



Asylum and Forced Displacement in the EU Enlargement Process

**Contributions to inform the European Commission 2024
Enlargement Package in the area of asylum**

Albania, Kosovo, Serbia, Ukraine

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INTRODUCTION

In response to geopolitical challenges, including the 2022 Russian war of aggression against Ukraine, the European Union (EU) Enlargement process has acquired new and growing relevance as a promise of “long-term stability, peace and prosperity across the continent”.¹ The advancement of “a consistent and merit-based enlargement policy” has been set out as one of the key priorities for the Hungarian Presidency of the Council of the EU in the second half of 2024, with the aim “to achieve meaningful progress with candidate and potential candidate countries [through] regular political dialogue with the partner countries, and (...) supporting them in meeting the Copenhagen criteria”.²

To provide an assessment of the state of play and progress made by the countries with regard to their integration into the EU, each year the European Commission adopts its "Enlargement Package", which includes country reports taking stock of the implementation of reforms and providing guidance on the respective priorities.³ In November 2023, the European Commission published the 2023 Enlargement Package, which provided the assessment of the accession progress of the Western Balkans countries, Türkiye, Ukraine, Moldova and Georgia.⁴

To inform the country reports in the framework of the upcoming **2024 Enlargement Package**, the European Council on Refugees and Exiles (ECRE) has launched a strand of work analysing asylum and forced displacement in the Enlargement process. Civil society experts in the area of asylum have provided their assessment of certain questions related to asylum and forced displacement in the Enlargement process, which ECRE is publishing here. The contributions are intended to influence the Country Reports on **Albania, Kosovo, Serbia, and Ukraine**. ECRE is pleased to collate and disseminate these expert contributions in order to reach a wider audience.

The contributions in this report seek to fill the gap in the area of the provision of information by civil society organisations about the situation on asylum and forced displacement in relation to the process of EU integration in accession countries. Expert contributions provide analysis of both asylum in the fundamental pillars of the accession process, as well as a more detailed overview of the specific challenges in certain chapters of the EU *acquis*, specifically the area of judiciary, fundamental rights, justice, freedom and security.

Part I of the country contributions covers the fundamental pillars of the accession process – the alignment with the Copenhagen criteria, which include:

- Political criterion: the functioning of democratic institutions and public administration reform (stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities);
- Economic criterion: the existence of a functioning market economy and the capacity to cope with competition and market forces in the EU;
- The ability to take on and implement effectively the obligations of membership, including adherence to the aims of political, economic (and monetary) union.

Unpacking the alignment with the Copenhagen criteria with regard to law and policies concerning asylum seekers and other migrants, the first part of the contributions cover inter alia such questions as the level of civil society participation in asylum- and migration-related policy-making, the state's policies

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2023 Communication on EU Enlargement Policy, COM (2023) 690 final, 8 November 2023.

² Programme of the Hungarian Presidency of the Council of the EU in the second half of 2024, p.8, available at: <https://bit.ly/4boLVUA>.

³ European Neighbourhood Policy and Enlargement Negotiations (DG NEAR), Enlargement Package 2023, available at: <https://bit.ly/3zp2xhM>.

⁴ Ibid.

on naturalisation, the situation pertaining to the right to work and access to education for asylum applicants and protection holders, the independence and capacity of administrative bodies responsible for examining applications for international protection, the functioning of oversight/monitoring bodies to safeguard the quality of the related decision-making process, and the capacity of national monitoring bodies to oversee the use of EU financial assistance for integration.

Further, **Part II** focuses on the state of play regarding the countries' alignment with the EU legislation related to certain aspects of asylum and migration. It comprises the questions related to the three relevant Chapters of the EU *acquis*:

- Chapter 23 – Judiciary and fundamental rights;
- Chapter 24 – Justice, freedom and security;
- Chapter 18 – Statistics.

The analysis of the situation in these three areas includes questions related to the independence of the judiciary and access to judicial remedy for asylum seekers and other migrants, the management of return processes, the implementation of the judgments of the European Court of Human Rights, certain aspects related to access to the asylum procedure and rights of applicants for protection, the use of safe country concepts, and the mechanisms for collecting, sharing and analysing statistics on migration.

The contributions also offer recommendations for improvement of the standards and practices related to the management of asylum systems and wider migration policies of the respective countries.

Disclaimer

While efforts have been made to ensure accuracy, the content of the country contributions is the responsibility of their respective authors.

About ECRE

ECRE is an alliance of 126 NGOs across 40 European countries, dedicated to protecting and advancing the rights of refugees, asylum-seekers and other forcibly displaced persons in Europe and in Europe's external policies.⁵ ECRE provides legal support, advocacy and communication on asylum issues and policies. Among other tools, ECRE manages its Asylum Information Database (AIDA), which contains information on asylum procedures, reception conditions, detention and content of international protection across 23 countries.⁶

⁵ For more information, please see ECRE website: <https://ecre.org/>.

⁶ For more information, please see AIDA website: <https://asylumineurope.org/>.

ALBANIA

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Part I: The fundamentals of the accession process (the Copenhagen criteria)

1. Political criterion: functioning of democratic institutions and public administration reform (stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities)

1.1. What is your assessment of the level of civil society participation in migration- and asylum-related policy-making?

Generally, the consultation process is carried out after the full draft of the acts has been presented. Civil society can engage during the consultation process of the acts via the electronic public consultation platform, at the Parliament or via the Executive branch (electronic register of public consultation). The opportunity for the contribution from civil society is given during the final phase of the policy-making process. However, most organisations do not have sufficient capacity to provide inputs in the process.

AHC assesses that the participation of interested groups during the drafting of various acts and not solely at the final stage when the draft has been finalised would serve as a more effective consultation process.

1.2. What are the regularisation options available for third-country nationals?

Law no. 79/2021 "For foreigners", provides for the possibility of regularisation based on defined grounds, including humanitarian ones. Article 52 foresees that for humanitarian grounds the foreigner is provided with a temporary residence permit, including the situations when a foreigner:

- a) submitted to the asylum authorities a request to be recognised as a refugee;
- b) has been subject to exploitative work conditions in the Republic of Albania and cooperates in a criminal process against the employer until the process is completed, and the foreigner receives the amount of his compensation determined by the process;
- c) has cooperated or agrees to cooperate with the justice bodies, at the proposal of the state or national security bodies;
- ç) it has been determined by the responsible authorities that he is a stateless person;
- d) is an abandoned minor or has been left without parental protection, guardian or companion for other reasons;
- dh) is a pregnant woman over 6 months;
- e) seriously ill persons who cannot be treated in the place of return, persons who seek to stay because they left their country due to natural disasters/events;
- ë) in other cases, defined as such in international agreements.

The foreigner who is granted a temporary residence permit according to para 1 of this Article enjoys the right to stay and move within the territory of the Republic of Albania, guaranteed for foreigners who

have a temporary residence permit, according to normal procedures. This includes the right to health care, financial assistance, free legal assistance, the right to translation and psychological support, as well as the right to work if the latter is afforded by legal provisions in force. Besides, the issuance of residence permits for victims of human trafficking is guaranteed.

1.3. What are the state's policies on naturalisation?

Obtaining citizenship by naturalisation is a procedure regulated by Article 8 of Law no. 113/2020 "On citizenship". It is envisaged that Albanian citizenship is acquired by naturalisation by the foreigner who has submitted a request and meets the following conditions:

- a) has reached the age of 18 (eighteen) years;
- b) has the legal capacity to act;
- c) resides legally and has resided for a continuous period of not less than 7 (seven) years in the territory of the Republic of Albania, as well as has obtained a permanent residence permit, valid at the time of submission of the request, according to the law on foreigners;
- ç) has a residence in accordance with the approved housing standards in the Republic of Albania;
- d) has legal income and financial resources, sufficient for living in the Republic of Albania, which coincides with the minimum standard of living, indexed every year in relation to the price index of some selected goods, provided for in the Institute's regulations of Social Security;
- dh) has not been convicted by a final court decision in his country, in the Republic of Albania or in any third country for criminal offenses, for which Albanian law provides sentences of not less than 3 (three) years imprisonment. An exception to this rule is made only in those cases where it is proven that the punishment was given for political motives;
- e) possesses knowledge of the Albanian language, spoken and written, certified by the relevant educational institution, as well as basic knowledge of the history of the Republic of Albania, according to the rules determined by higher education institutions;
- ë) does not pose a threat to public order and national security of the Republic of Albania.

The law provides for exceptions for fulfilling the above criteria based on certain categories (e.g., for stateless persons, for foreign persons married to Albanian citizens, for foreigners who have minor children with Albanian citizenship, etc.).

In the previous legal framework, a way of obtaining citizenship by naturalisation was the acceptance as Albanian citizens of foreigners who had reached the age of 18, if this fact did not affect the security and defence of the Republic of Albania, and in cases where the state had a scientific, economic, cultural or national interest. Currently, this way of acquiring citizenship is not included in cases of acquiring citizenship by naturalisation, but as a special case (Article 9 of the law). Such provisions have been analysed in a policy paper of AHC due to the risk of the phenomenon known as "golden passports" related to organised crime and money laundering in the EU. Our analytical overview was reflected in the position paper "Analysis in the context of obligations deriving from Albania's EU integration process, on the threat of golden passports for security, organised crime, and corruption".⁷

⁷ Albanian Helsinki Committee (AHC), "Analysis in the context of obligations deriving from Albania's EU integration process, on the threat of golden passports for security, organized crime, and corruption", Position Paper, June 2023, available at: <https://bit.ly/4cCLSpC>.

1.4. What is the situation in the area of access to justice for non-citizens?

Access to justice is guaranteed to non-citizens in Albania, mainly through the provisions of Law no. 11/2017 "For legal aid guaranteed by the state". Subjects benefiting from legal aid are:

1. foreign citizens or stateless persons who stay in the territory of the Republic of Albania for a temporary or permanent period and are equipped with a residence permit, in accordance with the legislation in force for foreigners;
2. foreign citizens, or stateless persons, who regularly enter the territory of the Republic of Albania and who benefit on the basis of international agreements ratified by the Republic of Albania or based on the principle of reciprocity;
3. asylum seekers, persons who enjoy refugee status and persons who are in the process of appealing administrative and/or judicial decisions for the rejection of the asylum application or the revocation of the refugee status decision, according to the legislation in force on asylum in the Republic of Albania.

Such categories are limited in our view which creates a burden for other foreigners who are in need of protection and do not have the financial income to pay a private attorney.

2. Economic criterion: the existence of a functioning market economy and the capacity to cope with competition and market forces in the EU.

2.1. What is the situation pertaining to the right to work and access to education for asylum applicants and protection holders?

According to the law, all persons who have submitted a request for international protection have the right to employment and to the realisation of professional training, regardless of whether they have access to the labour market. According to Article 61 of Law no. 10/2020 "On asylum in the Republic of Albania", applicants have the right to be employed no later than 9 (nine) months from the date of submission of the application; if the authority responsible for asylum and refugees has not yet made a decision, this delay cannot be attributed to the applicant. The Republic of Albania, for reasons of labour market policies, may give priority to the labour market for its citizens.

Regarding access to education, based on Article 59 of the same law, child applicants are granted the right to attend pre-university education under the same conditions as children with Albanian citizenship. They benefit from this right within 3 months from the date of submission of the application for international protection.

According to the information provided in section 2.1 regarding access to education, the law grants access to education to applicants for international protection. Regarding the actual situation of access to education, based on a study carried out by UNICEF, the cases referred until July 2023 did not include access to education or other forms of education and integrative treatment necessary for the children's age.⁸

⁸ UNICEF, "Unaccompanied and unprotected: Assessment of deficiencies in protection for unaccompanied foreign children in Albania", 2023, available at: <https://uni.cf/3W8c3P4>.

2.2. What is the number of non-citizens working in the informal economy? Of them, what is the number in precarious or exploitative situations?

AHC does not have primary data collected regarding non-citizens working in the informal economy. However, in 2023 there were 9,825 foreigners in Albania, granted work permits and work certificates, according to the data provided by the National Employment and Skills Agency (AKPA).⁹

According to the data of the State Inspectorate of Labour and Social Services, during 2023 inspections, 1350 foreign workers were identified and 27 of them did not have a work permit.¹⁰

3. The ability to take on and implement effectively the obligations of membership, including adherence to the aims of political, economic (and monetary) union.

3.1. What is your assessment of the independence and capacity of administrative bodies responsible for examining applications for international protection?

The law foresees that the decisions of the Authority responsible for asylum and refugees can be appealed to the National Commission for Asylum and Refugees, which is the superior collegial administrative body for reviewing complaints. The latter's decision can be appealed to the competent Administrative Court. Importantly, the Authority responsible for asylum and refugees as well as the National Commission for Asylum and Refugees are subordinate to the Ministry of the Interior. The members of these institutions are appointed by the executive bodies. Therefore, they do not enjoy full independence in the exercise of their powers.

AHC was a member of the National Commission for Asylum and Refugees, but since 2021, in a regressive manner, in line with the Decision of Council of Ministers no. 669, dated 10.11.2021 to change the composition of the Commission was introduced. On this matter, AHC reacted with an open letter¹¹ to the Minister of Interior of the time, while the latter, in the process of a parliamentary interpellation, made a decision to extend the invitation to AHC and any non-governmental organisation to attend the meetings of the Commission in the capacity of guests. Since that development, AHC has not been invited to any planned meetings and, apparently, based on our information, there has been a reduced number of Commission's meetings. At the same time, the criteria envisaged for members of the National Commission on Asylum and Refugees (such as being equipped with a 'secret' level security certificate), if extended over invitees, would create difficulties for effectively following these meetings as part of the civil society sector.

Besides, we note that the administrative staff needs continuous training on the practical implementation of the approved legal framework as well as on the management of the situations they encounter in their daily work. The National Strategy for Migration and the Action Plan 2024-2030 foresees measures to increase the capacities of the staff responsible for asylum procedures.

3.2. Are there oversight/monitoring bodies to safeguard the quality of the related decision-making process?

In order to safeguard the quality of the related decision-making processes, the law nr. 10/2021 "On asylum in the Republic of Albania", has provided the obligation of local authorities to cooperate with UNHCR with the aim of exchanging information as well as getting general or specific recommendations from UNHCR.

⁹ For more information, please see <https://bit.ly/3xyrZRn>.

¹⁰ State Inspectorate of Labour and Social Services, 2023 Report, available at: <https://bit.ly/3L6sYvc>.

¹¹ Open Letter "Albanian Helsinki Committee expelled without reason from Membership in the National Commission for Asylum and Refugees", 13 April 2022, available at: <https://bit.ly/4buqYHT>.

Moreover, the Ombudsman as an independent institution in the Republic of Albania monitors the conditions and treatment of asylum seekers in the Reception Centres and provides recommendations on taking the necessary measures. However, this institution is not directly involved in monitoring the quality of decision-making processes.

We estimate that the bureaucracies established in the processes of bilateral agreements between institutions and CSOs complicate and delay their effective monitoring.

While regarding the 2023 US Department Country (Albania) Report on Human Rights stated that police allowed UNHCR, the Office of the Ombudsman, and their partners to conduct independent monitoring of asylum processes and related facilities. The ombudsman and NGO Caritas were also allowed to monitor the detention of migrants. The AHC reported the Ministry of Interior did not respond to requests for a monitoring agreement for the asylum-seeker reception centre in Babrru.

3.3. Are there national monitoring bodies to oversee the use of EU financial assistance for integration (e.g., IPA and NDICI), aimed to improve overall conditions, including promoting the rights of displaced persons, vulnerable groups and national minorities? If so, is civil society engaged in their functioning?

AHC does not have information on whether there are national monitoring bodies to oversee the use of EU financial assistance for integration.

Part II: Alignment with EU acquis

Chapter 23: Judiciary and fundamental rights

1. What is the ranking of the independence of the judiciary?

There is no official ranking of the independence of the judiciary. The 2023 US Country Report on Human Rights in Albania notes political pressure, intimidation, corruption, and limited resources prevented the judiciary from functioning fully, independently, and efficiently. The government continued to implement an internationally monitored process to vet judges and prosecutors and to dismiss those with unexplained wealth or ties to organised crime. The ombudsman assessed that the judiciary made progress toward establishing a more independent system but added that more improvements were needed.

AHC assessed in its latest annual report on Human Rights that the judicial system was becoming more independent due to the judicial vetting process and the actions of the Special Prosecution Structure Against Corruption and Organized Crime (SPAK). However, there have been reports about the lack of transparency in investigations, significant delays in proceedings, and unfair court decisions.

2. What is the situation pertaining to access to judicial remedy for asylum seekers and other migrants?

AHC does not have concrete data on the situation regarding access to judicial remedies for asylum seekers and other migrants.

3. What is your assessment of the management of return processes?

With regard to measures taken by the Albanian state for entering into readmission agreements with countries of origin, according to the data from the Ministry of Interior, the national mechanism and the return policy for immigrants in irregular situations in their countries of origin have encountered obstacles with regard to the lack of readmission agreements and implementation protocols with these countries; with regard the national legislation, relevant procedures have been approved under the law on

foreigners for the process of identification at the border and the treatment of all categories of immigrants, including those in vulnerable situations, to refer them to relevant structures.

Therefore, the responsible structures of the Ministry of Interior have drafted and submitted to the Ministry for Europe and Foreign Affairs for further review the procedures of 10 draft readmission agreements with third countries of origin such as Morocco, Afghanistan, Iraq, Iran, Pakistan, Algeria, India, Egypt, Tunisia, Bangladesh. While the same draft agreements have been shared through diplomatic channels with the mentioned countries for the start of negotiations, from our recent policy paper it follows that Albanian authorities have received no response from these countries.¹²

4. To what extent the implementation of the judgements of the European Court of Human Rights and of other relevant international bodies in general, as well as specific to asylum matters is carried out?

AHC has not judicially represented cases related to asylum procedures before the ECHR and is not aware of any case regarding this category. However, with regard to the cases represented by AHC, we note with concern the delays in the execution or the incomplete execution of Court decisions, both domestic and by the ECHR. This problem relates to both procedural¹³ and material parts of the courts' decisions.¹⁴ As a result, the protection that the ECHR provides has not been fully effective, thus infringing the right to due legal process.

Chapter 24: Justice, freedom and security

1. What is the situation pertaining to access to asylum procedure (access to the territory, registration, etc.)?

Regarding access to asylum procedures, the law foresees that within 72 hours of submitting the request for international protection, the case is referred to the authority responsible for asylum, and in this way, the applicant has the right to stay in the territory of the Republic of Albania (near a Reception Centre or in the chosen a place of residence) until the final decision is taken. The law sets the standard that the procedures must be handled as soon as possible. However, the responsible staff at the Border and Migration Police requires continuous training in order to guarantee full compliance with the asylum procedures.

Moreover, during this procedure, the applicant has the right to be assisted by a translator, to be helped by specialists and to benefit from free legal services.

According to the Policy Paper mentioned above, the information provided by the authorities indicates 10-15 days on average, necessary to carry out essential administrative processes, including initial evaluations, health examinations, and procedural information. These deadlines enable a more complete assessment of the needs of asylum seekers and simplify the provision of necessary services during their transitory passing inside the Reception Centre. Meanwhile, maximal deadlines for the accommodation of asylum seekers vary from 8 up to 10 months, which according to the AHC's evaluation, represents an overextended time. Relatively long deadlines shed light on the challenges linked with complex cases, procedural complications, and potential obstacles in the process of administrative and judicial processing of decision-making on asylum. Compared to 2022, when the

¹² Albanian Helsinki Committee, "Efficiency of asylum procedures and challenges faced by domestic institutions for the treatment and management of irregular migrants", Policy Paper, December 2023, available at: <https://bit.ly/4cptUgh>.

¹³ AHC monitored the execution of ECtHR decisions Prizreni vs. Albania, Strazimiri vs. Albania, and Zaharia vs. Albania, in which the remuneration was approved after an unreasonable delay that varies from one year and five months to three years and three months.

https://ahc.org.al/wp-content/uploads/2023/08/Raport-Alternativ_Ekzekutimi-i-vendimeve-te-GJEDNJ-ndajShqiperise.pdf

¹⁴ For instance, the failure to establish a special medical institution to execute medical measures (Strazimiri case) but also to offer appropriate medical treatment (Zaharia case).

number of individuals seeking asylum in the Republic of Albania was 125, in the first 7 months (January-July) of 2023, there were 123 requests. This considerable increase accounts for the number of asylum seekers from Afghanistan, Iraq, Iran, Somalia, and Yemen. If the progressive increase in the number of applications continues until the end of 2023, this indicator requires vigilance of asylum authorities and inclusive systematic analysis, because there is a complex group of regional and global factors that have led to increased insecurity and instability in some countries of the world, including geopolitical, socio-economic, and humanitarian factors. Based on data provided by authorities responsible for asylum, there is a notable fact that there have been no negative decisions on asylum applications during the period of 2022-2023, while there have been cases when asylum seekers have withdrawn voluntarily their applications for international protection. Authorities do not provide detailed information about the analysis of the causes and factors that have led to the voluntary withdrawal, and there is a lack of information about the location of these citizens. Such data underscore the need for more accountability and transparency by responsible institutions, such as the National Commission for Asylum and Refugees and the Ministry of Interior. During the period January-December 2022 and January-July 2023, there were no instances of citizens who obtained the status of refugee/complementary protection who left Albania on their own. Before the review procedure of their requests for asylum, about 3,137 Afghan citizens withdrew their request for temporary protection and voluntarily left the country.

2. What is the practice related to the use of the Safe Country concepts?

The law no. 10/2021 "On asylum in the Republic of Albania", recognises the concept of:

- **The safe third country**, which is the country where the applicant stayed before coming to the Republic of Albania and to which it is assumed that he will return safely once the authorities are convinced that the applicant's fundamental rights and freedoms will be respected. The list of countries is approved by the Decision of the Council of Ministers.
- **The safe country of origin**, which is evaluated as such by the responsible authorities in case the applicant has citizenship of that country, is a stateless person and had previous residence in that country, or if he did not present sufficient information to consider the country in question as an unsafe country of origin for the special personal circumstances to be a beneficiary of international protection under this law.

3. How are the cases of vulnerable applicants treated? What are the guarantees for vulnerable groups?

The law no. 10/2021 "On asylum in the Republic of Albania", foresees a special chapter that regulates the treatment of vulnerable categories. Some of the additional guarantees are related to their needs, medical and psychological care, the appointment of representatives in cases of mental health problems, the appointment of guardians for unaccompanied children and the performance of medical visits, the assistance of psychologists for the vulnerable categories during the procedure of examining the request for international protection.

An analysis of statistical data indicates that in 2022, in Gjirokastra 33 foreign citizens were transferred to the Temporary Social Centre, while in 2021, there were no transfers to this institution. There was an increase in the number of cases during the first nine months of 2023, with 32 foreign citizens transferred to this Social Centre. The growing number of these cases is a result of the increase in the number of citizens who are part of vulnerable categories, such as women and children, who access the Albanian territory.

There is a need for the development and expansion of support services inside the Social Centre, providing tailored assistance that addresses the specific needs of vulnerable foreign citizens. This includes access not only to health care but also psychological support, educational opportunities and vocational training for women, facilitating their integration, should these citizens file a request for

asylum. It is also assessed that institutions of oversight should take measures to develop a long-term policy legal framework, aiming at addressing the root causes of migratory flows that include the vulnerable categories of immigrants. Such situations raise the need to engage in joint discussion with regional and international partners, as well as countries of origin, to identify paths and practices that should be followed by them to improve the socioeconomic conditions, offer sustainable alternatives to migration, and strengthen border controls to prevent the exploitation and smuggling of migrants.

4. What is the situation about the use of detention in asylum procedure?

Detention in the Closed Centre of Kareç is applied as an administrative measure of last resort towards foreigners who are the subject of an expulsion procedure, after all alternative measures have been executed, or if responsible authorities evaluate that these measures may not be applied to the foreign citizen. Data from the Director for Borders and Migration reflects that, compared to 2022 and 2021, there is an almost similar trend of the presence of foreigners in this Centre. More concretely, in 2021, 69 foreign citizens were identified while there were 65 such cases in 2022. An increase of 11 citizens was noticed during the 9-month period of 2023 (34 foreign citizens), against the same number of foreign citizens in the same 9-month period of 2022 (23 foreign citizens).

5. What is your assessment of the reception capacities and conditions?

There have been partial improvements with regard to reception conditions, more specifically, in two reception centres, established by law no. 10/2021 "On asylum in the Republic of Albania" and law no. 79/2021 "On foreigners" – the Asylum Reception Centre (Babrru) and the Closed Centre for Foreigners (Kareç). The key differentiation in the categorization of those accommodated in these institutions consists in the procedural legal status; more specifically, those who have filed a request for international protection are admitted and accommodated in the Asylum Reception Centre, while foreign citizens who are the subject of expulsion from the territory of the Republic of Albania are accommodated in the Closed Centre for Foreigners.

The monitoring mission undertaken by AHC observers in March 2023 highlighted inappropriate infrastructural conditions in the premises of the Closed Centre for Foreigners (Kareç), which do not ensure the minimal standards for humane treatment. In order to address this situation, improvements are required to guarantee the fulfilment of the fundamental principles of respect, dignity, and humane treatment of foreign citizens detained and placed at this institution. The collaborative efforts of domestic authorities that work in partnership with international organizations (such as IOM) reflect important steps undertaken to improve conditions and reinstate the dignity and rights of this category of citizens.

AHC wishes to reiterate that the lack of agreement with the Ministry of the Interior to the monitoring of the reception Centre in Babrru was a bureaucratic obstacle to the monitoring of an open institution. Given the capacity of the Reception Centre for accommodating up to 220 asylum seekers, we consider that the current administration of 18 employees is not sufficient to guarantee the provision of adequate services for asylum seekers. There is a need for cooperation and the coordination of efforts among key institutions such as the Ministry of Finance and Economy, the Ministry of Health and Social Protection, the National Employment Service, and the State Labour Inspectorate, to increase the well-being and standards of treatment of asylum seekers, as well as for facilitation of their integration in the society.

6. Can asylum seekers enjoy freedom of movement?

Yes, asylum seekers can enjoy freedom of movement. As foreseen in Article 47 of the Law no. 10/2021 "On asylum in the Republic of Albania", the applicant's freedom of movement may be limited only by the following measures:

- a) prohibition of movement outside the Reception Centre for Asylum;
- b) prohibition of movement outside the space designated by the responsible authority;

- c) the obligation to appear before the competent body at the appointed time;
- ç) submission of travel documents to the competent body;
- d) accommodation in the Closed Centre for Foreigners.

In accordance with the determinations made in point 1 of this article, the authority responsible for asylum and refugees makes a decision in written form defining:

- a) alternative measures to restrict the applicant's freedom of movement;
- b) keeping the applicant in the Asylum Reception Centre;
- c) the duration of the restriction in relation to the purpose of the decision.

In cases where, according to para 1 of this Article, there are conditions for restricting the freedom of movement of applicants by keeping them in the Asylum Reception Centre, the authority responsible for asylum and refugees decides to keep the applicant in the Centre for up to 8 (eight) days and this decision is notified to the applicant. The applicant may be kept in this Centre for more than 8 (eight) days only by decision of the competent administrative court. The request of the court is presented to the Ministry.

Following the decision of the authority responsible for asylum and refugees, the applicant can submit an appeal to the competent administrative court. The appeal to the court suspends the execution of the decision.

7. Do applicants for protection have access to free legal assistance?

Based on the state-guaranteed legal aid system implemented in the Republic of Albania, applicants are offered this aid only in relation to:

- a) information about their rights and obligations;
- b) drawing up appeals for the decisions taken during the request review procedure;
- c) drafting acts and representation in administrative procedures before the authority responsible for asylum and refugees, as well as before the court for appealing the decisions taken during the review of the request.

Moreover, the applicant has the right to contact the persons providing assistance at any stage of the procedure.

We estimate that the approval of the new Judicial Map in Albania has directly affected access to the judicial system due to the distance between judicial bodies from the residences. In this context, we believe that benefiting from free legal aid has become difficult for applicants. The legislation does not provide for reimbursement of transport expenses in certain cases. We assess that it is necessary to increase the number of NGOs which work with immigrants and asylum seekers and offer legal assistance through state budget funds.

Chapter 18: Statistics

1. What is the state of mechanisms for collecting, sharing and analysing statistics on migration in general, as well as on asylum applications and decisions?

AHC does not have official information on the mechanisms of collecting, sharing or analysing this data. However, on the official website of the Ministry of the Interior,¹⁵ monthly reports/bulletins with

¹⁵ For more information, see the website of the Minister of the Interior of the Republic of Albania, available at: <https://mb.gov.al/raporti-mujor/>.

summarised data on the issues under its competence are published. INSTAT is the main institution producing official statistics.

KOSOVO

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Part I: The fundamentals of the accession process (the Copenhagen criteria)

1. Political criterion: functioning of democratic institutions and public administration reform (stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities)

1.1. What is your assessment of the level of civil society participation in migration- and asylum-related policy-making?

Although there is a limited number of civil society organisations dealing with migration and asylum related issues, the level of their participation in policy making is considered to be good.

1.2. What are the regularisation options available for third-country nationals?

In Kosovo illegal stay is defined in the Law on Foreigners as the presence of a foreigner in the territory of the Republic of Kosovo who does not meet, or no longer meets, the conditions for entering or staying in the Republic of Kosovo.

There is no number or statistic of those who are illegally staying or working in the country. In this regard Kosovo does not have any specific regularisation program, however, third-country nationals who can enter Kosovo without a visa may file an application for a temporary residence permit at to Department for Citizenship, Asylum and Migration.

In 2023, amendments to the Law on Foreigners were initiated, but have not entered into force yet. One of the proposed provisions was the so-called “tolerated status”, in relation to third-country nationals who are not able to return to their country of origin, but also do not meet the criteria for legal stay in the country.

Also, due to a noted increase in the number of irregular migrants in the area, Kosovo made functional the Temporary Reception Centre for Migrants in 2022, where third-country nationals may stay for up to 15 days, before filing an asylum claim or continuing their journey out of the country.

1.3. What are the state's policies on naturalisation?

There is a Law on Kosovo Citizenship, the Law on Asylum and the Law on Foreigners regulating the naturalisation of foreigners and refugees.

According to the Law on Kosovo Citizenship, a person with refugee status or a stateless person may acquire the citizenship of the Republic of Kosovo by naturalisation if he/she resides in the territory Republic of Kosovo for five (5) years from the day of the recognition of refugee or stateless person status. Family members shall also be entitled to acquire citizenship of Kosovo. While other protection holders may acquire citizenship by naturalisation if he/she has resided for five (5) years without interruption in the Republic of Kosovo after obtaining a permanent residence permit.

1.4. What is the situation in the area of access to justice for non-citizens?

Non-citizens have access to justice and free legal aid under the legislation in force. The Ministry of Justice through its Agency for Free Legal Aid and in partnership with civil society organisations provide free legal aid services to non-citizens in Kosovo.

2. Economic criterion: the existence of a functioning market economy and the capacity to cope with competition and market forces in the EU.

2.1. What is the situation pertaining to the right to work and access to education for asylum applicants and protection holders?

Asylum applicants have the right to work once 9 months from the date of applying has passed, but no decision has been issued yet by the asylum authorities. Protection holders are eligible to work without requiring a work permit as well as they have access to education, too. However, language barriers and dependency on government benefits due to low-income salaries hinder their self-reliant working opportunities. Primary and secondary education is mandatory for Kosovo citizens. The same is applied to asylum seekers and protection holders in Kosovo. University education is available to protection holders, on equal terms with Kosovo citizens.

2.2. What is the number of non-citizens working in the informal economy? Of them, what is the number in precarious or exploitative situations?

There are no statistics yet on the number of non-citizens working in the informal economy.

3. The ability to take on and implement effectively the obligations of membership, including adherence to the aims of political, economic (and monetary) union.

3.1. What is your assessment of the independence and capacity of administrative bodies responsible for examining applications for international protection?

The administrative bodies responsible for examining applications for international protection are primarily DCAM (Department for Citizenship, Asylum, and Migration) within the Ministry of Internal Affairs. The capacity of DCAM is considered at a satisfactory level, however, enhanced training on international protection standards, COI (Country of origin), and human rights might enhance the quality of decision-making in needed.

3.2. Are there oversight/monitoring bodies to safeguard the quality of the related decision-making process?

The quality of decision-making is monitored by several national and international stakeholders: at the national level, the institution of Ombudsperson whose mandate is to monitor and protect the rights and freedoms of individuals. Then UNHCR and Civil Society Organizations (CSOs) partners have a strong presence where they play a crucial role in monitoring the decision-making process.

The asylum procedure in Kosovo is a multi-instance procedure, 2 of which are administrative and 3 other Judiciary, which is aimed at increasing the quality of decision-making. The decision in the first instance is made by the appointed case officer. This decision may be appealed to the National Commission for Refugees, which is composed of experienced lawyers from several Government Institutions. The third to fifth instances are judicial.

3.3. Are there national monitoring bodies to oversee the use of EU financial assistance for integration (e.g., IPA and NDICI), aimed to improve overall conditions, including promoting the rights of displaced persons, vulnerable groups and national minorities? If so, is civil society engaged in their functioning?

No.

Part II: Alignment with EU acquis

Chapter 23: Judiciary and fundamental rights

1. What is the ranking of the independence of the judiciary?

Satisfactory.

2. What is the situation pertaining to access to judicial remedy for asylum seekers and other migrants?

The applicants for international protection status have the right to appeal the asylum decisions in the Court system. Starting from the Basic Court, Court of Appeal, and up to the Supreme Court.

3. What is your assessment of the management of return processes?

The return process is managed by the Ministry of Internal Affairs respectively the department for readmission and return. In some cases, it was noticed that delays in the return process can be attributed to many factors such as lack of state representation offices in different countries, lack of financial means, etc.

4. To what extent the implementation of the judgements of the European Court of Human Rights and of other relevant international bodies in general, as well as specific to asylum matters is carried out?

Not applicable.

Chapter 24: Justice, freedom and security

1. What is the situation pertaining to access to asylum procedure (access to the territory, registration, etc.)?

Access to the asylum procedure is guaranteed by domestic law where according to the Kosovo Law on asylum application for protection can be made by a foreign national or a stateless person. In this situation, all foreign or stateless persons who express intention to seek asylum are transferred to the Asylum centre where they undergo the registration process.

2. What is the practice related to the use of the Safe Country concepts?

Kosovo doesn't have its own list of Safe Countries of Origin. The assessment of whether a country is a safe country of origin is based on a range of sources of information, including in particular information from the EU Member States, EUAA, UNHCR, the Council of Europe, and other relevant organisations.

3. How are the cases of vulnerable applicants treated? What are the guarantees for vulnerable groups?

Kosovo has legal obligations and international commitments to protect the rights and dignity of vulnerable applicants and to provide them with additional support during the asylum process. The identification of assessment is conducted upon arrival. Applicants also enjoy the legal and psychosocial support, however, some delays in the appointment of legal guardians have been noticed particularly for unaccompanied minors' categories.

4. What is the situation pertaining to the use of detention in asylum procedure?

Detention in the asylum procedure is used as the measure of last resort. For applicants who commit criminal offences, the same procedure is followed for the regular citizens of Kosovo. In terms of criminal offences such as illegal border crossing, the applicants are not kept in detention centres, but they enjoy the right to seek international protection if they express the intention to do so.

5. What is your assessment of the reception capacities and conditions?

The reception capacities and conditions are at a satisfactory level for the trend of applicants that Kosovo has. Two reception conditions are functional and are equipped with all the necessary facilities. For families, two separate spaces are designated that offer enough privacy and comfort, sanitary facilities are in place, food is served three times per day, and healthcare services are in place also legal and psychosocial services are offered by UNHCR's partner organisations, which are present in these facilities on daily bases. Furthermore, training and educational activities for children and adults are ongoing.

6. Can asylum seekers enjoy freedom of movement?

Asylum seekers enjoy the freedom of movement within the territory of Kosovo. Apart from applicants who reside in the asylum centre, they have to report back to the Centre before 22:00h. However, applicants who do have financial means to cover their expenses do not have to report back at the above-mentioned time: they can reside at the places of their own arrangements following permission granted from asylum authorities.

7. Do applicants for protection have access to free legal assistance?

Yes, free legal assistance and counselling are provided throughout the asylum procedure.

Chapter 18: Statistics

1. What is the state of mechanisms for collecting, sharing and analysing statistics on migration in general, as well as on asylum applications and decisions?

Department for Citizenship, Asylum and Migration within the Ministry of Internal Affairs has appointed officers in charge of statistics. On its web page, MIA shares DCAM quarterly statistical reports as well as the Annual Migration Profile reports.

SERBIA (I)

Name of contributing organisation: Belgrade Centre for Human Rights

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Part I: The fundamentals of the accession process (the Copenhagen criteria)

1. Political criterion: functioning of democratic institutions and public administration reform (stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities)

1.1. What is your assessment of the level of civil society participation in migration- and asylum-related policy-making?

Civil society organizations are regularly invited to participate in policy-making processes. The Belgrade Centre for Human Rights participated in the process of passing and amending laws and regulations related to the topics of asylum and migration. However, it often takes a long time before the solutions proposed by civil society organizations are adopted.

1.2. What are the regularisation options available for third-country nationals?

Third-country nationals can regulate their stay based on the Law on Foreigners (temporary residence based on various grounds: employment, education, ownership of real estate, family reunification, etc.), and for people who are in need of international protection, there is the possibility of applying for asylum under the basis of the Act on Asylum and Temporary Protection. Also, the Government's decision to grant temporary protection for persons displaced from Ukraine is currently in force.

1.3. What are the state's policies on naturalisation?

Until October 2023, persons with refugee status could not apply for permanent residence, and therefore not for citizenship, which prevented their naturalisation process. This left them with indefinite refugee status without any possibility of change. After the amendment of the Law on Foreigners, refugees can now apply for permanent residence after 3 years of continuous residence on the territory of Serbia, and after getting permanent residence they can apply for citizenship. This practice represents a major step forward in improving the position of refugees in Serbia. Since the establishment of the asylum system in the Republic of Serbia in 2008, this has been one of the biggest challenges in the integration of refugees into Serbian society.

1.4. What is the situation in the area of access to justice for non-citizens?

One of the main characteristics of the judicial system in Serbia is the long period it takes to make a decision in various procedures that are initiated to protect the rights of citizens. When it comes to foreigners, the challenges are often language barriers, as well as a lack of information about the entire process. Regarding the asylum procedure, the Law on Asylum and Temporary Protection (ZAPZ) prescribes free legal assistance for asylum seekers, however, this assistance is provided exclusively by civil society organizations with the support of international organizations. Also, the procedure before the Administrative Court, as the third instance, usually lasts for several years.

2. Economic criterion: the existence of a functioning market economy and the capacity to cope with competition and market forces in the EU.

2.1. What is the situation pertaining to the right to work and access to education for asylum applicants and protection holders?

Asylum seekers have open access to the labour market 6 months after submitting an asylum application. This is a change brought about by the amendments to the Law on Employment of Foreigners, since February 2024. Before that, this period was 9 months, and a personal work permit was required. A personal work permit costs around 100e and represents a significant financial expense for asylum seekers. Persons who have been granted the right to asylum or have been granted temporary protection acquire the right to work upon receiving the decision. According to ZAPZ, asylum seekers have the right to free primary and secondary education, and since primary education is compulsory, all children are enrolled in primary schools. Persons with refugee status or subsidiary protection have the right to access higher education under the same conditions as domestic citizens.

2.2. What is the number of non-citizens working in the informal economy? Of them, what is the number in precarious or exploitative situations?

Unfortunately, we do not have information on the exact number, but a large number of asylum seekers and refugees in Serbia work on the black market. Since they are not legally protected in these situations, the most common cases of abuse that occur are employers refusing to pay the people who work for them. Since the majority of refugees see Serbia as a transit country, a large number of them start working to collect money to continue their journey to the European Union countries, and therefore all of them are at risk of being exploited. When it comes to the work of regular foreigners, the attention of international institutions was particularly attracted by the case of the Linglong company, which is currently the best-known example of labour exploitation and abuse of the labour rights of foreigners in Serbia.

3. The ability to take on and implement effectively the obligations of membership, including adherence to the aims of political, economic (and monetary) union.

3.1. What is your assessment of the independence and capacity of administrative bodies responsible for examining applications for international protection?

The Asylum Office, which decides in the first instance in the asylum procedure, has been faced with a lack of staff in the last few years, which, according to their statements, leads to breaking the legal deadlines for decision-making. However, this reason for extending the deadline for decision-making is not prescribed by the ZAPZ. The Asylum Commission, which represents an independent body in the second instance, is not independent enough, given that the members of the Commission are also representatives of the Ministry of Interior, which includes the Asylum Office. In addition, the Asylum Commission in rare cases decides on appeals on the merits, but if it accepts the appeal, it always cancels the first-instance decision and returns the case to the Asylum Office for a new decision. The administrative court is the slowest to decide in the asylum procedure, and the reason for that is, among other things, the absence of specialized sections for deciding exclusively on the subject of asylum, but judges who deal with all kinds of administrative disputes decide on it. The Administrative Court is one of the courts with the largest number of cases in the Republic of Serbia.

3.2. Are there oversight/monitoring bodies to safeguard the quality of the related decision-making process?

The Asylum Commission should be a corrective body that would correct the decisions of the Asylum Office. However, in practice, the Asylum Commission, due to the already mentioned problem of independence, has a limited scope in its corrective role. There are no other independent authorities that

would supervise the asylum procedure and the work of competent authorities in this matter. UNHCR is present in Serbia, which aims to monitor the entire asylum system and support refugees.

3.3. Are there national monitoring bodies to oversee the use of EU financial assistance for integration (e.g., IPA and NDICI), aimed to improve overall conditions, including promoting the rights of displaced persons, vulnerable groups and national minorities? If so, is civil society engaged in their functioning?

To our knowledge, there are no national monitoring bodies to oversee the use of EU financial assistance, and the civil society is not engaged in their functioning.

Part II: Alignment with EU acquis

Chapter 23: Judiciary and fundamental rights

1. What is the ranking of the independence of the judiciary?

An independent judiciary has been a problem for many years in Serbia, as the European Commission Report flags every year.

2. What is the situation pertaining to access to judicial remedy for asylum seekers and other migrants?

There is a possibility of filing a complaint with the Asylum Commission as a second instance, but also filing a lawsuit with the Administrative Court as a third instance authority. However, people who do not have legal representatives are often prevented from exercising their right to a legal remedy due to lack of information and legal uncertainty. One of the problems is the adoption of negative decisions in cases where the Security Information Agency was consulted and it was determined that a person represents a security risk to receive asylum. Such decisions are not explained, the Asylum Office does not go into the merits and the reasons for persecution are not examined. Also, the possibility that a person will experience serious injustice or suffering if he/she were to return to the country of origin and the risk of refoulement is not examined. Since the reasons for such decisions are absent (due to the Data Secrecy Act in the case of an assessment by the Security Information Agency), people are prevented from effectively using a legal remedy, since they have no known reasons to file a complaint. This practice leaves a lot of room for arbitrary decisions in the asylum procedure.

3. What is your assessment of the management of return processes?

Serbia does not deport refugees and asylum seekers, except in certain cases of extradition. When it comes to voluntary return, this is the responsibility of the Commissariat for Refugees and Migration in cooperation with IOM. The Belgrade Centre for Human Rights has not been involved in these processes but only referred persons who would turn to us for this type of assistance.

4. To what extent the implementation of the judgements of the European Court of Human Rights and of other relevant international bodies in general, as well as specific to asylum matters is carried out?

After the ECtHR judgement in 2023 in the case of S.E. vs Serbia, which established a violation of the freedom of movement of a Syrian refugee due to the failure of Serbian authorities to issue a travel document, the competent authorities in the Republic of Serbia were ordered to start issuing travel documents for refugees. In 2024, the first travel documents for refugees began to be issued, since required by-laws were passed. This is a positive example of respecting the practice of the decision of the ECtHR with the aim of improving the position of refugees and respecting their rights. But this is something that we were advocating for more than 10 years.

However, on two occasions, Serbia extradited two BCHR clients who were in the process of extradition before final decisions on their asylum requests. They were extradited despite the existence of interim measures from international institutions, such as the Committee against Torture and the European Court of Human Rights, who ordered Serbian authorities not to extradite persons until the proceedings before these bodies are completed and until their asylum requests are considered (Case of Cevdet Ayaz, CAT/C/67/D/857/2017 and Case of Mohamed v. Serbia, app no. 4662/22).

Chapter 24: Justice, freedom and security

1. What is the situation pertaining to access to asylum procedure (access to the territory, registration, etc.)?

One of the biggest challenges is access to the territory at the international airports in Serbia, since in 2023 there were many cases of refusal for persons who express their intention to seek asylum in front of border police officers to register and be granted access to the territory and thus access asylum procedure. The assistance of lawyers who represent in the asylum procedure is often needed, in order to enable persons to access the asylum procedure. There are also cases of pushbacks at the borders, especially at the borders with Macedonia and Bulgaria, putting people at risk of refoulement. In the asylum centres, there is no possibility to register persons who intend to seek asylum, but they have to get to the police station on their own in order to register. During registration, there are no translators and certificates referring persons to asylum centres are issued only in the Serbian language, in the Cyrillic alphabet.

2. What is the practice related to the use of the Safe Country concepts?

Currently, the concept of a safe third country is not applied in practice, although it is prescribed in the Law on Asylum and Temporary Protection.

3. How are the cases of vulnerable applicants treated? What are the guarantees for vulnerable groups?

When it comes to the accommodation of particularly vulnerable groups, unaccompanied minors are accommodated separately from adults. However, although there are safe houses for their accommodation, a large number of them still reside in collective accommodation managed by the Commissariat for Refugees and Migration. Women travelling alone, people with disabilities and LGBTI refugees usually stay together in the same centre, separated from adult men travelling alone. When it comes to the duration of the asylum procedure and the special procedural guarantees provided by the Law on Asylum and Temporary Protection, there is no drastic difference, nor is there a priority in dealing with particularly vulnerable cases. Special procedural guarantees are prescribed, but it is not exactly defined as what they represent in practice. According to our experience, care is taken that during the asylum procedure in cases of vulnerable women, a female translator and officer from the asylum office are engaged. If the unaccompanied minor is placed in one of the institutions for the placement of children, the hearing is held in that institution, instead of moving the child to an asylum centre.

4. What is the situation pertaining to the use of detention in asylum procedure?

When it comes to detention, asylum seekers and migrants can be placed in the Shelter for Foreigners. They can be detained there for a maximum of 90 days, with the possibility of extending this period for another 90 days, if the circumstances of the case require it. In practice, asylum seekers are very rarely accommodated in this institution and usually, they let them go when they submit asylum applications.

5. What is your assessment of the reception capacities and conditions?

Asylum centres and reception centres are under the jurisdiction of the Commissariat for Refugees and Migration of the Republic of Serbia, which ensures the material reception of asylum seekers and refugees. Conditions in these centres vary from facility to facility. The best conditions are in the Asylum Centre in Vranje, which accommodates persons under temporary protection who have been displaced

from Ukraine. Reception centres where there is a higher turnover of people are in a worse condition than asylum centres. Accommodation capacities for the reception of refugees and migrants are sufficient and currently higher than the number of refugees in Serbia, which led to the closure of a large number of centres, especially in the north of Serbia. It is necessary to continue improving accommodation conditions in accordance with international standards, especially when it comes to accommodation of particularly vulnerable groups, such as persons with disabilities, women with children and unaccompanied minors.

6. Can asylum seekers enjoy freedom of movement?

Asylum seekers can freely leave asylum centres, to which they must return within 72 hours in order to remain in the asylum procedure, since if they do not return within this period, their asylum procedure is suspended. If a person has the means to stay at a private address, they can leave the asylum centre, but it is necessary to inform the Asylum Office about this, in order to carry out a field check. They can stay anywhere in Serbia as long as they notify the asylum office about the change of address. However, in some cases, like a recent terrorist attack in Moscow, the asylum centres were closed for about 10 days, which made it impossible for asylum seekers and refugees to leave the centres and thus limited their freedom of movement.

7. Do applicants for protection have access to free legal assistance?

Legal assistance is provided by civil society organizations, including the Belgrade Centre for Human Rights. Although the law prescribes mandatory legal aid for asylum seekers, the state does not provide legal aid, and there are numerous cases where persons do not have legal representatives but represent themselves in the asylum procedure.

Chapter 18: Statistics

1. What is the state of mechanisms for collecting, sharing and analysing statistics on migration in general, as well as on asylum applications and decisions?

There has been a problem for years because there is no unique database related to asylum and migration, but each state authority maintains its own database and statistics related to its scope of work. This often leads to different numbers, since the same parameters are not used to collect statistical data. For example, the Commissariat for Refugees and Migration has statistics only on persons who go through Centres, while the Asylum Office counts only persons who have formally entered the asylum procedure.

SERBIA (II)

Name of contributing organisation: Centre for Research and Social Development IDEAS

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Part I: The fundamentals of the accession process (the Copenhagen criteria)

1. Political criterion: functioning of democratic institutions and public administration reform (stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities)

1.1. What is your assessment of the level of civil society participation in migration- and asylum-related policy-making?

Civil society organizations play a crucial role in advocating for the rights of migrants and asylum seekers and providing essential services. Their involvement ensures that policies are not only informed by legal and international standards but also by a deep understanding of the needs of individuals on the ground. They are pivotal in providing services to migrants and asylum seekers, from legal aid to humanitarian assistance. Their active role in service provision gives them unique insights into the gaps between policy and implementation, allowing them to advocate for necessary changes effectively.

Despite their important role, CSOs may face challenges in participating fully in policy-making processes. Often, they face limited access to decision-making forums, insufficient funding, and occasional resistance from governmental or other stakeholders. However, there has been progress in terms of involving civil society in policy discussions, particularly through dialogues and consultation processes, the extent of their influence on final policy decisions can vary.¹

1.2. What are the regularisation options available for third-country nationals?

The Law on Asylum and Temporary Protection² provides the following regularization options for third-country nationals in Serbia:

1. Status of asylum seekers
2. Asylum (Refugee status or Subsidiary Protection):
3. Temporary Protection

In accordance, with the same Law individuals granted asylum are eligible for naturalization. However, no refugee has been granted citizenship until this date, primarily due to a lack of harmonization between the Law on Asylum and Temporary Protection Law on Foreigners - the second did not recognize asylum-based residence as a form of temporary residence that could lead to permanent settlement and later citizenship in accordance with the Law on Citizenship. Recent amendments to the Law on

¹ Civil society organizations attended and participated in public discussions on amendments to the laws concerning the status of foreigners—namely the Law on Employment of Foreigners, the Law on Foreigners, and the Law on Asylum and Temporary Protection. They presented their suggestions, and some of these proposals from NGOs were incorporated into the amendments to the laws, which came into effect in February of this year. However, it took a considerable amount of time for their proposals to be accepted and included in the final legislative changes, as they have been advocated for them for years.

² Law on asylum and temporary protection, "Official Gazette RS", no. 24/2018, available at: <https://shorturl.at/qlpwP>.

Foreigners on the permanent stay of refugees, effective from February 1st, thus pave the way for naturalization, though permanent residence alone does not guarantee citizenship; additional criteria must be met.

The Law on Foreigners³ allows for:

1. **Temporary residence of foreign citizens** for various purposes including employment, education, language learning, study, participation in student exchange programs, professional specialization, scientific research, family reunification, religious services, medical treatment, property ownership, **humanitarian stay, assumed victim of human trafficking status, victim of human trafficking status**, and other justified reasons in accordance with the law or international agreements.
2. **Permanent residence** granted to foreign nationals who have held temporary residence for 3 years (excluding those for study purposes) and meet certain conditions. Notably, the mentioned recent legal amendments specify that permanent residence can also be granted to those who have resided in Serbia for more than three years under granted asylum.

1.3. What are the state's policies on naturalisation?

Naturalization is a right guaranteed by the Law on Asylum and Temporary Protection. However, until this day, no refugee has received citizenship. This was not possible due to the lack of harmonisation of Law on Asylum and Temporary Protection, Law on Foreigners and Law on Citizenship.

However, recent legal changes pave the way for naturalization. In July 2023, amendments to the Law on Foreigners were adopted. These amendments have made it possible for refugees who have been residing in Serbia continuously for more than three years to access permanent residence.⁴ This category of foreigners has been granted more favourable conditions for obtaining permanent residence in Serbia compared to other foreigners, which, represents a significant advantage. The new provisions of the Law began to be applied on February 1, 2024 and at first refugees obtained permanent residence.⁵

One of the main advantages of acquiring permanent residence is the possibility of naturalization. According to the Law on citizenship, foreign citizens who have this kind of residence can be accepted in citizenship. However, although permanent residence is a step towards naturalization, naturalization is not guaranteed to refugees merely by obtaining permanent residence. The citizenship acquisition process is complex and subject to fulfilling a series of additional conditions, after which, as stated in the Law, a foreigner “can” be granted citizenship⁶, which leaves refugees in uncertainty.

1.4. What is the situation in the area of access to justice for non-citizens?

The situation regarding access to justice for non-citizens, including refugees, asylum seekers, and migrants in Serbia, is critically deficient. During pushbacks at the borders, these individuals often find themselves arbitrarily deprived of liberty outside any legal framework that would establish detention protocols, including grounds for detention, duration, extensions, and the process for ending detention. Furthermore, they are not issued individual decisions on the deprivation of liberty, which could be appealed through effective judicial remedies. The absence of three fundamental safeguards against ill-

³ Law on foreigners “Official Gazette RS”, no. 24/2018, 31/2019 and 62/2023, available at: <https://shorturl.at/pNQR3>.

⁴ Art. 68a Law on foreigners.

⁵ APC, The first refugee received permanent residence in Serbia available at: <https://shorturl.at/lpEPV>; BCHR, Odobreno stalno nastanjenje za izbeglicu iz Burundija, available at: <https://shorturl.at/bqCY1>.

⁶ Art. 14 Law on citizenship “Official Gazette RS”, no. 135/2004, 90/2007 and 24/2018, available at: <https://shorturl.at/bqhE8>.

treatment—access to a lawyer, the right to inform a third party about their situation, and the right to a medical examination—leaves them vulnerable to refoulement and chain-refoulement.⁷

During expulsions, non-citizens are also not adequately informed of their rights, responsibilities, or applicable procedures in a language they understand. Many are being held incommunicado, underscoring the secretive nature of such practices. They are denied legal access to the territory and to asylum or other residency procedures where they could express fears of refoulement or chain-refoulement. Informal and forceful expulsions back to countries like Bulgaria and North Macedonia occur without consideration of individual circumstances.

Moreover, these individuals are expelled without health screenings or assessments of vulnerabilities. The manner of expulsion often constitutes ill-treatment due to the harsh conditions of removal, physical and psychological abuse, and the potential for further ill-treatment or chain-refoulement in the countries to which they are returned.

Access to justice is severely hindered by a protective veil over perpetrators of such acts, with a lack of criminal and disciplinary actions taken against them. Serbian authorities' denial of these practices causes an atmosphere of impunity, further obstructing non-citizens' pathways to justice and undermining the principle of accountability within the asylum and migration management system.

For foreign nationals denied entry at airports, specifically Nikola Tesla Airport, the situation also undermines their access to justice and protection. These individuals are served with a refusal of entry decision in Serbian Cyrillic and English without being allowed to present reasons against their removal, including the risk of refoulement or chain-refoulement, in a procedure devoid of any risk assessment for such threats. Despite potentially understanding the decision, the structured barriers make it impossible for them to appeal due to arbitrary detention in transit zones, lack of access to legal representation or civil society support, and insufficient information on their rights and procedures in a comprehensible language.

The process to challenge the refusal is practically unfeasible due to logistical and financial constraints, such as the inability to pay the required appeal fee from detention or lack of access to necessary resources like paper or post office services. The language barrier further complicates the appeal process, with the content needing translation and the appeal not having an automatic suspensive effect, rendering any attempt futile before forcible removal.

Detention in the transit zone, ranging from hours to weeks without a legal basis, formal decision, or defined duration, constitutes arbitrary detention. The absence of provisions governing detention length or grounds, coupled with the denial of fundamental rights like access to legal counsel, interpreter services, and medical examination, exacerbates the deprivation of liberty.

This practice poses a significant risk, especially for those who may need international protection and are arriving from countries where they face serious threats to their safety and rights. Instead of being granted access to asylum procedures, they are denied entry, forcibly removed, and often subjected to physical force.

Other information relevant to the criterion and key recommendations:

1. There needs to be a structured, consistent mechanism for the involvement of civil society organizations in all stages of policy-making. This includes planning, implementation, and evaluation phases, ensuring their contributions are not only heard but acted upon.

⁷ IDEAS, 2024, 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, p. 6-14, available at: <https://shorturl.at/dmDM1>.

2. Insufficient funding of CSOs should be addressed by establishing dedicated financial support programs for civil society organizations working in the field of migration and asylum. This could involve both national funds and international cooperation projects.
3. The implications of refugees formally being categorized as foreigners with permanent residence should be clarified. Legal gaps risk these individuals losing rights guaranteed under the Law on Asylum and Temporary Protection due to the application of the Law on Foreigners. It's vital to ensure that a change in status does not lead to a change in the rights and obligations available to refugees in Serbia.
4. Further harmonization of the Law on Asylum and Temporary Protection, the Law on Foreigners and the Law on Citizenship is necessary, to remove legal ambiguities and inconsistencies.
5. Legal framework to clearly define the grounds, duration, extensions, and processes for ending the detention of non-citizens has to be amended. It has to be ensured that all forms of detention are underpinned by a legal framework and subject to judicial review
6. Non-citizens' should be guaranteed access to a lawyer and the right to inform a third party about their situation immediately upon detention. It should be ensured they are informed of their rights, responsibilities, and applicable procedures in languages they understand.
7. Health screenings and assessments of vulnerabilities for all non-citizens upon detention or before expulsion should be mandated. Special attention should be given to survivors of SGBV, LGBTQI+ individuals, victims of human trafficking, the elderly, unaccompanied and separated children, torture survivors, and families with small children.
8. Comprehensive training programs for law enforcement, border officials, and the judiciary on the rights of non-citizens, international refugee law, and human rights obligations, with a focus on the principle of non-refoulement should be implemented.
9. Accountability measures for authorities and officials involved in the arbitrary detention, ill-treatment, and unlawful expulsion of non-citizens must be established. It has to be ensured that perpetrators of human rights violations are subject to disciplinary and criminal prosecution.

2. Economic criterion: the existence of a functioning market economy and the capacity to cope with competition and market forces in the EU.

2.1. What is the situation pertaining to the right to work and access to education for asylum applicants and protection holders?

Right to work

The Law on Asylum and Temporary Protection prescribes that asylum seekers and individuals granted asylum have the right to access the labour market.⁸ This access is further regulated by the Law on the employment of Foreigners, which outlines the conditions and procedures for employing foreign citizens.⁹ In June 2023, significant amendments to this law were adopted by the Ministry of Interior, markedly enhancing the labour market position of asylum seekers and refugees.¹⁰

These amendments, effective from February 1, 2024, eliminate the requirement for personal work permits for refugees and asylum seekers. Consequently, these individuals can now enter the labour market without undergoing the previously mandatory, complicated, and costly process of obtaining additional documentation.

Additionally, the amendments have reduced the waiting period for asylum seekers to access the labour market in Serbia. Under the former legislation, asylum seekers were obliged to wait for 9 months after

⁸ Art. 48,57,59,65,76 Law on asylum and temporary protection.

⁹ Art 3, Law on the employment of Foreigners, available at: <https://shorturl.at/fMQ05>.

¹⁰ IDEAS, 2024, Improving Access to the Labour Market for Refugees and Asylum Seekers: Key Amendments to the Law on employment of Foreigners, available at: <https://shorturl.at/qSYZ0>.

filing their asylum application before applying for a personal work permit, while individuals who were granted asylum could apply for personal work permits immediately upon receiving a positive decision.¹¹ From now on, asylum seekers can access the labour market after 6 months.

Meanwhile, those granted temporary protection in Serbia were afforded immediate access to the labour market. Previously, they too were required to obtain work permits, but this requirement has now, due to the amendments, been eliminated.

Access to education

Law on Asylum and Temporary Protection ensures the educational rights of asylum seekers and individuals granted asylum. Asylum seekers have the right to free primary and secondary education - underage asylum seekers must be granted immediate access to education, at the latest within three months from the submission of their asylum application.¹² Refugees are being prescribed access to preschool, primary, secondary, and higher education as Serbian citizens.¹³

Primary education is both free and mandatory, while secondary education is also provided free of charge, yet it is not mandatory.

Although the right to education is guaranteed by international and national standards, refugees and asylum seekers face obstacles in accessing it. One primary issue is preschool education. As previously mentioned, this right is only guaranteed to refugees by law, thus excluding asylum seekers and individuals granted temporary protection. This exclusion is problematic considering the importance of preschool education for language learning and integration.

Enrolment in schools proceeds without major issues, the only difficulty can be the lack of proof of previous education for those who were educated in their country of origin, as schools rarely agree to conduct knowledge assessments.

However, The Qualifications Agency, which handles the process of recognition of previous education certificates has shown exceptional sensitivity in working with refugees and asylum seekers in previous years. The conditions for this group of foreigners have been simplified regarding the submission of necessary documentation that has to be translated and recognized. For example, while foreigners typically need to submit original proof of previous education, refugees and asylum seekers can provide a photograph or any other form of confirmation of their education in electronic or written format. In addition, the Qualifications Agency has exempted asylum seekers and refugees from paying fees for the translation and recognition.

Another problem in the field of education represents the fact, that children who do not sufficiently know the language and are enrolled in schools, lack support from state institutions in mastering the curriculum. The only assistance available comes from UNHCR and CSOs.

Commissariat for Refugees and Migrations in accordance with national standards should provide support to recognized refugees, facilitating their entry into the educational system.¹⁴ In practice, the Commissariat actively assists asylum-seeking children, particularly those in asylum centres, in accessing educational opportunities. However, individuals living at private addresses, including refugees, often rely on CSOs for educational support.

¹¹ However, this distinction had limited practical effects for refugees due to the protracted nature of the asylum process.

¹² Art. 48, 55 Law on asylum and temporary protection.

¹³ Art 59,64 Law on asylum and temporary protection.

¹⁴ Integration Decree "Official Gazette of the RS", No. 101/16, 56/18, available at: <https://shorturl.at/ehrN9>.

Other information relevant to the criterion

Regarding access to the labour market and education, the Commissariat for Refugees and Migrations is tasked to provide assistance as part of each refugee's individual integration plan.¹⁵ The Commissariat for Refugees and Migrations initiated meetings to discuss integration plans with refugees throughout 2023, however it remains unclear whether these integration plans have been effectively implemented. Furthermore, support for accessing the labour market is currently mostly provided by CSOs. In essence, state institutions have yet to offer organized assistance to refugees seeking to enter the labour market, even though such support is mandated by the Integration Decree.

Securing employment continues to be a considerable obstacle, primarily because of the language barriers that persist between many refugees and the local community. While the Commissariat for Refugees and Migrations is tasked with offering language classes to aid integration, no such classes were conducted in 2023. Fortunately, these essential language classes began in 2024, marking a positive step towards facilitating better communication and integration for refugees.

Key recommendations

1. It should be ensured that individual integration plans for refugees are effectively implemented. This includes regular follow-ups and updates to the plans to reflect the current needs and circumstances of the refugees. Additionally, the plans should encompass comprehensive support for both employment and education, including language acquisition, credential recognition, and vocational training.
2. Support mechanisms within schools to help children who are not proficient in the local language should be implemented. This could include hiring teaching assistants, offering supplementary language classes, or providing tailored educational materials to support language acquisition alongside regular coursework.
3. Language support service can be extended. The Commissariat for Refugees and Migrations should increase the availability and accessibility of language classes offered to include not just refugees but also asylum seekers, to aid in quicker integration into the education system and the workforce. It should consider partnering with local educational institutions and NGOs to expand these services.
4. The collaboration between state institutions and CSOs to ensure a more cohesive support system for asylum seekers and refugees can be strengthened. CSOs often fill gaps in services not provided by the state. Thus, a more integrated approach could enhance the overall support system for refugees.

3. The ability to take on and implement effectively the obligations of membership, including adherence to the aims of political, economic (and monetary) union.

3.1. What is your assessment of the independence and capacity of administrative bodies responsible for examining applications for international protection?

The independence and capacity of administrative bodies responsible for examining applications for international protection in Serbia are questionable due to the first instance - Asylum Office and second instance - Asylum Commission being integral parts of the Ministry of Interior, and all three instances—including the Administrative Court—lack the necessary capacities to handle asylum procedures effectively. This shortfall hinders fair, timely, and rigorous examination of asylum claims, contributing to high rejection rates and a lack of corrective measures in the decision-making process.

¹⁵ Integration Decree.

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. In 2023, out of 196 applications for asylum submitted, only 9 persons have been granted asylum, although the highest number of people comes from Syria and Afghanistan.¹⁶

The Asylum Office, tasked as the first instance authority, demonstrates a practice that is deemed unfair, excessive in length, and inconsistent, largely due to its lack of capacity to apply the principle of *in dubio pro reo* uniformly in similar or identical cases. The threshold for the burden of proof set by the Asylum Office is exceedingly high, limiting international protection to those who can provide direct evidence of severe acts of persecution.

The second instance authority, the Asylum Commission, continues to show a lack of corrective influence over the Asylum Office's work, as it's very rare for appeals against decisions of the Asylum Office to be accepted.

The Administrative Court, serving as the third instance authority, lacks a specialized department or panel for reviewing asylum cases. It rules on the lawfulness of final administrative acts via three-member judicial panels but has not conducted a single hearing of asylum seekers nor issued a single positive decision in the past 15 years. This highlights the Court's failure to establish itself as a corrective authority relative to the Asylum Commission and the Asylum Office.

3.2. Are there oversight/monitoring bodies to safeguard the quality of the related decision-making process?

In 2022, the Ministry of Interior has agreed with UNHCR to gradually introduce external control mechanisms, which implies the occasional presence of UNHCR officers at the asylum hearings. This is the first step in establishing the quality assurance control in partnership with the UNHCR.¹⁷ It continued in 2023 and will continue in 2024.

Besides that, the operations of the Asylum Office, Asylum Commission, and Administrative Court are not subject to effective evaluation by external professionals. Consequently, personal records of asylum officers or judges that detail the decision-making process—including the number and types of decisions made, the duration of the asylum procedure, and the overall quality of decision-making—are not publicly accessible or available upon request. This absence of transparency and accountability similarly affects the members of the Asylum Commission.¹⁸

3.3. Are there national monitoring bodies to oversee the use of EU financial assistance for integration (e.g., IPA and NDICI), aimed to improve overall conditions, including promoting the rights of displaced persons, vulnerable groups and national minorities? If so, is civil society engaged in their functioning?

Currently, we do not have specific information regarding national monitoring bodies tasked with overseeing the use of EU financial assistance for integration. However, IDEAS has received informal information indicating that Serbia will receive 5 million euros for processes related to returns. We will strive to gather more detailed information on this matter.

¹⁶ UNHCR Srbija, Statistics, Serbia: December 2023, available at: <https://shorturl.at/vBOYZ>.

¹⁷ AIDA, Report on Serbia, p. 27.

¹⁸ Ibid.

Other information relevant to the criterion and key recommendations

1. The capacity of the Asylum Office has to be strengthened: the state should allocate trained case workers to the Asylum Office to ensure timely, thorough, and independent assessments of asylum applications.
2. The position of the Asylum Office within the Ministry of Interior should be re-examined establishing the Asylum Office as a separate organizational unit that operates outside of the Border Police Directorate should be considered.
3. Given the Asylum Commission's demonstrated lack of effectiveness over 16 years, it should be abolished. An effective second-instance judicial review should be introduced, specifically through the Administrative Court. This requires establishing a specialized department within the court and training judges in International Human Rights Law and International Refugee Law to ensure competent and fair reviews of asylum decisions.
4. Partnership with UNHCR should be continued and expanded to introduce external control mechanisms. This partnership should focus on safeguarding the quality and fairness of the decision-making process in asylum cases.

Part II: Alignment with EU acquis

Chapter 23: Judiciary and fundamental rights

1. What is the ranking of the independence of the judiciary?

The independence of the judiciary is undermined by political influence on judicial appointments, with numerous judges reporting external pressures concerning their rulings. Politicians frequently engage in commentary on judicial affairs, including discussions about ongoing cases or investigations in public and through the media.¹⁹

2. What is the situation pertaining to access to judicial remedy for asylum seekers and other migrants?

Asylum seekers and migrants encounter administrative and linguistic obstacles that hinder their access to judicial remedy, with challenges persisting even when they secure legal representation.

The lack of a specialised department or panel within the Administrative Court (third and final instance) for asylum case reviews, coupled with staffing shortages, and a deficiency in knowledge of international refugee and human rights law,²⁰ significantly impairs the court's effectiveness. The Administrative Court has not conducted any hearings on asylum claims, its decisions have primarily ratified the application of the safe third country concept by asylum authorities without verifying the actual safety of these third countries for the applicants and has never decided on a complaint on the merits. Consequently, the Administrative Court's ability to serve as a corrective mechanism for the first and second-instance authorities in asylum matters is non-existent.

The access to judicial remedy for asylum seekers and migrants in Serbia, especially for survivors of sexual and/or gender-based violence, is notably challenging and limited. Various barriers such as mistrust, lack of clear information, and communication issues hinder access to justice. Furthermore, persistent stereotypes and prejudices among some authorities worsen these challenges, leading to delayed or inadequate responses to migrants' rights violations. The ineffective action of administrative and judicial bodies, coupled with insufficient sanctions against perpetrators, leaves victims without necessary protection and access to justice. This highlights a shortfall in Serbia's support and protection

¹⁹ Freedom house, Freedom in the world 2024, Serbia, available at: <https://shorturl.at/beqY4>

²⁰ AIDA, 2023 Serbia Country Report, p. 117, available at: <https://bit.ly/4cHdBow>.

system for SGBV survivors among asylum seekers and migrants, restricting their seeking of justice and redress for suffered injustices.

3. What is your assessment of the management of return processes?

The current state of cooperation on the return of refugees, asylum seekers, and migrants is markedly ineffective, with no formal agreements or procedures in place. Instead, border policies heavily rely on illegal expulsions that breach the core principles of non-refoulement and the prohibition of collective expulsions. In 2023, 744 individuals in the region underwent readmission procedures, with 136 being sent from Serbia back to neighbouring countries, notably Bulgaria. This included 104 people from Syria, Afghanistan, Palestine, and those who were deported based on expulsion orders lacking proper legal foundation and risk assessments for refoulement. This situation raises significant concerns about the safety and rights of those returned, especially given the negligible issuance of registration certificates to detainees, indicating severely restricted access to asylum procedures for those potentially in need of international protection.

4. To what extent the implementation of the judgements of the European Court of Human Rights and of other relevant international bodies in general, as well as specific to asylum matters is carried out?

While there are instances where Serbia has made strides in implementing the judgments of the ECtHR, such as the Rulebook on the Appearance and Content of the Travel Document Form for Refugees,²¹ significant challenges persist, particularly in safeguarding the rights and well-being of GBV survivors and other vulnerable groups.

In 2023, the European Court of Human Rights delivered a judgment in the case of S.E. v. Serbia. This ruling underscored the necessity for Serbia to undertake comprehensive legislative reforms to align its domestic laws with its international obligations, ensuring freedom of movement and right to leave the territory. The adoption of the Rulebook on travel documents for refugees represents a significant step by Serbia towards implementing the decisions of the ECtHR, establishing a clear, accessible procedure for refugees to obtain travel documents. The case represents an example of good practice when international legal mechanisms compelled Serbia to address systemic deficiencies in its asylum and refugee protection frameworks.²²

However, challenges remain, especially regarding the protection of victims of GBV. Despite obligations under Article 3 of the European Convention on Human Rights, the practice of the Asylum Office in Serbia, which has rejected a significant number of women proven to be victims of GBV, indicates a failure to fully apply these principles. The treatment of GBV survivors often remains negative and inconsistent, exacerbated by inadequate legal aid provision, a lack of risk assessment for refoulement states, and a disregard for special needs such as age, mental or medical conditions, or trauma from torture, human trafficking, and GBV. There are situations in which these victims are expelled at airports.

Inconsistent practices also persist in the treatment of asylum seekers who are HIV-positive. The Asylum Office in Serbia has reportedly rejected applications from two asylum seekers who are HIV positive and who left their country of origin due to a lack of available medications, despite a precedent where a citizen of the same country left for the same reason and was granted asylum. This inconsistency not only reflects a lack of uniformity in decision-making but also does not align with the ECtHR practices.

²¹ Rulebook on the content and design of the travel document form for refugees, "Official Gazette of the RS", No. 104/2023 available at: <https://shorturl.at/tBHP4>.

²² IDEAS, 2024, What What does the new Rulebook on the appearance and content of the travel document form for refugees bring? available at: <https://shorturl.at/aiuGM>.

Chapter 24: Justice, freedom and security

1. What is the situation pertaining to access to asylum procedure (access to the territory, registration, etc.)?

The situation pertaining to access to the asylum procedure in Serbia involves a structured process, as detailed by national standards.²³ Upon entering Serbia or within its territory, foreigners can express their intention to apply for asylum verbally or in writing to an authorized police officer of the Ministry of Interior or, exceptionally, at an asylum centre or other facility for the reception. Following this expression of intent, foreigners are immediately registered and directed to report to an asylum centre or designated accommodation facility within 72 hours, receiving a confirmation of registration.

The asylum procedure officially begins with the submission of an asylum application to an authorized officer of the Asylum Office within 15 days of registration, using a prescribed form. Before submitting application, applicants should be informed about their rights and obligations, including the right to reside, access to a free interpreter, legal aid, and UNHCR. An authorized officer, trained for the task, conducts interviews to gather all relevant facts and circumstances for deciding on the asylum application. Decisions in regular procedures are made within three months, extendable under specific conditions such as complex cases or a high volume of simultaneous applications. Extensions can go up to a total of 12 months, especially in situations where instability in the applicant's country of origin prevents a timely decision.

However, despite these established procedures, the reality shows challenges persist. There are still reports of individuals being denied entry at the borders and returned without an examination of their asylum needs, indicating systemic denial of access to the territory. Moreover, practices of pushbacks and collective expulsions to North Macedonia and Bulgaria, involving violence and the use of technology provided by the EU and other donors, have continued into 2023.²⁴ According to the response to our request for information of public importance, in 2023, 13,414 irregular crossings from Bulgaria were prevented (among them, most were Syrians), and from North Macedonia, 23,601 (among them, most were Turks). On the other hand, only 136 persons were officially readmitted from Serbia to Bulgaria and several other countries, which further confirms that informal and illegal practices applied in the context of border control are predominantly based on illegal and arbitrary acts of pushbacks and other risky forms of forcible removal such as automatic refusal of entry decisions, deprived of any risk assessment of refoulement, and without the possibility to be challenged with a remedy that has an automatic suspensive effect.

These actions signify a lack of accountability for those ordering and executing such measures, undermining the formal asylum process and the rights of those seeking protection.

Additionally, 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 airports remains a serious concern.²⁵

There were no reports of cases in which people fleeing from Ukraine were subjected to any form of denial of access to territory or asylum, temporary or other residential procedure. Thus, Ukrainian

²³ Art 35-47 Law on asylum and temporary protection.

²⁴ IDEAS, 2024, 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, p. 6-9.

²⁵ Ibid. p. 10-14.

refugees are not subjected to pushback practices as well, nor there were instances in which they were refused entry or readmitted to third countries.

2. What is the practice related to the use of the Safe Country concepts?

The concepts of safe country of origin and safe third country are set out in the Law on Asylum and Temporary Protection.

Safe country of origin²⁶ should be assessed using information from international bodies like EUAA, UNHCR, and the Council of Europe. The law mandates that the Government, based on the Ministry of Foreign Affairs' proposal, creates and, if necessary, revises a List of Safe Countries of Origin, considering criteria and opinions from specified competent authorities. A country on this list can only be deemed safe for an applicant if they are a national of or had habitual residence in that country and cannot justify why it is not safe for them.

Despite these provisions, the list has not been adopted yet, and the concept has been applied in practice only once to a Montenegrin citizen, with decisions upheld by the Asylum Commission and Administrative Court. No further applications of this concept have been recorded until now.

The Serbian asylum system has encountered significant issues with the flawed and indiscriminate use of the **safe third-country concept**.²⁷

A **safe third country** is defined as one where an applicant is not threatened by persecution or grave injustice, enjoys the protections of the non-refoulement principle, and can access an effective approval process for protection under the 1951 Convention. The process for determining if a country qualifies as a safe third country involves a case-by-case assessment to ascertain if the country meets the necessary criteria and if there exists a reasonable connection between the applicant and that country, suggesting they could feasibly seek asylum there. Applicants are also promptly notified about the invocation of this concept, providing them with an opportunity to contest its application based on their individual circumstances.

Law on Asylum and Temporary Protection²⁸ prescribes that an asylum application may be dismissed without examination on the merits if the concept of a safe third country can be applied. Throughout the years, the asylum authorities automatically relied on the Safe Countries List denying prima facie refugees the possibility for their asylum claim to be decided in merits. However, in 2020, the Asylum Office stopped applying this concept, which has led to a significant improvement in practice and a sharp increase in the cases being decided on the merits.

3. How are the cases of vulnerable applicants treated? What are the guarantees for vulnerable groups?

The Law on Asylum and Temporary Protection in Serbia prescribe special consideration for individuals requiring specific procedural or reception guarantees during the asylum process. This includes ongoing identification of personal circumstances for those needing particular support, starting as soon as possible after initiating the asylum procedure or expressing the intent to apply for asylum.²⁹ The Law on Asylum and Temporary Protection also prescribes that in the provision of material reception conditions, special attention should be given to individuals with special reception needs.³⁰ However, the

²⁶ Art 44 Law on Asylum and Temporary Protection.

²⁷ Art 45 Ibid.

²⁸ Art 42 Ibid.

²⁹ Art 17 Ibid.

³⁰ Art 50 Ibid.

law falls short of providing detailed operational guidance on how these needs should be assessed and addressed and what these needs actually include.

The Commissariat for Refugees and Migrations provides reception for asylum seekers in Serbia. The procedural aspects of reception are detailed in the Rulebook on House Rules in Asylum Centres and Other Accommodation Facilities for Asylum Seekers.³¹ The admission process includes checking registration certificates, luggage inspection, providing information on house rules, directing newcomers for medical examinations, and distributing personal hygiene items.

Despite these procedures, the execution of assessments for special reception needs, such as for vulnerable individuals and groups, remains vague and inconsistently applied. Notably, research by IDEAS in 2023 highlighted a gap in the assessment and accommodation of special protection needs, particularly among LGBTIQ+ asylum seekers.³² This leads to frequent oversight in providing vulnerable categories with adequate accommodation, health, and psychological support.

Women who are victims of GBV have been lacking social support, access to healthcare, economic empowerment, and access to justice, which are prescribed by domestic standards.³³ This support is primarily provided to them by non-governmental organizations. Individuals facing GBV and those from the LGBT community are mostly accommodated in Krnjača.

As for unaccompanied and separated children, the Law only prescribes their placement in social protection institutions. Although there's a practice for their placement in the AC Šid, instances occur where they might temporarily reside in other centres. As of April 5th, there were 101 children in centres, including 28 UASC, primarily housed in Šid, with a few exceptions temporarily placed in Sjenica and Bosilegrad pending transfer.

4. What is the situation pertaining to the use of detention in asylum procedure?

In recent years, the detention of asylum seekers has been minimal and typically short-lived, unless related to cases deemed to have a strong political or national security component. For instance, in 2021, no asylum seekers were detained by the Asylum Office, and in 2022, only five were detained, coming from Syria, Iran, and Kyrgyzstan. In 2023, one person was detained.

Detained asylum seekers are held in specific detention centres, with the long-standing Detention Centre for Foreigners in Padinska Skela and the newer facilities in Dimitrovgrad and Plandište, opened to manage the movements at the green and official borders with Bulgaria and Romania, respectively. The total capacity of these centres is 310 places, but the conditions within the newly opened centres and their compliance with human rights standards remain unclear due to a lack of available reports.

While the detention of asylum seekers under the Asylum Act is rare, concerns persist regarding the detention of foreign nationals under the Foreigners Act for the purpose of forcible removal, often without adequate assessment of the risks of refoulement or individual circumstances. This is particularly contentious given the origin of many detainees from countries like Afghanistan and Syria, where they may have prima facie claims to international protection. The process for expulsion orders, often issued without trained assessments of refoulement risks, further complicates the situation.

³¹ Rulebook on House Rules in Asylum Centres and Other Accommodation Facilities for Asylum Seekers, "Official Gazette of the Republic of Serbia", No. 96/2018.

³² IDEAS, 2024, Submission of the Centre for Research and Social Development IDEAS to the Human Rights Committee's 140th Session related to examination of the Fourth Periodic Report of Serbia p. 23-25.

³³ Law on the Prevention of Domestic Violence, Law on the Prohibition of Discrimination, and Law on Gender Equality.

Access to the asylum procedure for detained individuals who may be in need of international protection but do not wish to apply for asylum in Serbia remains a critical issue. The lack of registration as asylum seekers for those detained for forcible removal indicates a significant gap in the protection framework for non-citizens in Serbia, particularly for those from countries with high levels of persecution or conflict. Addressing access to asylum procedures and ensuring the rights of detained foreign nationals are fundamental to aligning Serbia's practices with international standards on the treatment of refugees and asylum seekers.

5. What is your assessment of the reception capacities and conditions?

The Commissariat for Refugees and Migration is in charge of governing asylum and reception centres in Serbia. As of 2023, there are 7 Asylum Centres and 11 Reception Centres. The total reception capacity is approximately 8,000³⁴. However, it's important to note that this capacity is primarily assessed based on the number of available beds, rather than adhering to specific quality standards such as those outlined in the EUAA Guidelines or other benchmarks set by the CPT or the CESCR.³⁵

As of April 5, 2024, a total of 850 individuals were accommodated in facilities managed by the Commissariat, with 686 in Asylum Centres and 164 in Reception Centres. This rate suggests that the overall capacity might appear sufficient, as the actual occupancy is relatively low.

The quality of conditions within these Asylum and Reception Centres varies significantly. According to testimonials from the clients of IDEAS, some centres, such as Bogovađa and Sjenica, are commended for their cleanliness and the quality of their food services. Conversely, others like Krnjača and Preserve have faced criticism for poor hygiene standards and inadequate nutrition provided to their occupants.³⁶

6. Can asylum seekers enjoy freedom of movement?

Upon admission to an asylum centre or another facility designated for the accommodation of asylum seekers, the asylum seeker has the right to reside in the Republic of Serbia and is free to move within the territory during this time.³⁷

The movement of the asylum seeker may be restricted by a decision of the Asylum Office when necessary for:

- 1) Establishing the identity or nationality;
- 2) Determining the essential facts, evidence, and circumstances on which the asylum application is based, which cannot be determined without restricting the asylum seeker's movement, especially if there is a risk of flight;
- 3) Ensuring the asylum seeker's presence in the asylum procedure when it can be reasonably assumed that the asylum application was submitted to avoid deportation;
- 4) Protecting the security of the Republic of Serbia and public order in accordance with the law;
- 5) Deciding, within the procedure, on the asylum seekers' right to enter the territory of the Republic of Serbia.³⁸

³⁴ CRMRS, Asylum and Reception Centres, available at: <https://shorturl.at/bfnxJ>

³⁵ AIDA, 2023 Serbia Country Report, p. 149, available at: <https://bit.ly/4cHdBow>.

³⁶ IDEAS, 2024, Submission of the Center for Research and Social Development IDEAS to the Human Rights Committee's 140th Session related to the examination of the Fourth Periodic Report of Serbia, p. 22.

³⁷ Art 49 Law on Asylum and Temporary Protection.

³⁸ Art 77 Law on Asylum and Temporary Protection.

The movement of the asylum seeker and a foreigner whose intention to seek asylum is registered can also be restricted by a decision of the Asylum Office in case of non-compliance with obligations.

7. Do applicants for protection have access to free legal assistance?

The Law on Free Legal Aid explicitly guarantees this right to asylum seekers, refugees, and persons granted subsidiary protection.³⁹ However, the Free Legal Aid Fee Schedule Regulation specifies that free legal aid is only available for administrative dispute procedures conducted before the Administrative Court. This limitation means that asylum seekers can apply for state-funded free legal aid only if their case reaches the third instance, which is the Administrative Court. This approach can be highly problematic, considering the general level of development of the Serbian asylum system and the quality of decision-making by the first and second instance authorities.⁴⁰

Access to free legal assistance is also enshrined in the Law on Asylum and Temporary Protection. A foreigner who has expressed an intention to seek asylum in the Republic of Serbia, as well as an asylum seeker, can utilize free legal aid and representation before the competent authorities. This aid is provided by associations dedicated to offering legal support to applicants and individuals granted asylum rights, in addition to the free legal aid available from UNHCR.⁴¹

In practice, the vast majority of individuals submitting an asylum application in Serbia opt for the legal services of CSO lawyers. Their support is funded not by the state but through projects, with main donors including UNHCR, the EU, and others. This means that this support is not stable and may vary based on the availability of project funding. CSOs represent asylum seekers across all three instances and before the Constitutional Court. Free legal assistance encompasses legal counselling, support during the asylum application process, representation during interviews at the Asylum Office (the first instance), appeals against negative decisions from the Asylum Office before the Asylum Commission (the second instance), and submitting appeals to the Administrative Court (the final instance).

Since 2024, the Center for Research and Development of Society has been the only UNHCR partner providing free legal aid to asylum seekers. Additionally, organizations such as the Belgrade Centre for Human Rights, Asylum Protection Centre, and KlikAktiv also offer support to asylum applicants.

Chapter 18: Statistics

1. What is the state of mechanisms for collecting, sharing and analysing statistics on migration in general, as well as on asylum applications and decisions?

The Commissariat for Refugees and Migration creates the Migration Profile of the Republic of Serbia. This profile provides a comprehensive overview of migration statistics and migration policies in the country, offering stakeholders involved in migration management and the wider public a detailed insight into the state of migration. The Migration Profile aims to identify and analyse key challenges in the field of migration. These profiles are published on the Commissariat's website⁴², but not promptly – the latest one is from 2022, with the expectation that the profile for 2023 will be released by mid-year.

The Asylum Office also maintains accurate statistics on the decisions made during the year, and for the first time this year, IDEAS has received comprehensive responses to requests for information of public interest.

³⁹ Art. 4 Law on Free Legal Aid "Official Gazette of the RS", No. 87/2018 available at: <https://shorturl.at/uwEIO> access 08/04/2024
⁴⁰ AIDA, 2023 Serbia Country Report, p. 122, available at: <https://bit.ly/4cHdBow>.

⁴¹ Art 56, Law on asylum and temporary protection

⁴² CRMRS, Migracioni profil Republike Srbije, available at: <https://shorturl.at/dn236>.

UKRAINE (I)

Name of contributing organisation: CF “Right to protection”

Contact person’s name and email: Svitlana Butenko – Programme Manager (email: s.butenko@r2p.org.ua)

Part I: The fundamentals of the accession process (the Copenhagen criteria)

1. Political criterion: functioning of democratic institutions and public administration reform (stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities)

1.1. What is your assessment of the level of civil society participation in migration- and asylum-related policy-making?

Since 2022, the civil society of Ukraine faces significant challenges when interacting with state authorities to participate in the formation of migration policy. CSOs urge the Ukrainian authorities to maintain a dialogue with civil society organisations, academic communities, and experts engaged in the protection of refugees, ensure regular consultations with them and consider their recommendations when preparing or reviewing refugee-related decisions and policies.¹ Public Council at the SMS² also exists, which is a temporary advisory body established to facilitate public participation in the formation and implementation of state policy in the areas of migration.³ However, after the start of Russia's full-scale invasion of Ukraine, the Public Council met only once.⁴

1.2. What are the regularisation options available for third-country nationals?

They are visa-free regime; visa; decision to extend the period of stay; permanent residence permit; temporary residence permit; refugee certificate; certificate of a person in need of complementary or temporary protection; certificate of asylum seeker; certificate of application for recognition as a stateless person; military ID card.⁵

1.3. What are the state's policies on naturalisation?

Refugees have a simplified naturalisation procedure (it is necessary to live the last 3 years, not 5; it is not necessary to obtain a permit for immigration or to prove the existence of legal sources of livelihood). There is no simplified naturalisation procedure for persons granted complementary protection. A child born to one of the parents who has been granted refugee status in Ukraine has citizenship by birth. Children of asylum seekers and children of persons granted complementary protection have the right

¹ The position of CSOs regarding the prevention of violation of the rights of refugees during the martial law in Ukraine, available at: <https://bit.ly/45NB6dz>.

² Later - SMS.

³ The Regulation on the Public Council at the SMS of Ukraine was approved by the Order of the State Migration Service of Ukraine dated 04.02.2022 No. 13, available at: <https://bit.ly/3xQm9pW>.

⁴ Ibid.

⁵ Law of Ukraine "On the legal status of foreigners and stateless persons" dated September 22, 2011 No. 3773-VI, available at: <https://bit.ly/3zDa1NZ>.

to acquire citizenship based on birth or territorial origin,⁶ but in practice, this becomes possible only after appealing the refusal of the migration service body to the court.⁷

1.4. What is the situation in the area of access to justice for non-citizens?

Foreigners and stateless persons have the right to judicial protection in Ukraine on an equal footing with Ukrainian citizens.⁸

Other information relevant to the criterion and key recommendations

1) Grant the right to acquire Ukrainian citizenship to all children born on the territory of Ukraine from asylum seekers and persons granted complementary protection.

2) Establish in the legislation a simplified naturalisation procedure for persons granted complementary protection.

2. Economic criterion: the existence of a functioning market economy and the capacity to cope with competition and market forces in the EU.

2.1. What is the situation pertaining to the right to work and access to education for asylum applicants and protection holders?

Protection holders have the right to work on par with Ukrainian citizens. Asylum seekers need to obtain a work permit for employment.⁹ Protection holders and their children have the right to education on equal terms with Ukrainian citizens, despite some existing obstacles for asylum seekers.¹⁰

2.2. What is the number of non-citizens working in the informal economy? Of them, what is the number in precarious or exploitative situations?

No information.

Other information relevant to the criterion and key recommendations

Ensure equal access to employment and education for asylum seekers.

3. The ability to take on and implement effectively the obligations of membership, including adherence to the aims of political, economic (and monetary) union.

3.1. What is your assessment of the independence and capacity of administrative bodies responsible for examining applications for international protection?

Since the full-scale invasion, the SMS temporarily suspended its work at the field level as well as its IT systems. Later, the SMS restarted activities in locations that were relatively secure or at a distance from hostilities.¹¹ We assess that now SMS has appropriate independence and capacity, however, the current practice of implementing laws for the protection of refugees and persons in need of complementary protection in Ukraine does not offer effective access to the asylum procedure. Ukrainian

⁶ Law of Ukraine "On Citizenship of Ukraine" dated January 18, 2001 No. 2235-III, available at: <https://bit.ly/4cCTyb0>.

⁷ Unified State Register of Court Decisions, available at: <https://bit.ly/3VR2fHT>; <https://bit.ly/3RRKqQm>; <https://bit.ly/3W5tdga>; <https://bit.ly/4cr7Llq>; <https://bit.ly/3xyy9AZ>.

⁸ Law of Ukraine "On the Judiciary and the Status of Judges" of 02.06.2016 No. 1402-VIII, available at: <https://bit.ly/4eL3u43>.

⁹ Law of Ukraine "On Employment of the Population" dated July 5, 2012 No. 5067-VI.

¹⁰ Mid-Term Report by the Coalition of NGOs based on Report of the Working Group on the Universal Periodic Review for Ukraine - A/HRC/37/16, available at: <https://bit.ly/45TowJW>.

¹¹ Asylum Seekers and Refugees in Ukraine Addressing Protection Risks During Wartime. Right to protection, available at: <https://bit.ly/4bAduKt>.

martial legislation does not restrict a person's right to seek protection in Ukraine, but the SMS regularly deprives asylum seekers of effective remedies by citing martial law.

3.2. Are there oversight/monitoring bodies to safeguard the quality of the related decision-making process?

There are no oversight/monitoring bodies with direct tasks to safeguard the quality of the related decision-making process. If a person disagrees with the decision, it can be appealed to a higher authority or court. Foreigners, stateless persons or their representatives may apply to the Ukrainian Parliament Commissioner for Human Rights (Ombudsman).¹²

3.3. Are there national monitoring bodies to oversee the use of EU financial assistance for integration (e.g., IPA and NDICI), aimed to improve overall conditions, including promoting the rights of displaced persons, vulnerable groups and national minorities? If so, is civil society engaged in their functioning?

Not aware of such a body.

Other information relevant to the criterion and key recommendations

The SMS should resume registering asylum applications, without any discrimination to ensure the adequate examination of alleged risks of treatment in violation of the ECHR and ensure that the refusal to accept the application is carried out in accordance with current Ukrainian legislation and is accompanied by a decision allowing effective access to the remedies as prescribed by Article 13 of the ECHR.¹³

Part II: Alignment with EU acquis

Chapter 23: Judiciary and fundamental rights

1. What is the ranking of the independence of the judiciary?

The mandatory observance by the bodies of legislative, executive and judicial power of the Constitution and laws of Ukraine ensures the implementation of the principle of separation of state power.¹⁴ The system of checks and balances was disrupted by Law No. 2952, which transferred the powers of the court to the executive authorities.¹⁵

2. What is the situation pertaining to access to judicial remedy for asylum seekers and other migrants?

Asylum seeker has the right to appeal the decision of the migration authorities to the higher instance authority (if applicable) or to the court.¹⁶

3. What is your assessment of the management of return processes?

The management of return processes in Ukraine involves three procedures: voluntary return, forced return and expulsion. The voluntary return process requires individuals to submit written requests to the

¹² The Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" of 23.12.1997 No. 776/97-BP, available at: <https://bit.ly/3L7M3gD>.

¹³ For more information, please see <https://bit.ly/3L7M3gD>.

¹⁴ Ukraine's Answers to the EU Questionnaire on the Application for Membership, available at: <https://bit.ly/3WiUplJ>.

¹⁵ Proposals of the Charitable Foundation "Right to Protection" regarding the draft Law of Ukraine on amendments to certain laws of Ukraine regarding the protection of the state border of Ukraine No. 7475 dated June 19, 2022, available at: <https://bit.ly/4cJYb35>.

¹⁶ Law of Ukraine "On Refugees and Persons in Need of Complementary or Temporary Protection" dated July 8, 2011, No. 3671-VI, available at: <https://bit.ly/4cr9MV0>.

SMS. Forced return decisions are made by authorities of the Ministry of Internal Affairs, State Border Protection, and Security Service of Ukraine.¹⁷ Before the decision of expulsion should have been approved by the court, now in accordance with Law No. 2952 there is no court approval.¹⁸

4. To what extent the implementation of the judgements of the European Court of Human Rights and of other relevant international bodies in general, as well as specific to asylum matters is carried out?

In Ukraine, the courts apply the ECHR and the ECtHR's case law as a source of law when considering cases.¹⁹ At the same time, 60% of leading cases from the last 10 years are still pending implementation.²⁰ "Kebe and others v. Ukraine" is the ECtHR's leading case specific to asylum matters for the group of 6 repetitive cases, which are still being implemented.²¹ Some of the issues in the case are being resolved, but new problems are emerging. Thus, in 2023, some NGOs, including the CF "Right to protection", made a joint submission²² about new Ukrainian legislation, incompatible with Ukraine's obligations under international law including the principle of non-refoulement. Communication is ongoing.

Chapter 24: Justice, freedom and security

1. What is the situation pertaining to access to asylum procedure (access to the territory, registration, etc.)?

The current practice of implementing laws for the protection of persons in need of international protection in Ukraine does not offer effective access to the asylum procedure. Individuals who cannot apply for recognition as a refugee or person in need of complementary protection face fines, deportation or detention for "illegal stay".²³ In addition, the recently adopted Law 2952-IX restricts the right to apply for protection at the border, thus violating the principle of non-refoulement under international law.²⁴

2. What is the practice related to the use of the Safe Country concepts?

There is no definition of "Safe Country" in Ukrainian legislation, the definition of "Third Safe Country" only exists.²⁵

3. How are the cases of vulnerable applicants treated? What are the guarantees for vulnerable groups?

The Refugee Law of Ukraine mentions only unaccompanied children, ignoring other possible categories of vulnerable persons.²⁶ Nor is there any specific mechanism for the identification and treatment of vulnerable asylum seekers and refugees. SMS has the possibility to refer to medical screening, however, the legislation does not foresee any specific reception conditions for vulnerable persons.

¹⁷ Supra 5.

¹⁸ Supra 16.

¹⁹ Art. 14 of Law of Ukraine "On the Execution of Judgments and Application of the Case Law of the European Court of Human Rights" dated February 23, 2006 No. 3477-IV, available at: <https://bit.ly/4eZBnyi>.

²⁰ European Implementation Network. Ukraine, available at: <https://bit.ly/3XOnEE3>.

²¹ For more information, see <https://bit.ly/3XOrQ72>.

²² The position of CSOs regarding the prevention of violation of the rights of refugees during the martial law in Ukraine, available at: <https://bit.ly/4btM74Q>.

²³ Ibid.

²⁴ UN High Commissioner for Refugees (UNHCR), UNHCR Comments on the Draft Law of Ukraine on Amendment of Certain Laws of Ukraine on the Protection of the State Border of Ukraine, November 2022, available at: <https://bit.ly/4btBtkT>.

²⁵ Law of Ukraine "On Refugees and Persons in Need of Complementary or Temporary Protection" dated July 8, 2011, No. 3671-VI, available at: <https://bit.ly/4cr9MVQ>.

²⁶ Supra 17.

4. What is the situation pertaining to the use of detention in asylum procedure?

Separate state institutions exist and operate in Ukraine, providing for the detention of foreigners who have illegally arrived in the country. Limited alternatives to detention are provided by legislation - only surety or bail.²⁷ Unlike EU legislation, Ukrainian legislation does not provide the priority of choosing a less coercive measure of influence on a person ahead of detention.

5. What is your assessment of the reception capacities and conditions?

Ukrainian law lays out minimum living standards that should be afforded to asylum seekers and refugees. However, there are many gaps in the reception standards as well as in the implementation of already established guarantees.²⁸

6. Can asylum seekers enjoy freedom of movement?

From the moment asylum seeker applies for recognition as a refugee or a person in need of complementary protection, and until the final determination of the status of such a person or his/her departure from the territory of Ukraine, he/she has a certificate of application for protection in Ukraine.²⁹ They can enjoy freedom of movement inside Ukraine. The certificate is not valid for travel abroad and their passports of country of origin are held by the territorial bodies of the SMS.³⁰

7. Do applicants for protection have access to free legal assistance?

Asylum seekers have free legal aid in the established order,³¹ it can be obtained only from the moment a person submits an application for recognition as a refugee or a person in need of complementary protection,³² Asylum seekers have access to free legal aid within the timeframe they need is offset by too short a timeframe for appealing the SMS decisions³³ (5 days) and in 15 by contrast - too long a period for consideration of an application for free secondary legal aid³⁴ (10 days). Wherein, 87% of refugees and asylum seekers know where to get legal help and/or find lawyers.³⁵

Chapter 18: Statistics

1. What is the state of mechanisms for collecting, sharing and analysing statistics on migration in general, as well as on asylum applications and decisions?

The SMS publishes the following data regarding international protection: the number of applications for international protection and their sex, and types of decisions concerning the applicants (granting the status, refusing, withdrawing).³⁶

²⁷ Art. 289 of the Code of Administrative Procedure of Ukraine dated December 7, 1984, No. 8073-X.

²⁸ UN High Commissioner for Refugees (UNHCR), Ukraine as a country of asylum. Observations on the situation of asylum-seekers and refugees in Ukraine, July 2013, available at: <https://bit.ly/3xTJqvD>.

²⁹ Supra 17.

³⁰ Supra 12.

³¹ Supra 17.

³² Art. 14 of Law of Ukraine "On Free Legal Aid" dated June 2, 2011 No. 3460-VI, available at: <https://bit.ly/4cr9MV0>.

³³ Supra 17.

³⁴ Art. 19 of Law of Ukraine "On Free Legal Aid" dated June 2, 2011 No. 3460-VI: available at: <https://bit.ly/4cr9MV0>.

³⁵ Supra 12.

³⁶ Please see the link to the SMS statistics for 2023, available at: <https://bit.ly/4cGOIKp>.

UKRAINE (II)

Name of contributing organisation: Civic organization “THE TENTH OF APRIL”

Contact person’s name and email: levgeniia Bulgakova – Project Manager (email: bulgakova@dk.od.ua)

Part I: The fundamentals of the accession process (the Copenhagen criteria)

1. Political criterion: functioning of democratic institutions and public administration reform (stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities)

1.1. What is your assessment of the level of civil society participation in migration- and asylum-related policy-making?

The civil society of Ukraine remains relatively active in the migration field despite the challenges caused by war. The main actors in the field are human rights NGOs and refugee or migrant communities. The support on the issues on migration is mostly provided by IOM and UNHCR. The number of refugee communities and activists severely decreased due to their flight from Ukraine for security reasons. It should be noted that the nationality composition of such communities changed due to the objective changes in the migrant population in the territory of Ukraine. Thus, Russian and Belarusian refugee communities became more visible and numerous due to the regimes in their countries and family ties in Ukraine. The level of participation of migrant communities is relatively reduced due to the decrease in the number of migrants and the change of focus due to the war. However, human rights NGOs are actively involved into migration-and-asylum related policy by making joint statements and providing recommendations with regards to the amendments to legislation. Reactivation of work with refugee communities that was initiated in 2023, supporting their capacity building complements CSOs ability to participate in related policies again even during the war.

1.2. What are the regularisation options available for third-country nationals?

Current legislation provides the following options:

- visa free regime
- temporary residence permit
- permanent residence permit
- refugee protection
- complementary protection
- temporary protection

Asylum seekers are documented with asylum certificates; persons who applied for stateless status are also documented with the certificate that confirms their legal stay.

The persons who may not be expelled and reach the maximum term of their stay in the migrant custody centre are issued with a temporary residence permit for one year with a possible extension.

The state also extended the regularisation options for foreigners who serve the Armed forces of Ukraine. Thus, after the signing of the contract, the foreigner’s status will be regularised on the basis of his/her military ticket. After the end of service, the person has the right to apply for a permanent residence permit.

The statelessness determination procedure was introduced in Ukraine in May 2021. It is established by the Law that the person is not obliged to confirm the legality of the stay or provide any other documents within the procedure. Still, in practice, authorities may request applicants to provide certificates on non-possession of the nationality of the country of birth and country/countries of previous residence.

1.3. What are the state's policies on naturalisation?

Current legislation envisages the following grounds for naturalisation: by birth; by territorial origin; admission to citizenship; restoration of Ukrainian citizenship; obtaining citizenship by a child in case of adoption or foster care/guardianship; and obtaining citizenship for children whose one or both parents are citizens of Ukraine.

The nationality status of the children born in Ukraine depends on the legality of stay of parents on its territory. Thus, in case parents staying in Ukraine irregularly, the child will not be considered as Ukrainian national even in case such child can become stateless person, which in its turn can lead in specific cases to possible violation of the rights.

In 2023 the state made amendments to the naturalisation procedure by facilitating the access to naturalization for foreigners who serve under the contract with Ukrainian military forces. Thus, a person can apply for citizenship after 3 years from the date of the contract signed and legal stay in Ukraine.

It should also be mentioned that in October 2022 by the Decree of CoM as of 12 October 2022 № 1202 the extension of the residence permits is not available for citizens of the Russian Federation, thus not only leaving such persons in legal limbo but also preventing from applying for citizenship when they have grounds for.

Some particular categories are:

- Refugees are entitled to apply for citizenship after 3 years of permanent stay in Ukraine from the date of their recognition
- Persons granted complementary protection have no access to the naturalisation process.
- Persons who were recognized as stateless may apply for citizenship after 3 years from the date of recognition.

However, in 2023 the requirements for obtaining citizenship were amended by the obligation to pass successfully exam on the Ukrainian constitution and history. Compared to the previous requirement - only the knowledge of the Ukrainian language on the required level. This requirement complicates the access to naturalisation given the fact that the state lacks programs on language, history and constitution for the purpose of naturalisation and integration. For some categories of persons, such as ones who are of particular interest to the state or serve in the Ukrainian military signature of the obligation to pass such exams is available.

1.4. What is the situation in the area of access to justice for non-citizens?

The Law of Ukraine "On the Judiciary and the Status of Judges" (Art 7) provides Foreigners, stateless persons and foreign legal persons the same right to judicial protection in Ukraine as citizens and juridical persons of Ukraine.

In accordance with para 1 of Article 5 of the Code of Administrative Procedures of Ukraine, any person can apply to the court in order to appeal the decisions of the state body. Para 7 of the same article envisages that foreigners and stateless persons enjoy the same rights within court protection as the citizens of Ukraine.

In accordance with Article 16 of the Code, the representation in courts is held by advocates. The applicants will also be provided with interpreters if needed.

In accordance with the Law of Ukraine on free legal assistance, the following categories of non-citizens may be assisted by the free secondary legal aid in Ukraine: all persons in criminal cases where the representation by the advocate is obligatory; foreigners and stateless persons who were detained for the purpose of identification and further refolement; persons who applied for stateless determination procedure from the moment the application submitted; persons who applied for asylum from the moment the application submitted; persons who lack any identity documents or documents establishing their citizenship only in the field of establishing facts of judicial matter connected to obtaining such documents.

Other information relevant to the criterion and key recommendations

It should be mentioned that persons who are willing to apply for asylum or statelessness determination procedures are not entitled to free secondary legal assistance provided by the state. Thus, they cannot rely on a free legal aid system in case of lack of access to the procedure of asylum or statelessness. In this situation, the persons may rely only on private advocates or human rights NGOs.

As to the access to justice for asylum seekers: the terms established by the Law of Ukraine "On Refugees" which is five working days is extremely tight considering the peculiarities of this category of cases such as language barrier, lack of social ties and lack of knowledge about the state system of assistance.

Some of the cases of access to justice may be challenged due to the court fees for some categories of cases.

2. Economic criterion: the existence of a functioning market economy and the capacity to cope with competition and market forces in the EU.

2.1. What is the situation pertaining to the right to work and access to education for asylum applicants and protection holders?

The Constitution of Ukraine guarantees everyone's right to education and regulates the obligation of complete general secondary education. According to the Law of Ukraine "On Education" everyone has the right to quality and accessible education. According to the Law of Ukraine "On Refugees and persons in need of complementary and temporary protection" persons who were granted refugee status or status of complementary protection have the same rights for education and work as Ukrainian citizens.

The implementation of the right to work of asylum seekers is complicated by the fact that these persons should obtain a work permit (Law on Employment of Population). In addition, in order to get a work permit and a job, the asylum seeker must obtain an identification tax number, which can only be issued if the person has a passport. Many asylum seekers have no passport or ID document, or it can be terminated. Besides, work contracts are signed only upon the provision of a national passport (regulated by the Labor Code) which is not the case for the vast majority of asylum seekers.

Both asylum seekers and protection holders have access to pre-school and obligatory school education on a free-of-charge basis. With regards to access to higher education for asylum seekers challenges may be identified in practice when persons have no identity documents, besides, such education is only available on a chargeable basis. For protection holders access to education is available at the same level as to citizens of Ukraine.

3. The ability to take on and implement effectively the obligations of membership, including adherence to the aims of political, economic (and monetary) union.

3.1. What is your assessment of the independence and capacity of administrative bodies responsible for examining applications for international protection?

Asylum consideration on merits in Ukraine has two phases: consideration on the local level and further authorisation from the central body, the State Migration Service. In practice, territorial bodies do not usually possess enough level of power to make independent decisions.

The capacities considering a sharp decrease in the number of applicants for protection are considered to be at a satisfactory level. The issue of professional interpreters is still a matter due to the lack of such interpreters on the territory of Ukraine and the financial capacity of the state.

3.2. Are there oversight/monitoring bodies to safeguard the quality of the related decision-making process?

The Ukrainian legislative does not provide any special oversight/monitoring function to safeguard the quality of the related decision-making process.

The court protection system could be considered as a supervisory/monitoring bodies in a way to ensure the quality of the relevant decision-making process. Asylum seekers have a right to apply for the court protection in case they do not agree with the migration bodies' decision made regarding them. The court procedure has three stages of appeal.

It should also be mentioned that a number of projects involving UNHCR and the State Migration Service on quality improvement of the decision-making process were implemented, including the monitoring/oversight component.

3.3. Are there national monitoring bodies to oversee the use of EU financial assistance for integration (e.g., IPA and NDICI), aimed to improve overall conditions, including promoting the rights of displaced persons, vulnerable groups and national minorities? If so, is civil society engaged in their functioning?

N/A.

Part II: Alignment with EU acquis

Chapter 23: Judiciary and fundamental rights

1. What is the ranking of the independence of the judiciary?

The independence of judges is guaranteed by the Constitution of Ukraine (Article 129), as well as by the Law of Ukraine "On the Judiciary and the Status of Judges" (Article 6).

The judiciary is considered to be one of the most independent bodies within the asylum procedure. This is observed by the increased number of judgements in favour of asylum seekers and refugees throughout the last years in Odesa region. The situation remains the same in the situation of full-scale invasion - judges consider the cases independently and without signs of discrimination to one or another nationality.

2. What is the situation pertaining to access to judicial remedy for asylum seekers and other migrants?

All asylum seekers are guaranteed access to protection in courts of all levels. The concerning issue is reflected in the latest amendment in February 2023 to Art 30 of the Law of Ukraine on the Legal status of foreigners and stateless persons which established the right for the State Border Guard service, Security Service of Ukraine and the migration service, including territorial bodies, to take the decision on forced removal. As compared to previous legislation where such burden was provided only to courts. Such a situation leads to access to judicial remedy at a later stage, only after the decision has been already taken by one of the state bodies. Free secondary legal aid that is be available only after the detention held aiming at identification and further forced removal.

Only restricted list of migrants has access to free legal aid (mentioned in previous paragraphs). Other categories have to search for other opportunities, such as private or pro-bono advocates or human rights NGOs, which, considering migrants' situation, may be quite challenging in practice.

Access to judicial remedy is quite well grounded in the legislation. The gap is with access to free secondary legal aid for the persons who may face the absence of access to procedure and thus not being entitled to free secondary legal assistance provided by the state that directly influences the opportunity of judicial assistance.

The issue of considering cases of asylum seekers in a simplified proceedings modality without hearing the parties influences the decision-making process and limits the stages of court consideration. Thus, subpara 11 of para 6 of Article 12 of the Code of Administrative Procedures of Ukraine provides the possibility to consider the cases on the stay of foreigners in Ukraine in a simplified procedure. Accordingly, the judges consider asylum cases as the ones mentioned. This has a direct influence on access to the Cassation stage since subpara 2 para 5 of art. 328 introduces the cassation filters and prevents the cases considered in simplified procedure from consideration of the cassation instance of the Supreme Court. That significantly reduces the effectiveness of national courts as national remedies

3. What is your assessment of the management of return processes?

The return process is seriously influenced by the situation of war and the cancellation of diplomatic relations with some of the countries. Thus, e.g. procedure of identification for the purpose of forced removal is actually blocked due to the absence of diplomatic communication. Thus, the persons have to stay in detention.

Besides, the lack of plane connection from the territory of Ukraine also influences the practices of return due to the actual impossibility of implementing the decision, even in case the person cooperates and wishes to return.

4. To what extent the implementation of the judgements of the European Court of Human Rights and of other relevant international bodies in general, as well as specific to asylum matters is carried out?

In general state bodies of Ukraine aim to implement judgements. However, due to the full-scale invasion of Ukraine, the issues of national security are brought forth by the state.

Chapter 24: Justice, freedom and security

1. What is the situation pertaining to access to asylum procedure (access to the territory, registration, etc.)?

According to the amendments (adopted in 2023) to the Refugee Law of Ukraine, State Border Service of Ukraine does not accept asylum applications and does not allow foreigners and stateless persons to enter the territory of Ukraine, in respect of whom an authorised body has made a decision to prohibit entry into Ukraine, as well as in case of crossing by the applicant of the state border of Ukraine directly from the territory of the state in which his life or freedom is not threatened, and applications for asylum are not accepted in the case of their submission by foreigners or stateless persons during martial law, during an attempt or after illegally crossing the state border for departure from Ukraine to other states or by persons admitted to Ukraine in accordance with international agreements on readmission.

In practice the State Migration Service of Ukraine does not accept applications in a unified manner in all regions of Ukraine, the level of access to procedure varies from region to region (which is not occupied by RF).

2. What is the practice related to the use of the Safe Country concepts?

There is a definition of “third safe country” in the Law of Ukraine on “Refugees and persons in need of complementary or temporary protection in Ukraine”.

Before the full-scale invasion, this provision of Law was used quite widely both by migration bodies and courts. Thus, e.g. in cases of AFG or SYR asylum seekers such countries of transit as RF and Turkey were considered as third safe countries.

3. How are the cases of vulnerable applicants treated? What are the guarantees for vulnerable groups?

There are no definitions of vulnerable applicants or vulnerability in the Ukrainian refugee Law. Due to this fact, there are no special procedures or guarantees for such categories.

Special procedural guarantees are provided only to unaccompanied minors, such as the provision of obligatory legal representatives in the refugee law. Besides, unaccompanied children were included in the Ukrainian Law “Protection of Childhood” and several by-law acts, which provide for the right to be accommodated in the children’s shelters, and their right to be recognised as a child deprived of parental care after granting them refugee status or complementary protection.

De-facto stateless status of the applicant is not considered a vulnerability factor.

4. What is the situation pertaining to the use of detention in asylum procedure?

Current legislation guarantees the right to apply for asylum from detention. In accordance with the Instruction on forced return and removal № 353/271/150 the person will stay in detention until his/her asylum application is considered.

The concern arises due to the fact that one of the MCCs is situated in Mykolayivska region, some areas of which is heavily shelled. Despite this, the MCC is fully operational. Despite the fact that MCC possesses shelter where persons can hide during the air alerts, the detainees not only face the burden of detention but also suffer from the situation of staying in one of the insecure regions. No real alternatives to detention considering the above-mentioned are provided.

One of the issues in detention is the lack of access to free-of-charge medical assistance to detainees in accordance with the Law of Ukraine on State financial guarantees of medical services that do not cover asylum seekers and other categories of migrants with irregular stay, including in detention, with its program. The emergency assistance is provided; however, the person has to reimburse it when exiting Ukraine. The specialised medical assistance for detainees is covered either by themselves or by NGOs.

5. What is your assessment of the reception capacities and conditions?

As mentioned above all asylum seekers including children are deprived of access to free-of-charge medical services at all levels. Medical assistance is provided solely on a chargeable basis.

There are 3 temporary accommodation centres (TAC) in Ukraine that are located in Odesa, Kyiv region and Zakarpatie. After the full invasion and exodus of asylum seekers and refugees in Ukraine, the level of requests for accommodation is very low. Some of the TACs were temporarily redesigned for the accommodation of IDPs as a response to emergencies.

6. Can asylum seekers enjoy freedom of movement?

Asylum seekers are free to move within Ukraine. In case of relocation to another region, their migration case should be transferred to the respective region upon their application. In practice, there is no clarity

in transferring procedures, and no provisions in legislation exist, that cause rejections in transferring the cases especially while the person is already in the court procedure of appealing the rejection on asylum.

Under Article 13 of refugee law, asylum seekers who have already applied for asylum to migration service, are obliged to inform the migration service about their trips outside the administrative-territorial unit of Ukraine, where they live.

7. Do applicants for protection have access to free legal assistance?

The issue of free legal assistance is mentioned in the chapters above.

Chapter 18: Statistics

1. What is the state of mechanisms for collecting, sharing and analysing statistics on migration in general, as well as on asylum applications and decisions?

What is the state of mechanisms for collecting, sharing and analysing statistics on migration in general, as well as on asylum applications and decisions? The SMS posts statistics on its official website at the following link <https://dmsu.gov.ua/diyalnist/statistichni-dani.html>.