulations that need to be adopted, forwarding a copy of each regulation to the Ombudsman without any delay.

* * *

The Ministry of the Interior and the Commissioner for Refugees and Migrations need to advise the Ombudsman on the follow-up on this Recommendation within 60 days. Taking into account the complexity of the future procedure to which this Recommendation refers, in the course of the following year, the authorities to which this Recommendation is addressed need to submit to the Ombudsman their periodic reports on the issues and the implemented activities at intervals that cannot be shorter than 60 days.

* * *

The duty of the state authorities, derived from the obligation to respect the principles of efficiency, cost-effectiveness, and the protection of civil rights and the public interest (Law on General Administrative Procedure), and the principle of effectiveness (Law on Public Administration), is to be proactive in implementing the administrative and other procedures of importance for the realization and respect of civil rights, showing initiative and commitment, with the actions and activities in the process directed to the achievement of its objectives and its purpose, i.e. the implementation of the statutory civil rights or the protection of their legal interests, i.e. proper determination of their obligations.

For the above reasons, in the course of performing the activities relating to the National Mechanism for the Prevention of Torture, the Ombudsman provides this Recommendation in order for the competent authorities to ensure timely implementation of the proposed and other appropriate measures under their respective competences, with the aim to improve their performance.

DEPUTY OMBUDSMAN

Milos Jankovic