

# Common Western Balkan Migration Policy: Borders and Returns

Regional Policy Paper

Editor:  
Jelena Unijat

Group 484  
Sarajevo, October 2019



BALKAN  
REFUGEE AND  
MIGRATION  
COUNCIL



Ministry of Foreign Affairs of the  
Netherlands



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Vladimir Petronijević

**Editor:**

Jelena Unijat

**Authors:**

Jelena Unijat (Group 484), Bogdan Krasić (BCHR), Emir Prcanović (Vaša prava BiH), Nina Velić (Vaša prava BiH), Amra Kadrić (Vaša prava BiH), Nazif Avdi (MYLA), Martina D. Martinova (MYLA), Irena Zdravkova (MYLA), Zoran Drangovski (MYLA), Arben Gudaci (MYLA), Naim Osmani (CRP/K), Memli Ymeri (CRP/K), Roven Vuksani (AHC), Dušica Merdović (GA), Zoran Vujičić (GA)

**Proofreading:**

Nataša Grba Singh

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Marko Zakovski

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# 1. Foreword

This is the first BRMC Regional Policy Paper. Its main purpose is to present to the general and professional public, as well as to stakeholders, the migration situation in the Western Balkans region, particularly through the overview of the relevant regulations mainly focused on the various modalities for the return of migrants. Unlike most regional papers, this one is primarily dealing with a comparative analysis, and thus it is not presented by countries but by topics. The practice is analysed through secondary sources.

Although the paper is regional in nature, the data were collected at the national level, since it was assumed that the local civil society organisations, Balkan Refugee and Migration Council (BRMC) members, had the most comprehensive insight into all migration-related issues in their countries. All BRMC members provided Group 484, the project coordinator, with the data on the relevant legislation, strategic framework and practice, as well as certain statistics for 2018. The laws governing the areas of state border control, treatment of foreigners and international protection are analysed only in the parts related to treatments at the borders, while the strategic framework analysis is presented only in the part related to regional cooperation in the border management process and the related issues. The institutional framework in the migration management system is also briefly presented.

The review of international and regional documents, mechanisms and bodies represent a very important part of this paper. The emphasis is also placed on the EU relations with the Western Balkan countries, and in particular on the accession process and cooperation with Frontex. Important thematic units are the access to the territory, access to the asylum procedure and return. In the chapters Access to the Territory and Access to the Asylum Procedure, particular attention is paid to the application of the principle of non-refoulement related to illegal entry into the territory, as well as access to the asylum procedure at the border crossings. Within the chapter Returns, voluntary (including assisted) and forced returns, readmission and informal returns are addressed, and detention of migrants in the return procedure is addressed as a particularly sensitive issue. The final section provides recommendations for further improvement of legislation and treatment, organised by topic areas, covering related national and regional challenges.

BRMC members owe immense gratitude to the Ministry of Foreign Affairs of the Kingdom of the Netherlands for supporting the development of this Regional Policy Paper, as well as the entire three-year implementation of the project Balkan Refugee and Migration Council - Making a Pathway for a Common Western Balkans Migration Policy.

## 2. Summary

Bearing in mind that the field of migration in the Western Balkans region has so far been presented mainly by individual countries through various publications, the aim of this Regional Policy Paper is to provide a comparative overview of the situation in the region, primarily through the analysis of laws and strategies, but to a certain extent also present the treatment practices. In order to gain a deeper and more comprehensive insight into the circumstances in individual countries, the data used for the preparation of this paper was collected at the national level.

The introduction itself provides an overview of the migratory movements in 2018 in the Western Balkan countries and shows the European Union's attitude towards this region in the context of the EU policy of externalisation of the control of its borders, with a brief overview of relevant EU documents in this field. This is followed by a brief outline of the international legal framework, as well as a list of the most important international documents on the treatment of refugees and migrants brought under the auspices of the United Nations and the Council of Europe ratified by the Western Balkan countries. Subsequently, a comparative analysis of the existing national border control laws, laws on foreigners and asylum-related laws is presented, as well as an analysis of the strategic framework, with the special emphasis on regional cooperation in the fields of migration management, integrated border management, as well as the fight against trafficking in human beings, finally outlining the institutional framework.

In the central section of the paper, a separate chapter is devoted to the role and relations of Frontex in the Western Balkans region, with an analysis of working agreements, and of the Status Agreement with Albania. This is followed by an overview of the regulations and practice of the Western Balkan countries in the areas of access to the territory, access to the asylum procedures, and returns. Throughout the chapter on access to the territory, legal and illegal entry into the country is dealt with, with the cases when entry into the country is allowed even when persons do not meet the general conditions for entry, as well as misdemeanour and criminal sanctions for illegal entries and exemptions from punishment. The section on the access to the asylum procedure also describes the accelerated procedure at border crossings and airport transit zones. The section dealing with returns addresses the issues of expulsions, entry bans, immigration detention, readmission, assisted voluntary return, as well as informal returns. At the end of the paper, recommendations are made to stakeholders for further improvement of the situation in this area.

### 3. Introduction

Ever since the beginning of the refugee crises in 2015, the so-called Balkan route has been one of the main routes for refugees to the EU countries. North Macedonia is the main entry point for migrants and refugees from Greece through the Balkan route. Refugees from North Macedonia go to Serbia and from that point they try to illegally cross the Serbo-Hungarian and the Serbo-Croatian border or to go to Bosnia and Herzegovina<sup>1</sup>(hereinafter referred to as BiH), and further to Croatia. Since the closure of the Balkan migration route, when an agreement between the EU and Turkey<sup>2</sup> was reached in March 2016, the EU borders have remained closed for migrants and refugees. Only up to 10 migrants per week can “legally” cross from Serbia to Hungary, though the so-called “lists for Hungary”, but this option is only possible for families. With the closure of the borders, smuggling and the illegal border crossing is the main way migrants can enter and transit the country on their way toward EU countries, despite the challenges they are facing on their journey through the Balkan countries. Migrants are constantly trying to find new methods and new ways to continue their journey and some of them try to cross difficult paths through Albania, Kosovo\* and Montenegro and in 2018, the so-called “coastal route”<sup>3</sup> (Albania, Montenegro and BiH) become topical.

During 2018, the most attractive was the route from Greece – North Macedonia – Serbia – BiH<sup>4</sup>, with an exception in the second quarter when pressure was observed at Greece’s common borders with North Macedonia and Albania, as well as along the sub-route via Albania – Montenegro – BiH – Croatia.<sup>5</sup> From July migrants started entering Serbia through Bulgaria in an increased number compared to previous quarters. A new trend of irregular backward movement of a significant number of refugees and migrants departing Serbia for North Macedonia, and subsequently to Greece was noticed. Their movements were mostly voluntary, with the majority’s intention to return to Greece.

According to the FRONTEX data, more than 30,600 illegal border crossings by non-regional migrants were detected on the route from Turkey, Greece and Bulgaria through WB in 2018 which represent an increase compared to 2017 when it was 19,000. It is believed that the size of the flow detected on the route throughout the region may have actually been lower than the reporting indicated, given that the same migrant may have been detected at the same border multiple times (i.e. preventions of crossings) but also at several different border sections.<sup>6</sup>

Most illegal border crossings were detected by Pakistani and Iranians, followed by Afghans and Syrians. Syrians were reported along the Greece – Albania – Montenegro – BiH (with the highest peak in the first quarter of 2018). Pakistani and Afghans were largely associated with attempts to cross the border from Greece towards North Macedonia, followed by Serbia - North Macedonia, as well as Serbia - BiH, Croatia - BiH and Serbia - Hungary border sections. From April 2018 the rise in detections of Iranians was observed (from 1,029 in Q2 to 3,746 in Q3). Iranians continued to move out of Serbia towards Greece (via North Macedonia), Hungary and Croatia (directly or via BiH). Their number decreased following Belgrade’s decision to reinstate visa-requirements in October (from 3,746 to 1,841 in the last quarter of 2018)<sup>7</sup>.

The number of detected people smugglers slightly increased in 2018 (from 763 in 2017 to 800 in 2018) with most detection by Serbia and BiH. Facilitators were mostly nationals of WB countries, followed by EU nationals, and in a smaller percentage, third-country nationals. FRONTEX data show that the most common way of illegal entry through border checkpoints is by hiding in vehicles and with the use

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1 Although the locations suitable for illegally crossing the borders with Croatia, Serbia and Montenegro have been closed, since the beginning of 2018, BiH has witnessed a dramatic increase in the number of migrants and refugees entering the country. (EU Report on BiH, 2019).

2 European Council, EU-Turkey Statement, 18 March 2016, <http://europa.eu/!Uv88TM>

\* This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

3 EU Report on Montenegro, 2019.

4 FRONTEX, Western Balkans Quarterly, Quarter 1, Quarter 2, Quarter 3 and Quarter 4. <https://frontex.europa.eu/publications/?category=riskanalysis>

5 FRONTEX, Western Balkans Quarterly, Quarter 2: April-June 2018.

6 FRONTEX, Western Balkans Quarterly, Quarter 1, Quarter 2, Quarter 3 and Quarter 4.

7 FRONTEX, Western Balkans Quarterly, Quarter 4: October-December 2018.

of forged document (passports, visas, IDs, resident permits, and other).<sup>8</sup> Whereas clandestine entries were mostly detected and reported at the Croatian-Serbian border, Serbia was on the top of the list regarding the reported cases of used forged identification documents at its air and land border checks, followed by Albania and BiH. Interestingly enough, during the entire year, most entry bans along the six WB countries were issued to Turkish citizens, followed with a significant number of Chinese, Iranian and Indian citizens.

Although the countries of the Western Balkans (hereinafter referred to as WB) are still perceived as transit countries for migrants attempting to reach EU countries, due to the restrictive border security measures it is becoming more difficult for non-regional migrants to transit through WB and the number of detected illegal stays increased during 2018 (from 3,220 in the period from January to March, up to 12,504 in the last three months of 2018).<sup>9</sup> Migrants circulate from one to another WB country, lot of them are stuck and cannot go further towards desired destination countries. On the other side, there is a challenge of return to their country of origin or another third country, although it is not only the issue of the Balkan countries, but rather a global one.<sup>10</sup>

Being interested in the EU accession, WB countries are examples of the EU policy of externalisation of the control of its borders with an impact in the area of asylum, migration, detention, and border control. The countries received and continue to receive support from EU countries and from the European Border and Coast Guard Agency (FRONTEX) in order to control their borders. In addition, the EU Commission continuously makes follow-up reports on the visa-free regime in WB countries. In the latest one,<sup>11</sup> all countries in the region were recommended to further strengthen border controls, in full respect of fundamental rights and to continue to organise information campaigns on the rights and obligations of visa-free travel. All WB countries aspire to become full members of the EU and they are in different stages of accession.

#### Different stages of the EU accession by countries

B&H	Serbia	Kosovo*	N.Macedonia	Albania	Montenegro
Potential candidate	Candidate country	Stabilisation Association signed	Candidate country	Candidate country	Candidate country
/	16 chapters out of 35 opened, 2 provisionally closed	/	The EU has not yet approved the start of accession negotiations.	The EU has not yet approved the start of accession negotiations.	32 chapters out of 33 opened, 3 provisionally closed
/	Chapters 23 and 24 opened	/	/	/	Chapters 23 and 24 opened

8 Around 2,800 non-regional migrants were detected while attempting to illegally cross the borders largely by hiding in means of transport, while in 2,000, the use of document fraud was observed.

9 FRONTEX, Western Balkans Quarterly, Quarter 4: October–December 2018, pp 15.

10 In 2018 the total return rate from the EU was 41.49%. Return Policy: desperately seeking evidence and balance, ECRE, 2019, Available at: <https://www.ecre.org/wp-content/uploads/2019/07/Policy-Note-19.pdf>

11 Second Report under the Visa Suspension Mechanism, {SWD(2018) 496 final}, available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20181219\\_com-2018-856-report\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20181219_com-2018-856-report_en.pdf)

### 3.1. European Union documents

In the accession process, WB countries are constantly trying to harmonise their laws with the EU *acquis* and the most relevant EU documents related to migration are as follows:

**The Charter of Fundamental Rights of the European Union** is prohibiting collective expulsions, emphasising that “no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment”.

**Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals** “sets out common standards and procedures to be applied in member states for returning illegally staying third-country nationals, in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations”.<sup>12</sup>

**Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)** “provides for the absence of border control of persons crossing the internal borders between the member states of the Union. It lays down rules governing border control of persons crossing the external borders of the member states of the Union”.<sup>13</sup> This Regulation “respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. It should be applied in accordance with the member states’ obligations as regards international protection and *non-refoulement*”.

**Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims** is establishing “minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims”.<sup>14</sup>

**Regulation 604/2013 of the European Parliament and of the Council of 26 June 2013 - Dublin III** is establishing criteria and mechanisms for determining which member state is responsible for examining an application for asylum filed in one of the member states by a third-country national or a stateless person.

**Regulation 603/2013 of the European Parliament and of the Council of 26 June 2013** is establishing EURODAC for the comparison of fingerprints for the effective application of the Dublin Directive, and on the request, for the comparison with EURODAC data by the law enforcement authorities of the member states and Europol for law enforcement purposes.

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<sup>12</sup> Article 1 of the Return Directive.

<sup>13</sup> Article 1 of the Schengen Borders Code.

<sup>14</sup> Article 1 of the EU Anti-trafficking Directive.

## 4. International Legal Framework

Almost all WB countries have signed and ratified almost all relevant international documents regarding migrants and refugees, adopted under the auspices of the United Nations System and the Council of Europe. Although Kosovo\* is not a signatory of the UN and the Council of Europe conventions, human rights and fundamental freedoms guaranteed by the most important international agreements and instruments are directly applicable in Kosovo\* through its constitution and, in the case of conflict, "have priority over provisions of laws and other acts of public institutions".<sup>15</sup> Due to the fact that the issue of irregular migration is within the scope of several areas of international law and that, therefore, relevant sources of law are numerous, this section will mention only some international acts, noting that these acts do not constitute an exhaustive list of sources of law.

### 4.1. United Nations documents

The most relevant UN documents are: the Convention Relating to the Status of the Refugees from 1951 (hereinafter referred to as the Refugee Convention) and the Protocol Relating to the Status of the Refugees<sup>16</sup> (1967); the International Covenant on Civil and Political Rights (CCPR)<sup>17</sup> (1966); the International Covenant on Economic, Social and Cultural Rights (CESCR)<sup>18</sup> (1966); the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>19</sup> (1984); the Optional Protocol to the Convention against Torture (OP-CAT)<sup>20</sup> (2002); the International Convention on the Elimination of Racial Discrimination (ICERD)<sup>21</sup> (1965); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>22</sup> (1979); the United Nations Convention against Transnational Organized Crime (UNTOC); the Convention relating to the Status of Stateless Persons<sup>23</sup> (1954); the Convention on the Reduction of Statelessness<sup>24</sup> (1961); the International Convention for the Protection of All Persons from Enforced Disappearance (CED)<sup>25</sup> (2006); Convention on the Rights of the Child (CRC)<sup>26</sup> (1989) and the General Comment no. 6<sup>27</sup> (2005); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)<sup>28</sup> (1990).

#### Ratified international treaties

Treaty	B&H	Serbia	Kosovo*	N.Maced.	Albania	Montenegro
Refugee conv.	X	X		X	X	X
CCPR	X	X		X	X	X
CESCR	X	X		X	X	X
CAT	X	X		X	X	X
OP-CAT	X	X		X	X	X

15 Articles 22 and 53 of the Constitution, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

16 Available at: <https://www.unhcr.org/1951-refugee-convention.html>

17 Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>.

18 Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>.

19 Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

20 Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cat-one.pdf>

21 Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cerd.pdf>

22 Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>

23 UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 27 on older women and protection of their human rights, 16 December 2010, CEDAW/C/GC/27, available at: <https://www.refworld.org/docid/4ed3528b2.html> [accessed 15 May 2019].

24 Available at: [https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness\\_ENG.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf)

25 Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/disappearance-convention.pdf>

26 Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

27 Available at: <https://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>

28 Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cmw.pdf>

Treaty	B&H	Serbia	Kosovo*	N.Maced.	Albania	Montenegro
CERD	X	X		X	X	X
CEDAW	X	X		X	X	X
CED	X	X			X	X
CRC	X	X		X	X	X
CMW	X				X	
UNTOC	X	X		X	X	X
Stateless persons	X	X		X	X	X
Reduction of statelessness	X	X		X	X	X

It is important to mention that the committees established by these conventions have a significant role in the protection of human rights of migrants by acting in various forms, such as regular and ad-hoc country visits, reports, recommendations, etc. Under the UN human rights system there is also the possibility for individual complaints against state parties, after domestic remedies have been exhausted. The complaint system is introduced through additional protocols (in case of CCPR, CEDAW, CESC, and CRC) or through the submission of a declaration to the treaty (in case of CERD, CAT, CED, and CMW).<sup>29</sup>In cases of potential breaching the principle of *non-refoulement*, it is very important that some committees (e.g. CAT) may issue an “interim measure” in order to prevent any irreparable harm (e.g. the deportation of an individual facing a risk of torture).<sup>30</sup>Unfortunately, the latest case from this region (*Ayaz v. Serbia*<sup>31</sup>) shows that the state can deport a foreigner despite the interim measure issued by CAT. The other shortcoming is that committee decisions cannot be directly enforced, but the respective state has to take action and inform the committee on the implementation of recommendations and after that the committee has to monitor the follow-up process.

Under the auspices of the UN, the so-called *soft law* regarding the rights of migrants and refugees has been recently expanded. In late 2018, the **Global Compact on Refugees**<sup>32</sup> and the **Global Compact for Safe, Orderly and Regular Migration**<sup>33</sup> were adopted. The adoption of these documents was foreseen by the **New York Declaration** of 2016.<sup>34</sup> The Global Compact on Refugees, although not a legally binding document, is an expression of the political will to activate the principles of responsibility sharing. The content of the Global Compact on Refugees is based on experiences gathered through the pilot implementation of the **Comprehensive Refugee Response Framework**<sup>35</sup> as an annex to the New York Declaration. The four key goals of the Global Compact on Refugees are to reduce the pressure on refugee countries, increase the independence of refugees, provide greater opportunities for legal migration to third countries, and support the resolution of problems in the countries of origin in order to ensure a safe and dignified return to homes. At the same time, with slightly lesser support, a separate document dealing with the rights of migrants was adopted. The Global Compact for Safe, Orderly and Regular Migration sets the cooperation in facilitating the safe and dignified return and readmission as one of the goals. Under this goal, states are committed to developing cooperation frameworks, including readmission agreements, promoting gender-sensitive programmes and programmes tailored to children in terms of return and reintegration, and are pledged to conduct an assessment in each individual case in order to provide access to effective remedies, procedural guarantees and full respect for international human rights law.

29 Sergio Carrera and Marco Stefan: Complaint Mechanisms in Border Management and Expulsion Operations in Europe, Centre for European Policy Studies (CEPS), Brussels, 2018, p. 45.

30 Ibid. p. 48.

31 CAT/C67/D/857/2017 16. August 2019.

32 Available at: <https://www.unhcr.org/5c658aed4>

33 Available at: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/73/195](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195)

34 Available at: [https://www.iom.int/sites/default/files/our\\_work/ODG/GCM/NY\\_Declaration.pdf](https://www.iom.int/sites/default/files/our_work/ODG/GCM/NY_Declaration.pdf)

35 More information available at: <http://www.globalcrrf.org/>

## 4.2. Council of Europe documents

The most relevant Council of Europe documents are: the European Convention on Human Rights (ECHR)<sup>36</sup> (1950); the Council of Europe Convention on Action against Trafficking in Human Beings<sup>37</sup> (2005); the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>38</sup> (1987); the European Convention on the Legal Status of Migrant Workers<sup>39</sup> (1997).

### Ratified CoE conventions

Conventions	B&H	Serbia	Kosovo*	N.Maced.	Albania	Montenegro
ECHR	X	X		X	X	X
Anti-trafficking conv.	X	X		X	X	X
Torture prevention conv.	X	X		X	X	X
Migrant workers conv.					X	

Within the CoE, there are important bodies for the protection of human rights of migrants, such as the European Court of Human Rights (ECtHR)<sup>40</sup> established under the European Convention on Human Rights (ECHR), and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)<sup>41</sup> established by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The CoE state parties are obliged to guarantee rights set up in the ECHR to every person within the state's party jurisdiction<sup>42</sup> and in accordance with the ECtHR case law. This also includes third party nationals or stateless persons under the effective control of the state party, who are entitled to receive protection from the ECtHR, after exhausting domestic legal remedies.<sup>43</sup> Additionally, the ECtHR case law<sup>44</sup> is very important and has an impact on respective states legislative and practice. During the monitoring visits, CPT pays special attention to the detention of migrants. In their area of expertise, CPT has developed rich practice and set standards for the treatment of detained foreigners.<sup>45</sup> CPT delegations also monitor forced return flights and make reports with recommendations to the respective states.<sup>46</sup>

36 Available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

37 Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008371d>

38 Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007a67f>

39 Available at: <https://rm.coe.int/1680077323>

40 More about the ECtHR - <https://echr.coe.int/Pages/home.aspx?p=home>

41 More about CPT: [https://www.coe.int/en/web/cpt/about-the-cpt?p\\_p\\_id=56\\_INSTANCE\\_2sd8GRtnPW2B&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-4&p\\_p\\_col\\_count=1&\\_56\\_INSTANCE\\_2sd8GRtnPW2B\\_languagelid=sr\\_RS](https://www.coe.int/en/web/cpt/about-the-cpt?p_p_id=56_INSTANCE_2sd8GRtnPW2B&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-4&p_p_col_count=1&_56_INSTANCE_2sd8GRtnPW2B_languagelid=sr_RS)

42 ECHR, Art. 1.

43 See more about complaint mechanisms in: Complaint Mechanisms in Border Management and Expulsion Operations in Europe - Op. cit.

44 HUDOC database of judgments, decisions and other documents of the ECHR is available at: <https://hudoc.echr.coe.int/eng#%7B%22documentcollectionid%22:%7B%22GRANDCHAMBER%22%7D%7D>

45 See more about CPT immigration detention standards: <https://www.coe.int/en/web/cpt/immigration-detention>

46 The first CPT report on an operation of deportation of foreign nationals by air is available at: [https://www.coe.int/da/web/cpt/news-2013/-/asset\\_publisher/F4MCR6Bvx1tS/content/forced-return-flights-from-the-uk-the-european-anti-torture-committee-publishes-its-first-report?\\_101\\_INSTANCE\\_F4MCR6Bvx1tS\\_viewMode=view/](https://www.coe.int/da/web/cpt/news-2013/-/asset_publisher/F4MCR6Bvx1tS/content/forced-return-flights-from-the-uk-the-european-anti-torture-committee-publishes-its-first-report?_101_INSTANCE_F4MCR6Bvx1tS_viewMode=view/)

# 5. Comparative Analysis – Laws and Policies

## 5.1. Legal framework

The main laws in the areas of treatment on borders and returns are the laws on border control, laws on foreigners and laws on asylum.

### 5.1.1. Border control regulations overview

The laws on border control in the WB region<sup>47</sup> are quite similar. They regulate border control and crossing of the state border, border crossings, borderlines, protection area, procedures for basic and detailed border checks, transfer and control of arms and ammunition transfer across the state border, international border police cooperation, data collection and keeping records, border misdemeanours and other issues related to border control. Border control implies border checks and border surveillance. Border check is carried out at border crossings during the fixed working hours related to the issues of crossing the state border,<sup>48</sup> while border surveillance is carried out between crossing points outside working hours in order to prevent avoidance of the border control, as well to combat cross-border crime, prevent illegal crossing of the state border and take measures against persons who have illegally crossed the state border. The purpose of border control is security of the state border; protection of life and health of people and the environment; preventing the commission and detection of criminal offences and misdemeanours; preventing irregular migration; preventing and detecting other activities and actions that violate public order and peace, legal order and public security. The laws on border control in all WB countries stipulate that border police officers should respect basic human rights and human dignity and should act impartially, without discrimination on any ground. It can be noticed that the law governing the control of the state also regulates cooperation among state administration bodies responsible for integrated border management.

The Serbian law related to border control is somewhat different from other laws in the region. Firstly, only in the Serbian law irregular migration is defined as any movement of population from one country to another, the movement not in line with applicable legal regulations, as well as the stay that is contrary to applicable legal regulations. Additionally, according to this law, the migrant crisis is marked as one of the non-military challenges, risks and threats for the state border, while other laws on border control in the WB region do not provide such definitions. The Serbian law lacks detailed provisions about international police cooperation, as the laws in other countries. It has only one referring norm that prescribes that international border cooperation shall be conducted according to the international agreement (e.g. the Police Cooperation Convention for Southeast Europe). Additionally, the Serbian Law on Protection of State Borders is also specific because only this law stipulates prison sentences for misdemeanours related to irregular migration, while in other countries only fines are imposed. Furthermore, although the special attention for the protection of minors is dedicated in the laws in all WB countries, only the Serbian law stipulates different treatment for minors under and over 16 years of age, the so-called “older minors”. In order to cross the state border, a minor, a citizen of the Republic of Serbia under the age of 16, when travelling alone or accompanied by another person who is not his/her parent or legal representative, must have the certified consent of both parents, if jointly exercising parental rights, or a legal representative,<sup>49</sup> and the older minors can cross the border without any consent. Finally, the military engagement in border control activities is only prescribed in the Serbian law, and similar provisions do not exist in the laws of other WB countries, so there is no legal ground for engaging army forces in their border control legislation.

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47 Law on Border Control of BiH (Official Gazette of BiH, no. 53/09, 54/10, 47/14); Law on Protection of State Borders of the Republic of Serbia (Official Gazette of RS, no. 24/18); Law no. 04/L-072 on Control and Surveillance of the State Border of Kosovo\*; Law on Border Control of North Macedonia (Official Gazette of no. 171/10, 41/14, 148/15, 55/16, 64/18); Albanian Law on Border Control (no. 71/16) and Law on Border Control of Montenegro (Official Gazette of Montenegro, no.72/09, 20/11, 40/11, 39/13 and 17/19).

48 The issues of control of persons and travel documents, control of means of transport and control of things carried out during the fixed hours in the border crossing area, related to the intended crossing of the state border or immediately after crossing the state border, and other control of traffic of persons, goods, services, means of transport, animals and plants across the state border stipulated by law.

49 Op. cit. Art. 54, par. 2.

In Albania, in addition to the control and measures taken at the border crossing points, border and migration authorities are also mandated with the overall border patrol duty and have the right to undertake investigative and procedural actions in cases of border-related offences.<sup>50</sup>

#### *National laws on border control by WB countries*

BiH	Serbia	Kosovo*	N.Macedonia	Albania	Montenegro
Adopted	Adopted	Adopted	Adopted	Adopted	Adopted
2009	2018	2011	2010	2008	2009
Last amended					
2014	/	2018	2018	2016	2019

### 5.1.2. Foreigners and asylum seekers regulations overview

Considering the legislative changes at the EU level in the field of migration, during 2018 almost all WB countries<sup>51</sup> changed their national laws on foreigners and asylum in order to harmonise them with the EU legislation. Only in the Montenegrin's laws on foreigners and asylum all relevant EU directives, without any reserves, were transposed and consequently it has opened a question of the capacities and conditions for their full and effective implementation. For certain number of provisions, laws have introduced delayed in implementation, thus leaving the national authorities some additional time for preparation. Other countries have opted for gradual transposition, and thus their legislative frameworks are only partially harmonised. For these countries, transposition of the EU standards is an ongoing process.<sup>52</sup> In both cases, progressive or full transposition of norms, the main challenge remains to meet conditions and capacities for their implementation.

#### *National laws on foreigners by WB countries*

B&H	Serbia	Kosovo*	N.Macedonia	Albania	Montenegro
Adopted	Adopted	Adopted	Adopted	Adopted	Adopted
Nov. 2015	March 2018	March 2018	May 2018	March 2013/ Amended on 2016	Feb. 2018
Implemented	Implemented	Implemented	Implemented	Implemented	Implemented
Nov. 2015	Oct. 2018	May 2018	May 2019	April 2013/ August 2016	Feb. 2018

#### *National laws on asylum by WB countries*

B&H	Serbia	Kosovo*	N.Macedonia	Albania	Montenegro
Adopted	Adopted	Adopted	Adopted	Adopted	Adopted
Feb. 2016	May 2018	March 2018	April 2018	Sept. 2014	Dec. 2016
Implemented	Implemented	Implemented	Implemented	Implemented	Implemented
Feb. 2016	June 2018	May 2018	April 2018	October 2014	Jan. 2018

<sup>50</sup> Articles 297 and 298 of the Criminal Code.

<sup>51</sup> Exceptions are BiH and Albania. The obligation for Community-compatible legislation, stemmed from the Stabilization and Association Agreement signed on 12 June 2006, which was subsequently transformed into an integral part of the strategic instruments adopted by Albania (Articles 46-47 and Articles 80-81 of the SAA).

<sup>52</sup> In Albania, a new law on asylum is being drafted.

All laws on foreigners in the WB region<sup>53</sup> regulate conditions for entry, movement, stay and return of foreigners, as well as immigration detention, violations and penalties for breaching the provisions, etc. Positive novelties are those prescribing temporary residence permit for humanitarian reasons and temporary residence permit for victims and supposed victims of human trafficking. In Kosovo\*, through latest amendment, temporary residence on humanitarian grounds was introduced, including refugees, persons under subsidiary protection and victims of human trafficking or victims of migration, smuggling and foreigners who have willingly expressed cooperation with competent authorities.<sup>54</sup> In this way, persons can be motivated to cooperate with law enforcement and courts in criminal procedures for serious criminal acts. Similarly, the Serbian legislation also recognises temporary residence on humanitarian grounds that could be issued up to one year,<sup>55</sup> and related to the (supposed) victim of human trafficking and without conditioning on cooperation with competent authorities, the temporary residence could be approved up to 90 days.<sup>56</sup> With the aim of improving the position of victims of human trafficking, the Montenegrin law also stipulates the reflexion period for victims of trafficking up to 90 days.<sup>57</sup> This law is also interesting and specific since it is the only law on foreigners from this region that has introduced the set of provisions dedicated to the cooperation with the EU member states<sup>58</sup> - joint flights with the EU member states, assistance to the EU member states during the force return flights, procedure for foreigners who have residence or who are granted international protection in an EU member state, as well as special provisions on entry, exit, movement, stay and work of the EU member states citizens. Unlike the laws on foreigners in other countries in the region, in this law asylum seekers and refugees are not excluded from its application and only foreigners with privileges and immunities are excluded.

The Serbian Law on Foreigners is only in the region that provides legal possibility for the Government, upon the proposal of the Minister of Interior, to adopt a regulation with a limited implementation deadline, which would regulate the tolerated stay on the territory of the Republic of Serbia of a large number of foreign citizens who are illegally staying and who cannot be returned to the country of origin due to the implementation of the principle of non-refoulement or who cannot leave the Republic of Serbia due to circumstances that do not depend on them. However, in spite of the existence of this situation on the ground, the legal possibility for the adoption of the regulation has not been used. Despite the lack of similar provisions in the laws of other countries in the region, in all of them, including the situation on the ground in Serbia, a significant number of migrants accommodated in the transit centres could be actually *de facto* considered as migrants with tolerated stay because they do not have any legal status in the country and do not possess any documents that would regulate their entry or stay in the country.

In Kosovo\*, the amendments of 2018, similarly to what was previously regulated in the Albanian Law on Foreigners, introduced the disputed provision. This article stipulates a broad and discretionary authority of the Minister of Internal Affairs to declare a foreign person a *persona non-grata* for minimum 5 years or even longer and consequently this person cannot enter or stay on the territory during this period. Although it is stipulated that the procedure of declaring a foreigner person a “*persona non-grata*” will be regulated by the Administrative Instruction, issued by the Minister of Internal Affairs, in cooperation with the Minister of Foreign Affairs, the instruction has not been yet adopted. The instruction needs to regulate this procedure in detail, including the effective legal remedy.

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53 Law on Foreigners of BiH (Official Gazette of BiH, no. 88/15); Law on Foreigners of the Republic of Serbia (Official Gazette of RS, no. 24/18, 31/19); Law No. 06/L-036 (Official Gazette of Kosovo\*, no. 6/18); Law on Foreigners (Official Gazette of North Macedonia, no 97/18); Albanian Law on Foreigners, no. 108/2013/138; Law on Foreigners of Montenegro (Official Gazette of Montenegro”, no. 12/18).

54 Law on Foreigners, Art. 41, par. 1. sub-par. 1.4.

55 Article 61. In these specific situations: 1) his family, cultural or social connections with the Republic of Serbia, the degree of integration of the foreigner into the social life of the Republic of Serbia in the previous period, especially with regard to his education, work activities or language skills; 2) postponing the forced removal of an alien referred to in Article 84 of this Law for a period of one year or more; 3) a foreigner who is a victim of a serious crime, including persons who have been involved in an action to facilitate irregular migration and who cooperates with the police and judicial authorities, whose presence is necessary in criminal proceedings or involved in an investigation as a witness or injured party; 4) a minor alien who is abandoned, who is a victim of organized crime or who for some other reason has been left without parental care or unaccompanied; 5) serious and justified personal reasons of a humanitarian nature, the existence of the interests of the Republic of Serbia or internationally assumed commitments.

56 Article 62, par. 4.

57 Op. cit. Article 54.

58 Op. cit. Articles 120-123, 136-137 and 150-178.

Meanwhile in Albania, the Law on Foreigners has extended the obligation of control over foreigners to private and public institutions that are service providers. Article 136 of the Law on Foreigners prescribes the obligation of the institutions providing public services, organisations, local administration, public interest companies and social security institutions, not to provide their services to foreigners who have not obtained a valid travel document recognised by this law, valid visa or residence permit and who do not prove that they have entered and remain legally in the territory of Albania. This obligation extends to hospitals and health centres, except when foreigners are required to receive medical service in emergencies, and when the lack of medical treatment threatens the loss of their life (Article 136).

The laws that regulate asylum in the WB region<sup>59</sup> recognise international protection, e.g. granting refugee status, subsidiary protection and temporary protection. The laws regulate principles, conditions and procedure for granting refugee status, the status of subsidiary protection, cessation and revocation of refugee status and the status of subsidiary protection, temporary protection, identification documents, rights and obligations of asylum seekers, refugees and foreigners under subsidiary protection, the role of the UNHCR, as well as other issues related to asylum. Only the Serbian and Montenegrin laws stipulate the accelerated asylum procedure on borders.<sup>60</sup>

Regarding the special treatment of minors, both Serbian and Montenegrin laws have certain specificities. Besides the definition of unaccompanied minors, the Serbian law introduces the definition of separated minors. The Montenegrin law is the only law on asylum that stipulates age assessment of minors,<sup>61</sup> and prescribes that medical assessment is conducted by medical examination and X-ray of a hand and/or teeth. In the case of unjustified denial of the consent for medical assessment, the minor is considered as an adult, but asylum application cannot be denied only on that fact. In Albania, in the event of suspicion of the age of the detained foreigner, the authority responsible for border and migration may require specialised state institutions to perform the detainee's DNA tests for the sole purpose of verifying their age. In the case when even after the verification and examination their age cannot be determined, it is presumed that they are minor.

According to the law in Montenegro, based on the request of the UNHCR, asylum seekers can be resettled in Montenegro. The law also prescribes that the Government issues a decision regarding the resettlement and adopt a programme of resettlement.<sup>62</sup> In the same way as the EU member states, under the solidarity principle, Montenegro will admit a certain number of refugees,<sup>63</sup> but with no precisely defined procedures and conditions. Although all national laws on asylum in the WB region prescribe the non-refoulement principle, the Montenegrin stipulates that if the European arrest warrant/ the decision on extradition to an EU member state or to the International Criminal Court is issued to an asylum seeker, the asylum seeker can be extradited. The fact that a person is seeking international protection does not prevent his/her extradition.<sup>64</sup> In addition, under certain circumstances and in a special procedure an asylum seeker can be extradited to the third country.

## 5.2. Policy framework

All WB countries have national strategies for migration management, including the combating of irregular migration, as well as strategies for integrated border management (IBM) and anti-trafficking strategies. Some of the strategies have expired and new ones have not been adopted, as it is the case with Montenegrin and Bosnian IBM strategies which expired in 2018. Bearing this in mind, the national governments should prepare and adopt new strategies without further delay.

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59 Law on Asylum of BiH (Official Gazette of BiH, no. 11/16, 16/16); Law on Asylum and Temporary Protection of the Republic of Serbia (Official Gazette of RS, no. 24/18); Law on Asylum no. 06/L-026; Law on International and Temporary Protection (Official Gazette of North Macedonia, no. 64/18); Law on Asylum in the Republic of Albania, no. 121/14; Law on International and Temporary Protection of Foreigners (Official Gazette of Montenegro, no. 2/17).

60 See more in the chapter: Access to Asylum Procedure.

61 Op. cit. Art. 41.

62 Op. cit. Art. 73.

63 Op. cit. Art. 74.

64 Law on International and Temporary Protection of Foreigners, Art. 12.

## National strategies

B&H	Serbia	Kosovo*	N.Macedonia	Albania	Montenegro
Strategy in the Area of Migration and Asylum and Action plan <b>2016-2020</b>	Strategy on Combating Irregular Migration <b>2018-2020</b> and Migration Management Strategy <b>2009</b>	National Strategy on Migration and Action Plan <b>2019-2023</b>	Resolution on Migration Policy and Action Plan <b>2015-2020</b>	National Strategy on Migration <b>2019-2022</b>	Strategy on Integrated Migration Management <b>2017-2020</b>
IBM Strategy and Action Plan <b>2015-2018</b>	IBM Strategy <b>2017-2020</b>	IBM Strategy <b>2019-2023</b>	National IBM Development Strategy <b>2015-2019</b>	IBM Strategy and Action Plan <b>2014-2020</b>	IBM Strategy <b>2014-2018</b>
Strategy to Combat Human Trafficking <b>2013-2015</b> and Action Plan <b>2016-2019</b>	Prevention and Suppression of Trafficking in Human Beings <b>2017-2020</b>	National Strategy Against Trafficking in Human Beings in Kosovo* <b>2015-2019</b>	National Strategy on Combating Trafficking in Human Beings and Illegal Migration <b>2017-2020</b>	National Strategy on the Fight Against Trafficking in Human Beings <b>2018-2020</b>	Strategy on Combating Trafficking in Human Beings <b>2019-2024</b>

The main aims of the **migration strategies**<sup>65</sup> related to irregular migration in the WB region are the improvement of the border control system and suppression of illegal migration, fight against smuggling and trafficking of human beings. The harmonisation with the EU regulation in the area of migration and cooperation in the prevention and control of irregular migration and readmission are highlighted as well. It is very important that national strategies have recognised the necessity for strengthening administrative and technical capacities of relevant state bodies and improvement of professional skills and better material preparation for the protection of state borders.

The national **IBM strategies**<sup>66</sup> emphasise that the main priority is the further harmonisation with the EU policies and practices, particularly with the EU concept on IBM from 2006 or 2012. On the one hand, the security of external borders of the EU and special role of non-EU neighbouring countries is also recognised, and on the other, WB countries expect cooperation and support of the EU in border protection and in organising joint return operations of irregular migrants to the countries of origin. This region has also identified the misuse of international protection mechanisms which acquits migrants of misdemeanour responsibilities. The strengthening of bilateral operational cross-border cooperation, i.e. the establishment of joint patrols, as well as participation in regional projects and initiatives are also recognised in the strategies.

65 Strategy in the Area of Migration and Asylum and the Action plan 2016-2020 of BiH, available at: [http://www.kryeministriks.net/repository/docs/STATE\\_STRATEGY\\_ON\\_MIRGRATION\\_ACTTION\\_PLAN\\_2013-2018.pdf](http://www.msb.gov.ba/PDF/Strategija_E; Serbian Strategy on Combating Irregular Migration in the Republic of Serbia for the period 2018-2020, with the Action Plan (Official Gazette of RS, no. 105/18); Serbian Migration Management Strategy (Official Gazette of RS, no. 59/09); National Strategy on Migration and its Action Plan 2013-2018, available at: <a href=); North Macedonia Resolution on Migration Policy and Action Plan 2015-2020 (Official Gazette of North Macedonia, no.08-290/1); Albanian National Strategy on Migration 2019-2022, available at: <https://mb.gov.al/wp-content/uploads/2019/07/Strategjia-Kombetare-per-Migracionin-MB-2019.pdf> and Strategy on Integrated Migration Management in Montenegro 2017-2020, available at: <https://asocijaciaspektra.files.wordpress.com/2018/04/strategija-za-integrisano-upravljanje-migracijama-u-crnoj-gori-za-period-2017-2020-godine.pdf>

66 Strategy on Integrated Border Management in BiH and Framework Action Plan for the period 2015-2018, available at: <http://www.msb.gov.ba/PDF/strat070915.pdf>; Strategy on Integrated Border Management in the Republic of Serbia 2017-2020 (Official Gazette of RS, no. 9/17); Kosovo\* 2013-2018 IBM Strategy, Available at: [http://kryeministri-ks.net/wp-content/uploads/docs/NATIONAL\\_STRATEGY\\_OF\\_THE\\_REPUBLIC\\_OF\\_KOSOVO\\_ON\\_INTEGRATED\\_BORDER\\_MANAGEMENT.pdf](http://kryeministri-ks.net/wp-content/uploads/docs/NATIONAL_STRATEGY_OF_THE_REPUBLIC_OF_KOSOVO_ON_INTEGRATED_BORDER_MANAGEMENT.pdf), [http://www.kryeministriks.net/repository/docs/Action\\_Plan\\_of\\_the\\_Strategy\\_on\\_Integrated\\_Border\\_Management.pdf](http://www.kryeministriks.net/repository/docs/Action_Plan_of_the_Strategy_on_Integrated_Border_Management.pdf); North Macedonia National Integrated Border Management Development Strategy 2015 – 2019, available at <http://www.igu.gov.mk/files/STRATEGY.pdf>; Albanian National Strategy on Integrated Border Management and its Action Plan, available at: [http://www.punetebrendshme.gov.al/wp-content/uploads/2018/01/Strategjia\\_e\\_Menaxhimit\\_te\\_Integruar\\_te\\_Kufijve\\_2014-2020.pdf](http://www.punetebrendshme.gov.al/wp-content/uploads/2018/01/Strategjia_e_Menaxhimit_te_Integruar_te_Kufijve_2014-2020.pdf) and Montenegrin Strategy on Integrated Border Management 2014-2018, with Framework Action Plan, available at: <file:///D:/Downloads/STRATEGIJA%20INTEGRISANO%20UPRAVLJANJA%20GRANICOM%20I%20OKVIRNI%20AP%202014-2018.pdf>

Strategies for combating trafficking in human beings<sup>67</sup> identify the necessity for strengthening cooperation and coordination among relevant authorities and CSOs specialised in this issue, as well as improving harmonisation of the national policies. The special attention is given to the protection of illegal migrants, especially the protection of vulnerable groups and improvements in victim identification among migrants.

## 6. Institutional Framework

### 6.1. State bodies

In WB countries, the border police, within the Ministry of Interior (or the Ministry of Security in BiH) has the central role in migration management, which indicates that migration issues are marked primarily as the security issues. Besides the border police units and other different units for the fight against trafficking in human beings and smuggling, in the scope of MoI there are also asylum offices, sectors for readmission, immigration detention centres, as well as centres for asylum seekers and transit centres for migrants. In Serbia, there is a separate government institution, the Commissariat for Refugees and Migration that is responsible for the reception and care of refugees and migrants and all the asylum and transit centres are within their jurisdiction.

Besides MoI, ministries for social affairs have a very important role, particularly for the protection of vulnerable groups, especially unaccompanied and separated children. In Albania, unlike other WB countries, the authorities are responsible for unaccompanied minors' protection issues, established in each of the local self-government units. The legal basis for their establishment is a separate law regulating the rights of the child.<sup>68</sup> For WB countries, it is characteristic that the Ministry of Justice does not have much competence in these matters, with the exception of migrants who are in prisons and detention units, i.e. those sentenced to imprisonment for a criminal offence or misdemeanour.

As the migration policy is a complex area, it implies the need for inclusion of a larger number of institutions, with precise responsibilities and competencies to prevent overlapping of activities. In order to achieve better coordination among various state bodies and local and international organisations engaged in migration managing, WB countries have recognised the necessity for establishing special coordination bodies, such as the Migration Coordination Body in BiH, Working Group for Solving the Problems of Mixed Migration Flows in Serbia, Government Authority on Migration in Kosovo\*, National Coordination Centre for Border Management in North Macedonia, Interdepartmental Working Group in Montenegro, Technical Committee on Migration and Inter-ministerial Committees in Albania.<sup>69</sup> The countries have established the coordination mechanisms in two ways, either on an *ad hoc* basis with a specially defined mandate or based on key strategic and policy documents.

The judiciary control of different decisions of state authorities related to the border and return issues exist in all WB countries, but the problem is that appeals, as a rule, do not have a suspensive effect and generally there is no *ex officio* judiciary review of decisions, which seriously limit the basic human rights (e.g. deprivation of liberty). In judicial proceedings, administrative courts are mainly competent, but in some cases, courts of general jurisdiction also have the authority in WB countries.

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67 Strategy on Combating Human Trafficking in Bosnia and Herzegovina 2013-2015 and Action Plan 2016-2019, available at: [http://msb.gov.ba/PDF/brosura%20eng%20final%20mail%20\(1\).pdf](http://msb.gov.ba/PDF/brosura%20eng%20final%20mail%20(1).pdf), and [http://www.msb.gov.ba/PDF/AKCIONI\\_PLAN\\_2016-2019\\_30\\_12\\_2015.pdf](http://www.msb.gov.ba/PDF/AKCIONI_PLAN_2016-2019_30_12_2015.pdf); Serbian Strategy on the Prevention and Suppression of Trafficking in Human Beings, Especially Women and Children, and Protection of Victims 2017-2022, with the Action Plan for 2019 and 2020 (Official Gazette of RS, no. 50/19); Strategy Against Trafficking in Human Beings in Kosovo\* 2015-2019, available at: [http://www.kryeministri-ks.net/repository/docs/NATIONAL\\_STRATEGY\\_AGAINST\\_TRAFFICKING\\_IN\\_HUMAN\\_BEINGS\\_IN\\_KOSOVO.pdf](http://www.kryeministri-ks.net/repository/docs/NATIONAL_STRATEGY_AGAINST_TRAFFICKING_IN_HUMAN_BEINGS_IN_KOSOVO.pdf); North Macedonian National Strategy on Combating Trafficking in Human Beings and Illegal Migration 2017-2020, available at: <http://nacionalnakomisija.gov.mk/wp-content/uploads/2016/12/Nacionalna-strategija-i-akciski-plan-za-borba-protiv-trgovija-so-lugje.pdf>; Albanian National Strategy on the Fight Against Trafficking in Human Beings 2018-2020, no. 770, available at: <http://80.78.70.231/pls/kuv/f?p=201:Vendim%20i%20KM:770:26.12.2018>; Montenegrin Strategy on Combating Trafficking in Human Beings 2019-2024, with Action Plan for 2019, available at: <https://www.osce.org/me/mission-to-montenegro/424634?download=true>

68 Article 41/3/d on the Law No. 18/2017 "On the Rights and Protection of the Child".

69 These bodies were functional in the past, but currently, there is no functional coordination body in Albania. The National Strategy on Migration 2019-2022 stipulates that the work is underway to establish a thematic working group on migration that will coordinate the work of all ministries in this area at the strategic and technical levels.

The comprehensive system for independent monitoring of forced returns has not yet been established and in WB countries it has relied on sporadic control activities of independent bodies, such as Ombudsperson institutions, or the national mechanisms for the prevention of torture. Only in Serbia, according to the new Law on Foreigners, the Protector of Citizens is authorised to supervise the procedures of forcible removal, and in the first year of application of the new regulations, he conducted four monitoring visits on forcible returns, but no reports on the visits have been published so far.<sup>70</sup>

## 6.2. International organisations and CSOs

Besides state institutions, international organisations and international and local CSOs in this region have an important role in the work with refugees and migrants. Some of the most influential international organisations in the WB region are UNHCR, UNICEF, UNFPA, IOM, Danish Refugee Council (DRC), Save the Children, Red Cross, Doctors Without Borders (MSF), etc.

The most important international organisation in the protection of refugees is the United Nations High Commissioner for Refugees (UNHCR) that has free access to all persons in accordance with its mandate. The competent authorities are obliged to cooperate with the UNHCR, which on the other hand implies that asylum seekers, during the asylum procedure, have the right to contact UNHCR officers. In WB countries, International Organization for Migration (IOM) has an important role in assisted voluntary return (AVR), by providing assistance in the process of voluntary returns of migrants. In BiH, IOM has also provided the establishment of five reception facilities for migrants (Usivak, Bira, Miral, Sedra and Borici).

Migration, Asylum, Refugees Regional Initiative (MARRI) is also an important regional inter-governmental initiative as all WB countries are its members. It is a regional mechanism with the core mandate to support the Western Balkans region in migration management. It was established in 2004 within the context of the Stability Pact through the South-East European Cooperation Process (SEEC) and since 2008 it has been jointly owned by six Participants: Albania, BiH, Kosovo\*, Macedonia, Montenegro and Serbia. The Secretariat of the MARRI Initiative (MARRI Regional Centre) is based in Skopje.

Civil society organisations play a particularly important role in the protection of migrants through the provision of free legal aid, as well as through analysis, monitoring, reporting, training, and providing recommendations. In Albania, an important role in the asylum procedure has been given to the CSO Albanian Helsinki Committee, which is represented with one member in the National Commission for Asylum and Refugees.<sup>71</sup>

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70 Monitoring of forced return of Chinese citizens, available at the NPM website: <https://npm.rs/index.php?limitstart=4>, accessed: 13.06.2019, and NPM nadzirao postupak prinudnog udaljenja - <https://npm.rs/> accessed: 13.09.2019.

71 The Commission has the sole role and competency as a decision-making authority for appeals of asylum seekers against decisions of the authority responsible for asylum and refugees.

## 7. Western Balkan Countries and the European Border and Coast Guard Agency (FRONTEX)

All WB countries signed working agreements with Frontex during 2009 and Kosovo\* signed the agreement in 2016. It is a uniform agreement with very similar provisions for all countries, except for the Kosovo\* agreement, which has some differences, possibly owing to the fact that this agreement was signed 7 years later. Working agreements regulate mutual relations between the respective country and Frontex and they are not considered as international treaties. The main objectives are countering irregular migration and related cross-border crime, strengthening security at the borders between the EU member states and WB countries, and developing good relations and mutual trust and facilitating measures by joint efforts. For the implementation of the working agreements, Frontex and respective countries designate Contacts Points and when necessary, they can establish expert working groups. Moreover, respective countries are obliged to appoint a National Contact in the field of risk analysis to participate as an observer in relevant sessions of the meetings of the Frontex Risk Analysis Network (FRAN). According to the working agreement, Frontex can support national border police with relevant analytical products and training. Upon the decision of the Executive Director of Frontex and the agreement of the hosting member state, Frontex can invite representatives of national border police to participate in joint operations as observers, and can develop cooperation in the field of joint return operations and promote active participation in Frontex coordinated joint return operations.

Considering that the working agreement with Kosovo\* was signed recently, the provisions about information exchange are more detailed. Additionally, this agreement foresees the possibility for the adoption of a separate security arrangement/agreement for exchanging intelligence and classified information and special agreement for exchanging personal data. Unlike the other working agreements this agreement stipulates that for termination of it, both parties should make written notification within at least 90 days.

The Liaison Officers Network in the Western Balkan countries (based in Belgrade) was established in 2017. Frontex Liaison Officer corresponds to the EU Delegation to the country he/she is stationed and works closely with European Migration Liaison Officer (EMLO), Immigration Liaison Officer (ILO) and other actors.

Among all WB countries, only Albania has signed the Status Agreement<sup>72</sup> with Frontex and other countries, except Kosovo\*, are in the phase of initialling and drafting status agreements. Frontex-Albania Status Agreement became operational on 1 May 2019<sup>73</sup> and the first operation started on 22 May 2019 at the land border between Albania and Greece.<sup>74</sup> The main aim of the operation is to control migratory flows, to tackle cross-border crime, including migrant smuggling, trafficking in human beings and terrorism, and to enhance European cooperation at the land border between Albania and Greece. At the start of the operation, the officers deployed by Frontex were provided by Austria, Croatia, Czechia, Estonia, Finland, France, Germany, Latvia, the Netherlands, Romania, Poland, and Slovenia. The EU officers support local authorities in border surveillance and border checks as well as training activities to develop regional border control capacities and by the exchange of operational information, professional experiences and best practices. They are also empowered to fight human and drug trafficking and car theft. The Agreement has also provided for technical equipment relevant for different missions such as 16 patrol cars and one van equipped with night vision equipment.

With the Status Agreement, the powers of the members of the team are very broad.<sup>75</sup> They have the authority to perform the tasks and exercise the executive powers required for border control and return operations, but only in the presence of border guards or other relevant staff of the Republic of Albania, respecting the laws and regulations of the Republic of Albania. While performing their tasks and

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72 Allows teams from Frontex to be deployed in non-EU state.

73 It is the first agreement of this kind with a neighbouring non-EU country and the EU.

74 Available at: <https://frontex.europa.eu/media-centre/news-release/frontex-launches-first-operation-in-western-balkans-znTNWM>

75 More about Frontex representatives powers and responsibilities in: ECRE Comments on Proposal for a European Border and Coast Guard - <https://www.ecre.org/wp-content/uploads/2018/11/ECRE-Comments-EBCG-proposal.pdf>

exercising their powers, members of the team may carry service weapons, ammunition and equipment as authorised according to the home member state's national law. While performing their tasks and exercising their powers, members of the team are authorised to use force, including service weapons, ammunition and equipment, with the consent of the home member state and the Republic of Albania, in the presence of border guards or other relevant staff of the Republic of Albania and in accordance with the national law of the Republic of Albania.<sup>76</sup> The Republic of Albania may authorise members of the team to use force in the absence of border guards or other relevant staff of the Republic of Albania. Members of the team enjoy immunity from the criminal, civil and administrative jurisdiction of the Republic of Albania in respect of the acts performed in the exercise of their official functions in the course of the actions carried out in accordance with the operational plan.

On the other hand, members of the team also have some duties of respecting human rights. In the performance of their tasks and in the exercise of their powers, they should fully respect fundamental rights and freedoms, including the access to asylum procedures, human dignity and the prohibition of torture, inhuman or degrading treatment, the right to liberty, the principle of non-refoulement and the prohibition of collective expulsions, the rights of the child and the right to respect for private and family life. They can be controlled through a complaint mechanism, which each Party should have and deal with allegations of a breach of fundamental rights committed by staff in the exercise of their official functions in the course of a joint operation, rapid border intervention or return operation performed under this agreement.

In case of possible breach of the principle of non-refoulement under joint operation, i.e. within the Frontex activities in the territory of a third country, the question arises as to who will be responsible. In this regard, when defining the operational plan of each joint operation, it is necessary to take into account the possible implications of the refusal of entry or removal of a foreigner and to take into account the circumstances in the foreign country of departure, i.e. the degree of respect for international standards and basic human rights, in order to avoid breach of the principle of non-refoulement and contribute to a clearer definition of responsibility in case of a possible breach.<sup>77</sup>

#### Agreements with FRONTEX by countries

B&H	Serbia	Kosovo*	N.Macedonia	Albania	Montenegro
Working agreement	Working agreement	Working agreement	Working agreement	Working agreement	Working agreement
03/04/2009	17/02/2009	25/05/2016	20/01/2009	19/02/2009	18/06/2009
Status Agreement	Status Agreement	Status Agreement	Status Agreement	Status Agreement	Status Agreement
Initialled Jan 2019	Initialled 20/09/2018	Initialled /	Initialled 18/07/2018	Initialled 12/02/2018	Initialled 07/02/2019
Signed /	Signed /	Signed /	Signed /	Signed 05/10/2018	Signed /
Operational /	Operational /	Operational /	Operational /	Operational 01/05/2019	Operational /

<sup>76</sup> Frontex – Albania Agreement, Article 4/6.

<sup>77</sup> See more at the following link: <http://preugovor.org/Tekstovi/1521/Statusni-sporazum-i-uloga-Frontex-u-Srbiji.shtml>

## 8. Access to the Territory

Crossing border and entry to the territory is legal when border checks have been performed and the foreigner has been allowed to enter the country in accordance with laws regulating border control or/ and treatment on foreigners. Foreigners who do not fulfil the prescribed conditions to enter the country are rejected and their entry to the country is refused. However, in the WB region, there are exceptions in which foreigners who fail to fulfil the entry conditions still may qualify and be allowed to enter the country in a legal manner. Some of these exceptional cases are due to humanitarian grounds, national interest or as a result of the fulfilment of obligations of the state based on international treaties.

In the enforcement of border control, with the purpose to respect human rights standards, it is very important that the clear and detail procedures for entering the country and refusing entry are established and that negative decisions are being issued in written form with right on appeal. In order to ensure full implementation and protection of the rights of persons in need of international protection, as well as the application of the principle of *non-refoulement*, it is very important to prescribe the effective legal remedy on decisions of border police regarding entering the territory that can be reached only if they have a suspensive effect.<sup>78</sup>

### Decisions on refusing entry by countries

B&H	Serbia	Kosovo*	N.Macedonia	Albania	Montenegro
Written decision	Written decision	Written decision	Written decision	Written decision	Written decision
Yes	Yes	Yes	Yes	Yes	Yes
Right to appeal	Right to appeal	Right to appeal	Right to appeal	Right to appeal	Right to appeal
Yes	Yes	Yes	Yes	Yes	Yes
No suspensive effect	Exceptional suspensive effect	No suspensive effect	No suspensive effect	No suspensive effect	Exceptional suspensive effect

Practice in WB countries is that the foreigners that are refused to enter the country are given a written decision prepared from the border police. Against the decision for entry ban, the foreigner has the right to submit a written appeal within 8 days, in the national language, which is very disputable,<sup>79</sup> given that foreigners mainly do not understand languages spoken in this region. In Serbia, the written decision is the first time proscribed and introduced with the new Law on Foreigners. Before the adoption of new regulations, the UN Special Rapporteur on Torture (SRT) was recommended to the Republic Serbia to ensure that decisions taken by the border authorities, including refusals of entry and, more importantly, deportation decisions, are carefully documented and subjected to independent judicial review, and that any person affected by such measure be informed of their rights, including the right to legal remedy and legal counsel, in a language they understand.<sup>80</sup> According to the provisions of the Rulebook,<sup>81</sup> the decision contains the list of reasons for refusing entry and the police officer only needs to mark one of the given options, without further explanation of the decision for refusing the entry. Since the decision does not contain an explanation, the facts on which the decision is based, it is very hard to write an effective appeal based only on the reasons prescribed by the Law and contained in the negative decision. The decision in Albania is similar to the Serbian format of decision. This decision is called the "order on entry ban" and contains the list of reasons foreseen in the Law on Foreigners. The law stipulates that against this order

78 According to the ECtHR effective remedy against a decision which allegedly violets the non-refoulement principle must have an automatic suspensive effect (*Hirsi Jamaa et al. v. Italy*) in: *Complaint Mechanisms in Border Management and Expulsion Operations in Europe* - Op. cit.

79 SRT Report on Visit to Serbia and Kosovo\* in 2017 (A/HRC/40/59/ 25.01.2019), available at: file:///D:/Downloads/izvestaj-specijalnog-izvestioca-UN-za-torturu.pdf

80 Ibid.

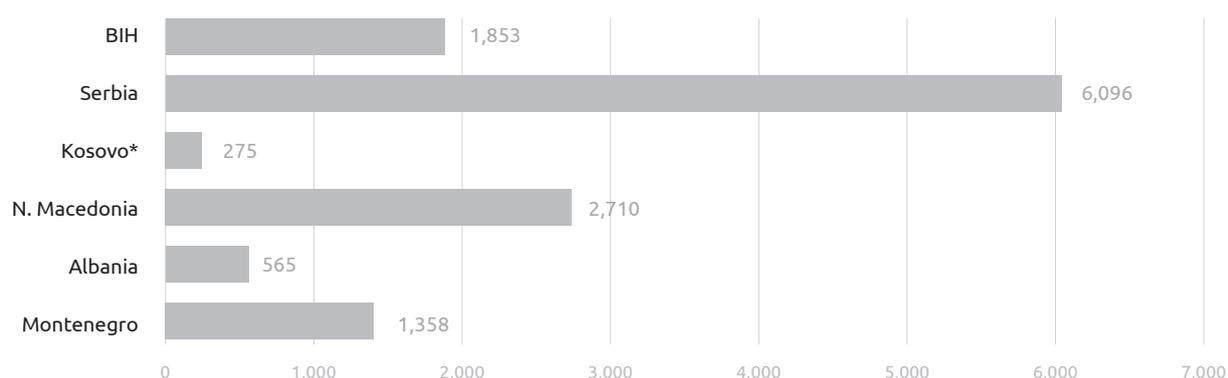
81 Rulebook on the Appearance of the Form to Refuse Entry into the Republic of Serbia, the Appearance of the Form to Grant Entry into the Republic of Serbia and the Manner of Entering Data on Refusing Entry into the Travel Document of the Foreigner, "Official Gazette of RS", No. 50/2018.

the foreigner has the right to file an appeal. However, the Law on Foreigners fails to foresee the authority the appeal should be filed to or the deadline for it. On the other hand, the very form of the decision states that a foreigner may file an appeal against the decision to refuse entry in line with the provisions of the Code of Administrative Procedure and/or Civil Code. This provision is considered a bit problematic since in addition to the fact that they do not speak the language, foreigners can hardly be expected to be familiar with the provisions of the Albanian law and the jurisdiction of the Albanian authorities and courts, and so this is hardly applicable in practice. As a rule, the appeal on the decision for entry refusal does not have a suspensive effect. However, if there are reasons for applying the principle of *non-refoulement*, in some WB countries (Serbia and Montenegro) the appeal still has a suspensive effect.

An additional guarantee is that the Serbian Law of Foreigners stipulates that, despite the existence of reasons for refusing entry, the foreigner may be granted entry if required so by international obligations<sup>82</sup> and the principle of *non-refoulement* could also be interpreted as one of them. In addition to the possibility of making a decision on granting entry for humanitarian reasons, although there is a reason for refusing entry, a visa could be issued for these reasons at the border crossing.<sup>83</sup> The North Macedonian Law on Foreigners in Article 11 also foresees an exceptional situation in which a foreigner who does not meet one or more conditions for entering the country can be granted permission to enter for humanitarian reasons, if it is in the national interest of the Republic of North Macedonia or due to the fulfilment of obligations under international agreements. Additionally, the North Macedonian Law of Foreigners (Article 19) establishes special protection, according to which foreigners may not be refused entry to the country when they express intention to apply for recognition of the right to international protection in North Macedonia, when they apply for the recognition of the right to international protection at the border crossings in North Macedonia or to whom North Macedonia has recognised the right to international protection. In practice, the effectiveness of this measure has not been tested as there have not been applications for international protection filed at the state border crossing points. Only in one case, a person was allowed to submit asylum claim at the Skopje International Airport, an action admitted by the authorities only after MYLA's intervention. In Serbia, however, some 702 intentions for seeking asylum were expressed at border crossings,<sup>84</sup> of which 325 were issued at the International Airport in Belgrade until 18 October 2018.<sup>85</sup> The provisions of the Albanian Law on Foreigners are similar, foreseeing that the categories of foreigners who seek asylum or temporary protection are excluded from the entry ban and therefore are guaranteed the entry to Albania even if the general requirements are not met. The situation is similar in other countries.

Finally, in all WB countries, except in Montenegro, an administrative dispute may be initiated against the second instance decision, so that judicial protection is ensured as well, but the duration of administrative disputes is mostly up to 60 days. Although the court procedure should be faster, in WB countries these administrative disputes are conducted in the regular procedure.

Denied entries 2018. (data from national authorities)



82 The entry can also be approved for humanitarian reasons or if there are interests of the Republic of Serbia.

83 At the border crossings during 2012, 204 visas were issued, in 2013, 461 visas were issued, in 2014 190 visas were issued, in 2015 80 were issued, in 2016, 63 visas were issued, in 2017 101 visas, while during 2018, 108 visas were issued. It can be concluded that the number of visas for humanitarian reasons is negligible, bearing in mind that the Republic of Serbia has generally reduced the number of issued visas at the border, with more than 95% of the visas issued to participants in international sports events. - Revised Action Plan for Chapter 24, p. 73.

84 Migratory Profile of the Republic of Serbia for 2018, p. 50. [http://www.kirs.gov.rs/media/uploads/Migracije/Publikacije/Migracioni\\_profil\\_2018.pdf](http://www.kirs.gov.rs/media/uploads/Migracije/Publikacije/Migracioni_profil_2018.pdf)

85 NPM Report on visit of Border Police station Belgrade at Nikola Tesla Airport - <https://npm.rs/attachments/article/796/Izvestaj%20Aerodrom.pdf>

## 8.1. Misdemeanours and criminal acts related to illegal border crossings

Unlike legal entry, illegal entry of foreigners as entry away from the place, time and manner set for border crossing, avoiding border checks, using fake documents or entering before entry ban expiry. For illegal entries, misdemeanours and criminal sanctions are prescribed. The act of smuggling of persons is also in close connection with illegal border crossings (which means illegal entries and illegal exits).

### Punishment for illegal border crossing by countries

<b>B&amp;H</b>	<b>Serbia</b>	<b>Kosovo*</b>	<b>N. Macedonia</b>	<b>Albania</b>	<b>Montenegro</b>
<b>Misdemeanours</b>	<b>Misdemeanours</b>	<b>Misdemeanours</b>	<b>Misdemeanours</b>	<b>Misdemeanours</b>	<b>Misdemeanours</b>
1. illegal border crossing	1. illegal entry 2. illegal border crossing 3. helping in illegal border crossing	1. illegal cross-border entry 2. helping in illegal border crossing	1. illegal entry 2. illegal border crossing	1. irregular border crossing	1. illegal entry 2. entry without passport or ID document
<b>Sentences</b>	<b>Sentences</b>	<b>Sentences</b>	<b>Sentences</b>	<b>Sentences</b>	<b>Sentences</b>
1. fine	1. fine 2. fine or imprisonment up to 30 days 3. imprisonment up to 60 days and fine	1. fine 2. fine	1. fine 2. fine	1. fine	1. fine 2. fine
<b>Criminal acts</b>	<b>Criminal acts</b>	<b>Criminal acts</b>	<b>Criminal acts</b>	<b>Criminal acts</b>	<b>Criminal acts</b>
1. smuggling of people 2. recruiting, harbouring and enabling stay in BiH 3. by an organised group and if victim is under 18 4. in cases resulting in death 5. smuggling of migrants by an organised criminal group or association	1. illegal border crossing 2. smuggling of people 3. qualified forms of smuggling 4. smuggling by organised criminal groups	1. smuggling of people 2. smuggling by organised criminal groups	1. illegal border crossing 2. smuggling of people 3. qualified forms of smuggling 4. smuggling by organised criminal groups	1. illegal border crossing 2. facilitating illegal border crossing 3. irregular entry, using a visa, or a counterfeit passport/residence permit	1. illegal border crossing 2. smuggling of people 3. smuggling by organised criminal groups
<b>Sentences</b>	<b>Sentences</b>	<b>Sentences</b>	<b>Sentences</b>	<b>Sentences</b>	<b>Sentences</b>
1. imprisonment of 1-10 years; 2. imprisonment of 6 months - 5 years; 3. imprisonment of 3-15 years; 4. imprisonment of not less than 5 years 5. Imprisonment of not less than 3 years.	1. imprisonment up to 1 year 2. imprisonment of 1-8 years 3. imprisonment of 2-12 years 4. imprisonment of 3-15 years	1. fine and imprisonment of 2-10 years	1. imprisonment up to 1 year/fine 2. 6 months - 5 years imprisonment 3. 1-10 years imprisonment 4. 1-5 years imprisonment	1. fine or imprisonment of up to 2 years 2. imprisonment of 1-4 years 3. imprisonment of 6 months to 4 years.	1. imprisonment of up to 1 year 2. imprisonment of 3 months - 5 years 3. imprisonment of 1-10 years

When we analyse data from the region, we can conclude that only in Serbia the law stipulates prison sentence for the misdemeanour of illegal crossing of the state border or illegal staying.

Moreover, the Serbian law foresees that helping in illegal border crossing is punishable as well. The provisions of Article 121, para. 3 of the Serbian Law on Foreigners stipulate that a person who aids or attempts to aid a foreign citizen to illegally enter, transit or reside in the territory of the Republic of Serbia will be punished by imprisonment for up to 60 days in prison and a fine. Taking into consideration how the criminal act of smuggling of persons is prescribed<sup>86</sup>, the question arises as to in which cases a person that “aids” a foreign citizen will be criminally prosecuted and when a misdemeanour procedure will be initiated.<sup>87</sup> It is encouraging that the Serbian Law on Foreigners stipulates that assisting for humanitarian reasons is not considered as assisting in the sense of committing a misdemeanour offence.

According to the Convention relating to the Status of Refugees<sup>88</sup> and the national laws on asylum in the WB region, a foreigner shall not be punished for unlawful entry or stay in the country if he/she expresses without delay intention to apply for asylum and provides a valid justification for illegal entry or stay. The Law on Asylum and the Law on Foreigners of Impressible that no penalty would be imposed to a foreigner, on account of his/her illegal entry or stay in BiH, coming directly from a territory where his/her life or freedom was threatened, provided that he/she reports himself/herself without any delay to the competent authorities and expresses justified reasons for illegal entry or stay in BiH. The Macedonian Law on International and Temporary Protection (Article 27) also stipulates that asylum seekers who have entered or reside in the territory of North Macedonia illegally and come directly from a state in which their life or freedom have been endangered will not be dealt with in line with the regulations on foreigners, if they expressly intend or apply for recognition of the right to asylum, and provide justified reasons for their unlawful entry or stay. In Albania, the similar situation is regulated by the Asylum Law which provides that asylum seekers entering the territory of Albania irregularly must apply for asylum within 10 days, in order to avoid the Criminal Code application on the charges of illegal border crossing, which is punishable by a fine or imprisonment of up to two years (Article 287 of the Criminal Code). The non-punishable principle is also regulated in the Serbian Law on Asylum and Temporary Protection in Article 8, but in a more favourable way than it is regulated in the Convention relating to the Status of Refugees, because it is not stipulated that refugees should come directly from the state in which their life or freedom have been endangered. It is only requested that the intention to apply for asylum is expressed without delay in order to provide a valid justification for illegal entry or stay.

Unlike the mentioned legislation in the region, in Kosovo\*, the Law on Asylum does not have an explicit provision on the principle of non-punishment for illegal entry of refugees, but the Criminal Code stipulates that no criminal proceedings can be initiated or continued against any *bona fide* refugee or internally displaced person coming from a territory where his or her life or body or fundamental freedoms or rights are threatened, provided that he/she has presented himself/herself to the police or the KFOR within a reasonable time and shows good cause for crossing at an unauthorised border or boundary-crossing point.<sup>89</sup>

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86 Art. 350, para. 2 of the Criminal Code (“Official Gazette of the RS”, no. 85/05.. 94/16) - Whoever enables another illegal crossing of the Serbian border or illegal sojourn or transit through Serbia with intent to acquire a benefit for himself or another shall be punished by imprisonment of one to eight years.

87 See more in: Grujčić Gordana: Migrant smuggling in Legal Framework of RS – A Penal Act Between Criminal Offence and Misdemeanour in: Towards a Better Future – Democracy, EU Integration and Criminal Justice, volume 1, Faculty of Law Kicevo, University St Kliment Ohridski, Bitola, 2019, p.p. 336-346.

88 Article 31.

89 Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18413>

## 9. Access to the Asylum Procedure

International protection of refugees begins by ensuring their acceptance into a safe country of asylum, by granting asylum and ensuring respect for their fundamental human rights, including the right not to be returned forcefully to a country in which there is a threat to their safety or survival (the principle of non-refoulement). The laws on asylum in WB region envisage recognition of the forms of international protection, such as refugee status and status of subsidiary protection, as well as, extraordinarily, in a situation of massive influx, temporary protection. The intention to apply for asylum can be expressed to the police officer at the border crossing point or in the nearest police station, but an intention can also be expressed in the asylum centre or other facility intended for accommodation of foreigners or a shelter for foreigners. Within the validity of the intention, duration of which varies from country to country, but no longer than 15 days, the foreigner is obliged to contact the Asylum Office in order to submit an asylum application. After that, the asylum seeker receives an identity document with an image –an asylum seeker card. Only in Kosovo\*, the application is submitted directly during the first contact with the border police, in a police station or at DCAM<sup>90</sup>, and intentions can be submitted only in the situations of a massive influx in which cases validity of confirmation of intention to apply for international protection is up to 72 hours.<sup>91</sup> The Asylum Office conducts one or more interviews about all the facts and circumstances relevant to deciding on the asylum application. The Asylum Office may uphold the application and grant refugee status or subsidiary protection, or it may dismiss or reject the application. The procedure may also be discontinued.

In most WB countries, the first instance decision can be appealed to the Asylum Commission. An appeal may be brought against the second instance decision to the Administrative Court, which is the final instance. In some countries, such as Montenegro and BiH, an appeal cannot be submitted against the decision rejecting asylum application. However, an administrative dispute may be initiated before the Court. Review of the court judgment before the Appellate Council of the same Court is possible, but it does not delay the execution of the first instance decision.

All countries have some mechanisms in place to provide grounds for the foreigners whose asylum claim has been denied to remain in the territory, if there are any reasons relating to non - refoulement. In the Law of BiH, foreigners whose asylum claim or granted refugee or subsidiary protection status have been legally rejected but who cannot be removed for reasons specified under Article 109 (Principle of Non-refoulement) paragraph (2) of this Law, should be issued by the Service, upon own request and following the recommendations of the asylum authority, a certificate of stay, permitting them to remain in BiH until security conditions for their return are met, which will serve them as the foreigner's ID card.

In Albania, "in case that the asylum application is rejected after the examination of the merits of the case, the rejected asylum seeker is subjected to return procedures to the country of origin. The return may be suspended for humanitarian reasons or based on the principle of the best interest of the child and/or the right to family life".<sup>92</sup> According to the Law on Asylum, the asylum review process should be guided by the principle that *'asylum seeker has the right of asylum'* and *'not be prejudiced against'* so as to be grounded in the asylum seeker's credibility premise.

For a readmitted person, who has already applied for asylum in BiH and has been issued asylum seekers card, it can be very difficult to apply for asylum again. The same situation is for those who only express intention to seek asylum. If returned to BiH, they rarely have the opportunity to access the asylum procedure. The situation in Kosovo\* is different and there are two cases of two stateless persons returned from Germany who have applied for asylum. There are no relevant data regarding North Macedonia, as the readmission with Serbia is not functional.

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90 Department for Citizenship, Asylum and Migration within the MIA.

91 Article 52, Law on Asylum.

92 Law on Asylum. See also the Law on Foreigners.

The problem that arises in practice is that migrants stranded in the transit centres have an undefined legal status. In North Macedonia, police officers at the border sites often refuse to register the asylum applications submitted from migrants and instead many of the migrants are pushed back to Greece without any legal and official procedure. In Serbia, during 2018 and 2019 a lot of migrants in transit centres were not registered. On the other side, countries of the WB region are transit countries and a lot of migrants who are determined to submit or have submitted asylum application, abandon their initial decisions and go further to Western European countries. As we can see from the statistical data below, during 2018 in North Macedonia, not a single intention for seeking asylum was registered, while in Serbia that number was twice lower than the number of total new arrivals, and so it can be concluded that irregular migration in the region is in expansion and tolerated by the countries. Although BiH had one of the biggest migratory pressures in the region with the largest number of registered migrants, only less than 7% sought asylum.

## **ASYLUM STATISTICS 2018**

### **BiH**

In 2018, out of 23,902 arrivals, 22,499 formally expressed intention to seek asylum.<sup>93</sup>

In 2018, 1,568 foreigners applied for asylum and 0 got refugee status, while subsidiary protection was granted to 11 persons.<sup>94</sup>

### **Serbia**

In 2018, out of 16,060 arrivals,<sup>95</sup> 8,410 formally expressed intention to seek asylum.<sup>96</sup>

In 2018, 341 foreigners applied for asylum and 11 persons got refugee status, while subsidiary protection was granted to 14 persons.

### **Kosovo\***

In 2018, out of 818 arrivals, 594 formally applied<sup>97</sup> for asylum.

In 2018, 594 foreigners applied for asylum and 61 got refugee status, while subsidiary protection was granted to 0 persons.

### **North Macedonia**

In 2018, out of 32,500 arrivals,<sup>98</sup> no one formally expressed intention to seek asylum.

In 2018, 297 foreigners applied for asylum and no one got refugee status, while subsidiary protection was granted to 6 persons.

### **Albania**

In 2018, out of 6,893 arrivals,<sup>99</sup> 5,728 formally expressed intention to seek asylum.

In 2018, 5,728 foreigners asked for asylum and 3 got the refugee status, while subsidiary protections were granted to 13 persons.

### **Montenegro**

In 2018, out of 4,753 arrivals, 4,570 formally expressed intention to seek asylum.<sup>100</sup>

In 2018, 3,127 foreigners applied for asylum and 14 were granted international protection.<sup>101</sup>

93 Migration Profile of BiH, p. 58. <https://dijaspora.mhrr.gov.ba/wp-content/uploads/2019/07/010720191.pdf>

94 Ibid. p. 57.

95 UNHCR, Serbia Update, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/67469.pdf>

96 Migratory Profile of the Republic of Serbia for 2018, p. 50.

97 In Kosovo\* does not exist intention for asylum.

98 MYLA, 2018 CSO's Report on Irregular Migration for SEE, p. 23, available at: [http://myla.org.mk/wp-content/uploads/2019/08/2018\\_CSOS-REPORT-ON-IRREGULAR-MIGRATION-FOR-SOUTH-EASTERN-EUROPE.pdf](http://myla.org.mk/wp-content/uploads/2019/08/2018_CSOS-REPORT-ON-IRREGULAR-MIGRATION-FOR-SOUTH-EASTERN-EUROPE.pdf)

99 Data from Mol of Albania.

100 Progress Report Montenegro 2018, p.p. 39-40, available at: <https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/20190529-montenegro-report.pdf>

101 Ibid.

## 9.1. Accelerated asylum procedure at the borders

Only in Serbia and Montenegro, there is an option for accelerated asylum procedure on border crossings stipulated as such in the laws on asylum. In both countries, the procedure is the same. At the border crossing, or in the transit zone, an accelerated asylum procedure can be carried out within 28 days.<sup>102</sup> However, in order for this procedure to be carried out, it is necessary to provide adequate accommodation and food to the asylum seekers, and the adequate conditions in the Republic of Serbia and Montenegro are still not in place. The accelerated procedure at the border can only be carried out if the request can be rejected or refused, and it is explicitly provided that the asylum procedure at the request of an unaccompanied minor cannot be conducted at the border or in the transit area. In the accelerated procedure, access to legal aid must also be provided. If the Asylum Office fails to reach a decision within 28 days, the applicant is allowed to enter the territory for the purpose of conducting the procedure upon the asylum application. The decision can be appealed against within five days from the date of submission to the Asylum Commission in Serbia, and to the Administrative Court in Montenegro. The Commission is obliged to decide on the appeal within 15 days, and the appeal postpones the execution of the decision. Regardless of the existing legal grounds, due to the inadequate facilities and other infrastructural resources on borders, in practice in both countries, the border crossing/transit zone procedure has not been carried out since the adoption of the new legislation.

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<sup>102</sup> Law on Asylum, Art. 41.

# 10. Returns

A foreigner may be returned to his/her country of origin, in a transit country in accordance with readmission agreements or other procedures, as well as in another country in which he/she voluntarily decides to return and is accepted. The principle of *non-refoulement*, best interest of the child, life within a family, and the health status provide guarantees that protect the foreigners from being deported back to countries where their human right would be violated.

## 10.1. Expulsion decisions and entry bans

The main reasons a foreigner may be subject to an expulsion measure are as follows: if has entered country illegally, remained in country after the expiry of the visa or residence permit or after the expiry of the visa-free stay, or if his/her application for residence permit had been rejected, and has not left country in the period specified for voluntary departure; has remained in country after the cessation of refugee status, subsidiary protection or temporary protection or after the asylum claim was rejected, legally sentenced for a crime related to trafficking in narcotic drugs, weapons, human beings, terrorism, money laundering, or any other form of organised, cross-border or transnational crime; legally convicted of a criminal offence for which a prison sentence of one year or a more severe punishment may be pronounced; his/her presence constitutes a threat to public order and security, etc.

As a rule, the return decision sets a voluntary return deadline, which ranges from 7 to 30 days in all the countries. The voluntary enforcement of the return decision may be extended for an appropriate period, mainly from 60 days to one year (in BiH and North Macedonia there is no specific deadline), taking into account the specific circumstances of the individual case, for example finishing the school year, execution of financial obligations, health problems, etc. In some countries (e.g. Kosovo\*), a foreigner who has been granted an extension of time for voluntary departure, has to show up at the Border Police every ten days. A foreigner who has been granted an extension of the voluntary return period has the following rights: to reside together with his/her family members who are present in the territory; to use medical emergency services, treatments for specific diseases and public health services; minors have guaranteed access to the education system; to special services for people with disabilities. On the other hand, if there is estimated flight risk or if the foreigner poses a threat to public order, public peace or security the foreigner can be obliged to leave the country immediately or may be given a period of 7 days to leave the country voluntarily.

In order to follow the enforcement of the return decisions, the Serbian Law on Foreigners stipulates the possibility that the return decision indicates the place where they must cross the state border with the obligatory reporting to the police officer at the border crossing. In Kosovo\* as well, the Law on Foreigners stipulates that the return decision need to contain the border crossing point through which the foreigner will pass. However, the existing practice indicates that it is quite difficult to monitor the enforcement of return decisions. If a foreigner does not leave the country within a certain period, he/she will be forcibly removed.

The positive aspects of the WB countries legislations are that all of them guarantee the respect of the principle *non-refoulement* and special protection of minors, particularly unaccompanied minors. On the other side, as a rule, the appeal does not postpone the execution of the expulsion decision, except if the condition for the application of *non-refoulement* is met. However, the laws of certain WB countries stipulate that some serious security reasons may, to the some extent, abolish this obligation of the respective state - if a foreigner who is justifiably considered a threat to national security or who has been convicted by the final judgment for a serious crime and constitutes a danger to the country may be forcibly removed or returned to another country, except if he/she would thus be exposed to a real risk of being subjected to death penalty or execution, torture, inhuman or degrading treatment or punishment.

## Expulsion decision

B&H	Serbia	Kosovo*	N.Macedonia	Albania	Montenegro
Deadline for voluntary return	Deadline for voluntary return	Deadline for voluntary return	Deadline for voluntary return	Deadline for voluntary return	Deadline for voluntary return
7 - 30 days	7 - 30 days	7 - 30 days	up to 30 days	7 - 30 days	7 - 30 days
Right to appeal	Right to appeal	Right to appeal	Right to appeal	Right to appeal	Right to appeal
Yes	Yes	Yes	Yes	Yes	Yes
Suspensive effect	Exceptional suspensive effect	No suspensive effect	No suspensive effect	Suspensive effect	No suspensive effect
Postponing forced return	Postponing forced return	Postponing forced return	Postponing forced return	Postponing forced return	Postponing forced return
Yes	Yes	Yes	Yes	Yes	Yes
Postponing is not defined in the law	Up to 1 year	Up to 60 days	Up to 90 days for voluntary return, forced return period of postponing is not defined in the law	More than 30 days	Up to 90 days

When issuing a return decision, the competent authority may also impose an entry ban on the foreigner. In all WB countries, an entry ban can be issued for a period no longer than five years and in case of the expulsion decision in Montenegro, that ban can be up to 20 years. In the WB countries, the entry ban can be shortened for humanitarian reasons after half the period of the entry ban has passed. In addition, in all the countries, except Montenegro, entry ban can be prolonged for an indefinite time for security reasons.

There are some differences in the regulation of an entry ban in the region. In the Serbian law, an entry ban can be issued in cases the person breaches regulations governing the employment and work of foreigners; assists in the unlawful entry, transit or stay; concludes marriage for the benefit; breaches regulations governing the spread of violence at sports events, public order and peace, weapons or substance abuse; avoids tax liabilities; has committed a criminal offence prosecuted ex officio; has been convicted in another state for a serious crime; repeats the misdemeanours and commits offence with elements of violence. Unlike the Serbian law, some of these reasons in the laws on foreigners of North Macedonia,<sup>103</sup> BiH and Montenegro<sup>104</sup> are the reasons prescribed for issuing an expulsion decision.

## Entry ban

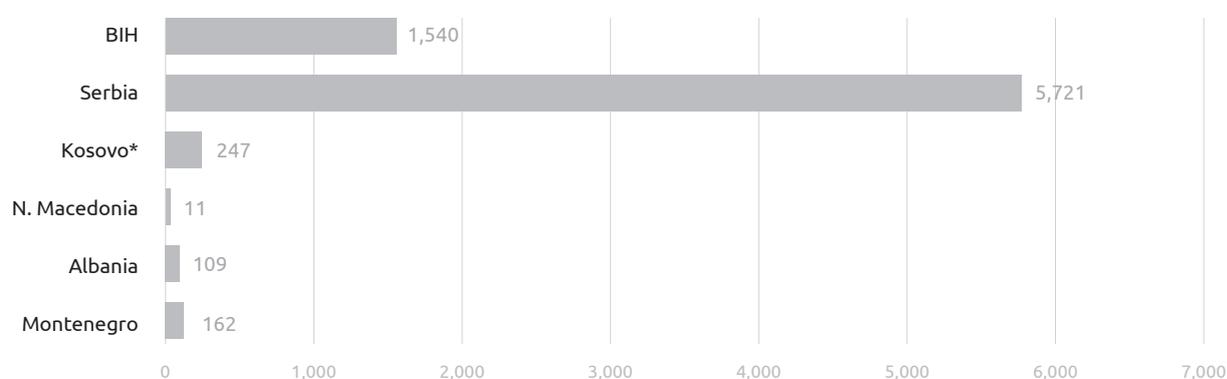
B&H	Serbia	Kosovo*	N.Macedonia	Albania	Montenegro
Duration	Duration	Duration	Duration	Duration	Duration
1 - 5 years	up to 5 years	1 month - 5 years	up to 5 years	3 months - 5 years	3 months - 20 years
Extension for security reasons					
Yes	Yes	Yes	Yes	Yes	No
Entry ban can be omitted for humanitarian reasons	Entry ban can be omitted for humanitarian reasons	Entry ban can be omitted for humanitarian reasons	Entry ban can be omitted for humanitarian reasons	Entry ban can be omitted for humanitarian reasons	Entry ban can be omitted for humanitarian reasons
No	Yes	No	Yes	Yes	No

<sup>103</sup> Law of Foreigners of North Macedonia, Art. 149.

<sup>104</sup> Montenegrin Law on Foreigners, Article 110.

Special protection measures are stipulated for minors. A child cannot be returned to his/her country of origin or to another country that agrees to accept the child until sufficient conditions for acceptance are not provided from that country. Separated or unaccompanied children require prompt action regarding their early identification, protection and care, as well as with regard to tracing the families of separated children, in order to connect them with their parents or other caregivers.

Expulsion decisions 2018 (data from national authorities)



## 10.2. Immigration detention

During the return or asylum procedure, migrants/asylum seekers can be placed in immigration detention facilities. Concerning immigration detention, there are differences in practice in the WB region. In some countries, unaccompanied minors are allowed to be detained, and in some not. Furthermore, the detention duration upon the first decision and also maximum duration of detention differ from country to country. In some countries, there are differences between detention practice of migrants and detention practice of asylum seekers. Generally, in WB countries, there is no *ex officio* judicial review of the detention procedure. Only in Kosovo\*, the Basic Court *ex officio* decides to extend the detention of asylum seekers after 8 days, thereby introducing judicial control over detention decisions. However, in addition to the satisfactory legal framework, problems in the migration detention practice could be identified. Namely, after his last visit to Kosovo\* in 2017, the UN Special Rapporteur on Torture (SRT) recommended to the authorities to “refrain from policies of mandatory, prolonged or indefinite detention of migrants. Any migration-related detention should remain an exceptional measure and should be physically separated from detention relating to the criminal justice system. Migrants, especially children, should never be detained solely because of their irregular migration status or simply because they cannot be expelled.”<sup>105</sup> Additionally, although in some WB countries national constitutions guarantee that a person may be deprived of liberty only by a court decision, and that in the situations when a person is not deprived of liberty by a court decision, the person must be brought before the competent court without any delay, in the area of immigration detention it is not the case.<sup>106</sup>

Detainees can lodge an appeal to the Administrative Court, except in BiH where an appeal can be submitted to the Ministry of Security in which case it is questionable whether the second-instance authority is independent and impartial regarding the first-instance authority. In Serbia, detained migrants submit appeals to the Administrative Court and detained asylum seekers submit appeals to the Higher Court. Serbia is also the only country in the region where unaccompanied and separated children (UASC) cannot be detained in the detention centre for foreigners.

<sup>105</sup> Report on Visit to Serbia and Kosovo\* of the UN Special Rapporteur for Torture (A/HRC/40/59/ 25.01.2019.), p. 20.

<sup>106</sup> For example, the Macedonian Constitution- “No individual's freedom can be restricted, except by a court decision and in cases and a procedure determined by a law.”, the Serbian Constitution-“A person deprived of liberty without a court decision must be delivered without delay, and at the latest within 48 hours, to the competent court, otherwise he shall be released.”

## Immigration detention by countries

B&H	Serbia	Kosovo*	N.Macedonia	Albania	Montenegro
Duration upon the first decision	Duration upon the first decision	Duration upon the first decision	Duration upon the first decision	Duration upon the first decision	Duration upon the first decision
90 days - both migrants and asylum seekers	90 days migrants / 3 months asylum seekers	6 months migrants / 8 days asylum seekers	6 months migrants / 3 months asylum seekers	6 months migrants	6 months migrants / 3 months asylum seekers
Max. duration	Max. duration	Max. duration	Max. duration	Max. duration	Max. duration
180 days - both migrants and asylum seekers	180 days migrants / 6 months asylum seekers	12 months migrants / 2 months asylum seekers	18 months migrants / 6 months asylum seekers	12 months migrants	18 months migrants / 6 months asylum seekers/6 weeks foreigners in transfer
Right to appeal	Right to appeal	Right to appeal	Right to appeal	Right to appeal	Right to appeal
Yes	Yes	Yes	Yes	Yes	Yes
Competent appeal authority	Competent appeal authority	Competent appeal authority	Competent appeal authority	Competent appeal authority	Competent appeal authority
Ministry of Security	Administrative/ Higher Court	Basic/Appeal Court	Administrative Court	Judicial District Court	Administrative Court
<i>Ex officio</i> court revision	<i>Ex officio</i> court revision	<i>Ex officio</i> court revision	<i>Ex officio</i> court revision	<i>Ex officio</i> court revision	<i>Ex officio</i> court revision
No	No	No	No	No	No
UASC can be detained	UASC can be detained	UASC can be detained	UASC can be detained	UASC can be detained	UASC can be detained
Yes	No	Yes	Yes	Yes	Migrants No/ asylum seekers Yes
Alternative measures	Alternative measures	Alternative measures	Alternative measures	Alternative measures	Alternative measures
Yes	Yes	Yes	Yes	Yes	Yes

## 10.3 Readmission

The readmission agreement facilitates and speeds up the process of returning of the citizens of one of the contracting parties, as well as third-country nationals or stateless persons who are illegally transferred from the territory of one of the contracting parties directly to the territory of the other contracting party.

The most WB countries concluded readmission agreements with the European Union during 2007.<sup>107</sup> Only Kosovo\* has not concluded agreement with the EU, but has bilateral readmission agreements with 24 countries, including 20 EU member states and members of the Schengen area. Upon the Readmission Agreement with EU, WB countries are obliged to readmit their own nationals, third-country nationals or stateless persons. The agreement regulates the reciprocal obligations of the EU for the readmission of its own nationals, third-country nationals and stateless persons, as well as the readmission procedures, transit operations, costs, data protection, as well as the implementation and application provisions. This agreement provides an obligation to conclude protocols for implementation with each EU member state on defining technical issues, e.g. competence of relevant authorities, border crossings for readmission and acceptance of persons of concern, fast track procedures, etc.

Besides the agreement with the EU as a whole, the countries of the Balkan region have also concluded bilateral readmission agreements and implementation protocols with EU member states, as well as non-EU member states and bilateral agreements between each other.

### 10.3.1. Review by countries

#### *BiH*

**Implementation protocols** with the following countries: Estonia, Malta, Austria, Bulgaria, Hungary, Czech Republic, Denmark, Romania, Germany, Belgium, Netherlands, Luxembourg, Russian Federation and Ireland.

**Bilateral readmission agreements** with the following countries: Moldova, Denmark, Norway, Switzerland, Serbia, Montenegro, N. Macedonia, Turkey, Albania and Russian Federation.

#### *Serbia*

**Implementation protocols** with the following EU member states: Italy, Slovenia, France, Hungary, Great Britain, Austria, Malta, Slovakia, Germany, Romania, Bulgaria, Estonia, the Czech Republic, Benelux countries, Cyprus, Greece, Lithuania, Portugal and Sweden.

**Bilateral readmission agreements** with the following countries: Bosnia and Herzegovina, Denmark, Canada, Norway, Croatia, Switzerland, North Macedonia, Moldova, Albania, Montenegro, Russian Federation, Germany, Sweden, Belgium, the Netherlands, Luxembourg,<sup>108</sup> Austria, Slovakia, Bulgaria, France, Hungary and Slovenia.

#### *Kosovo\**

**Bilateral readmission agreements** with the following countries: Croatia, Switzerland, Germany, Austria, Malta, Norway, Lichtenstein, Bulgaria, Sweden, Finland, Hungary, Check Republic, Albania, Montenegro, France, Slovenia, Denmark, Turkey, Estonia, North Macedonia, United Kingdom, Benelux (Belgium, Netherlands and Luxembourg) and Italy.

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107 Albania signed the Readmission Agreement (RA) with the European Commission in 2005 and is the first country in Europe and the fourth in the world to sign a readmission agreement with the European Commission following Macao, Sri Lanka and Hong Kong. Source: Study Report "On the Rights and Freedoms of Migrants, Asylum Seekers and Refugees in Albania, during 2012 - 2017", Albanian Helsinki Committee, July 2018, p. 77.

108 Agreement has been signed with the Benelux countries, with the Republic of Serbia presenting one contracting party and the Benelux countries another contracting party.

**Implementation protocols** with the following countries: Croatia, Switzerland, Germany, Austria, Malta, Norway, Lichtenstein, Bulgaria, Sweden, Finland, Hungary, Check Republic, Albania, Montenegro, France, Slovenia, Denmark, Turkey, Estonia, North Macedonia, United Kingdom, Benelux (Belgium, Netherlands and Luxembourg) and Italy.

#### ***North Macedonia***

**Implementation protocols** with the following countries: Austria, the Czech Republic, Benelux countries (Belgium, Netherland and Luxembourg).

**Bilateral readmission agreements** with the following countries: Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Denmark, France, Germany, Hungary, Iceland, Italy, Kosovo\*, Moldova, Montenegro, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Benelux countries and Croatia.

#### ***Albania***

**Implementation protocols** with the following countries: Belgium, Luxembourg, Netherlands , Austria, Greece, Italy, Hungary, France, Slovenia, Slovakia, Malta, Czech Republic, Bulgaria, Portugal, Spain.

**Bilateral readmission agreements** with the following countries: Italy, Switzerland, Belgium, Romania, Bulgaria, Germany, Croatia, United Kingdom, North Macedonia, European Union, Denmark, Iceland, Norway, Bosnia and Herzegovina, Montenegro, Kosovo\*, Serbia, Moldavia, Ireland, United Arab Emirates, Russia.

#### ***Montenegro***

**Implementation protocols** with the following countries: Slovenia, Malta, Austria, Bulgaria, Check Republic, Germany, Benelux, Slovakia and Estonia.

**Bilateral readmission agreements** with following countries: Norway, Switzerland, Croatia, Bosnia and Herzegovina, Albania, Kosovo\*, North Macedonia, Moldova, Turkey, Serbia.

### **10.3.2. Practice and main challenges**

According to the latest reports of the European Commission, WB countries almost in 100% of the requests, admit their own citizens from the EU, but there is still the problem of admission of third-country nationals. In Serbia, the admission of nationals under the readmission agreement with the EU is going efficiently, but according to the European Commission's assessment, the readmission of third-country nationals is not at the satisfactory level.<sup>109</sup> A similar situation is in North Macedonia, where the readmission agreement with the EU is being implemented in a satisfactory manner regarding own nationals, but the number of third-country nationals in 2018 remained low.<sup>110</sup> The readmission agreement with the EU continued to be implemented smoothly regarding Montenegrin nationals, while the number of readmission requests from EU member states continued to decrease. Montenegro accepted 100% of readmission requests concerning Montenegrin nationals, or 402 individuals. However, 93% of the requests regarding non-Montenegrin nationals were refused, mostly regarding members of the Roma community with invalid passports of the former Yugoslavia that did not meet the conditions for readmission according to the Montenegrin authorities.<sup>111</sup> The total number of citizens of BiH returned from EU member states decreased from 4,025 in 2015 to 3,730 in 2016 and 2,660 in 2017, while the return rates are stable at 74.8%, 74.6% and 72.7% respectively.<sup>112</sup> Only with Albania, the readmission agreement with the EU is being implemented in a satisfactory manner both for own and third-country nationals.

Regarding regional cooperation and implementation of the bilateral agreements among WB countries, the situation is as follows. According to official data, 450 persons were readmitted from BiH to Serbia (275 through the regular procedure and 175 through the accelerated procedure), while 193 persons were

109 Serbia 2019 Report, {COM(2019) 260 final}, European Commission, Brussels, 29/5/2019, p. 39.

110 EU Report on North Macedonia, 2019.

111 EU Report on Montenegro, 2019.

112 EU Report on BiH, 2019, p. 66.

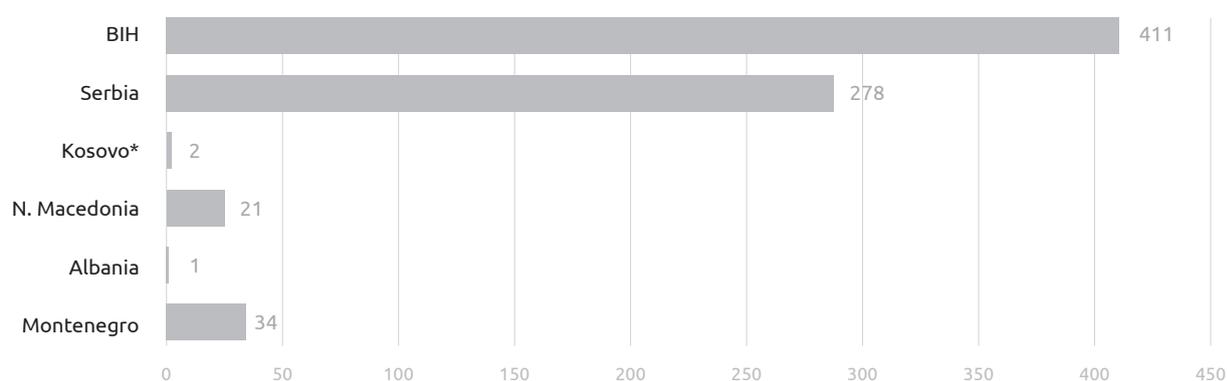
admitted from BiH to Montenegro (143 through the regular procedure and 50 through the accelerated procedure).<sup>113</sup> The largest number of persons admitted to BiH under the Readmission Agreement is from the Republic of Croatia. The readmission agreement with the Republic of Croatia is one of the parameters used to monitor illegal migration. According to the Minister of Security of BiH, the implementation of readmission agreements with Serbia, Montenegro and Croatia are largely affected by the increased number of arrivals to BiH, and that all three countries are trying to avoid their contractual obligations.<sup>114</sup> The same challenge exists in the application of bilateral readmission agreement between Serbia and North Macedonia, since North Macedonia usually admit only own citizens.<sup>115</sup> Montenegro accepted to readmit 730 third-country nationals from neighbouring countries in 2018, of which 704 from BiH.<sup>116</sup> However, it was able to return only 36 third-country nationals to Albania, although Albania remains the main entry point to Montenegro.<sup>117</sup> Therefore, we can conclude that bilateral cooperation in the implementation of the readmission agreement in the region is not at an adequate level.

The main challenge is that the most WB countries have not yet signed the readmission agreements with countries of origin of migrants transiting, residing or seeking protection in the country, although they plan some measures and take some actions in this direction. Only Albania, during 2018, signed the readmission agreements with Morocco, Afghanistan, Iraq and Iran.

#### 10.4. Assisted voluntary return (AVR)

At the request of the foreigner whose asylum application has been rejected, refused, dismissed or suspended, as well as the foreigner who has been denied the right to asylum, competent authority undertakes appropriate measures to enable that person to voluntarily return to the country of origin. Voluntary return programmes for foreigners who do not have funds for return are mainly implemented through the International Organization for Migration (IOM). All WB countries have cooperation with IOM and the last official cooperation with IOM was concluded in Kosovo\*, in 2019. In addition, there is the possibility of independent voluntary return of a foreigner when the costs of return are covered by the foreigner him/herself. During the procedure for voluntary return, the foreigner has the right to stay and to freedom of movement, accommodation, food, clothing and footwear, health care, preschool, primary and secondary education, information and legal assistance, freedom of religion. According to the Serbian Law on Foreigners, during the deadline for voluntary return, AVR programmes can also include foreigners who have been issued the decision on removal. In Kosovo\*, in order to encourage assisted voluntary return, the police may revoke the decision on removal or revoke the entry or residence ban. In addition, in the light of encouraging assisted voluntary return, the Ministry may conclude agreements or cooperate with other countries' competent bodies, international organisations and civil society organisations, as well as provide travel documents, travel tickets, and conduct financial payments.

AVR supported by IOM 2018 (data from IOM and national authorities)



113 Ibid. p. 66.

114 <https://faktor.ba/vijest/mektic-svako-ko-moze-gleda-da-ne-prihvati-migrante/22774>

115 In 2018 readmitted 1 person, citizen of North Macedonia.

116 EU Report on Montenegro, 2019.

117 Ibid.

## 10.5. Informal return

The consequences of tightening border controls in the border areas and the closure of borders have increased the smuggling activities, illegal border crossing, and violations of the rights of the migrants. A typical example of migrant's rights violations is the informal returns, i.e. pushbacks and push forwards along the borders. Pushbacks/push forward is a term used to describe practice by authorities of the forcible return of individuals who just enter their country from another country. Therefore, pushbacks encompass the legal concept of collective expulsion, which is prohibited in Article 4 of the Protocol 4 to the European Convention on Human Rights (ECHR). Pushbacks practices are also against international and EU law because they deny people the right to seek assistance and violate the principle of *non-refoulement*. In most cases, it is chained reaction and sometimes states try to avoid responsibility for the illegal activities by presenting these activities as a legitimate goal of protection of state borders and preventing illegal entries. In practice, when a foreigner illegally crosses the state border outside the place, the time or the manner determined for crossing the state border or is caught immediately after the illegal crossing of the state border, the authorities will not issue a return decision not any other decision for expulsion, but they will just push the foreigner back.

In North Macedonia migrants apprehended in border areas are regularly placed in temporary transit centres, near the border, and pushed back to the previous transit country within days.<sup>118</sup> At the southern border, the informal returns are organised in a tent outside the transit centre of Vinograd, which is used for temporary accommodation of individuals that have entered the country illegally. Here, the migrants are photographed, and only basic personal data are taken by officials of the Ministry of Interior. After that, without any official procedures or records, they are immediately returned back to the country from which they entered North Macedonia (mostly Greece).

The UNHCR continues to record collective expulsions to Serbia from the neighbouring countries. There were 10,432 such expulsions in 2018, up from 8,772 in 2017. Most pushbacks were from Croatia (6,541). At the same time, the UNHCR and its partners noted over 8,000 irregular movements from Serbia to North Macedonia. Together with pushbacks, migrants were often alleged to have been subjected to various forms of abuse including beatings with rubber batons and fists, slapping, kicking, dog bites, use of tear gas, use of rubber bullets, insults, humiliation and intimidation at the hands of Croatian police.<sup>119</sup> Although the cases of abuse had been documented in detail by a team consisting of lawyers, forensic specialists, psychologists, pedagogues and psychiatrists the Croatian Ministry of Interior continued to deny that there had been any violations committed by its law enforcement agencies. However, in July 2019 the President of Croatia admitted both the use of force and pushbacks of migrants.<sup>120</sup>

Similar practices were documented among the persons expelled from Hungary. The main difference is that Hungary allows a small number of people to seek asylum in one of the two transit zones on its border with Serbia, while Croatia does not allow anyone to access the asylum procedure if they come from Serbia.

Authorities in Croatia also sealed the border with BiH and were sending back to BiH anyone with illegal status. Many migrants complained of being beaten and robbed by Croatian police when they attempted to cross over.<sup>121</sup> There were numerous allegations toward Croatian border police of bad treatment of the migrants who tried to cross the border. They were taking all their documents, phones and in some cases they used force. This is confirmed by the testimonies of people who were forced to enter the country through areas other than the formal border crossings, in the middle of the night, and without an official transfer.<sup>122</sup> In support of the allegations, there are reports based on the testimonies of the pushback victims and police violence.<sup>123</sup> The Human Rights Watch report about the migrant situation in 2018, states

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118 US States Department North Macedonia Report on Human Rights 2018.

119 Documenting abuse and collective expulsions of refugees and migrants, BCHR and IAN. Available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2019/01/DOCUMENTING-ABUSE-AND-COLLECTIVE-EXPULSIONS-OF-REFUGEES-AND-MIGRANTS.pdf>

120 Kitarović potvrdila: Policija je nasilna prema migrantima, Available: <https://www.blic.rs/vesti/svet/kitarovic-potvrdila-policija-je-nasilna-prema-migrantima/t8ezlxt>

121 <https://www.rferl.org/a/bosnia-struggling-flood-migrants-other-balkan-routes-shut-down/29448610.html>

122 <https://www.asylumineurope.org/reports/country/croatia/access-territory-and-push-backs>

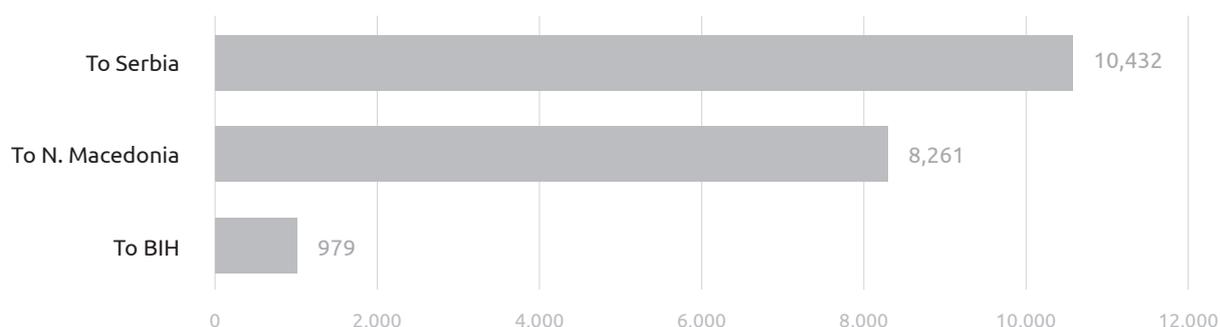
123 <https://www.borderviolence.eu/>

that 20 people provided detailed reports of violent behaviour with Croatian border forces.<sup>124</sup> Unlawful expulsions and deportations as well as pushbacks were widespread through the entire border line from Croatia to BiH, as well from BiH to Serbia. In response to larger numbers of migrants and refugees crossing through BiH, there were reports of pushbacks to Serbia and Montenegro. According to UNHCR reports, the number of testimonies of collective expulsion into Serbia increased.<sup>125</sup> The arbitrary has become the norm, since there are cases of people with asylum seeker cards in BiH, who are pushed back to Serbia, and people who come from Serbia who are pushed back as well.

In Kosovo\*, during 2018, 109 returns/pushbacks incidents were reported. From Kosovo\* to the neighbouring countries and/or Turkey 88 groups of persons were returned back by Kosovo\* authorities, where 275 Turkish nationals were returned back to Turkey from IAP. 14 other pushback incidents were carried out by Kosovo\* authorities where 81 individuals were pushed back to Albania. From the neighbouring countries to Kosovo\* 2 pushback incidents were carried out by Serbian authorities where 7 individuals were pushed back to Kosovo\* and 5 other pushback incidents were carried out by Montenegro authorities where 11 individuals were pushed back to Kosovo\*. The majority of pushbacks occurred in the green border zone in Vermice.

Primarily due to the nature of these activities, but also because of the different methodological approaches used by different CSOs and international organisations that monitor and investigate pushbacks, there is no uniform statistics and sometimes one pushback incident can be counted more than once and can be classified in different ways. Taking all these facts in consideration, we have to say that there is no regional methodology and approach in collecting data of pushbacks in the WB region and consequently statistical data could not be compared or analysed at the regional level.

WB countries with the largest number of informal returns in 2018 (data from the UNHCR and partners)



124 <https://www.hrw.org/news/2018/12/11/croatia-migrants-pushed-back-bosnia-and-herzegovina>

125 Desperate Journeys, January - December 2018, UNHCR, available at: <https://www.unhcr.org/desperatejourneys/>

# 11. Final Remarks and Recommendations

Unquestionably, numerous activities are being undertaken in the WB region aimed at adapting legislation and practice to international and regional standards, as well as the challenges arising from the current migration flow present in this region.

The main driver of the reform process is the aspiration of countries to take a step closer to the EU standards and requirements through changes in legislation and the established practices. We believe that the commitment and dedication of the WB region should also be used to build complementary systems of migration and asylum management in the region. This will consequently contribute to a higher level of protection of the rights of migrants and persons seeking international protection and the rationalisation of the use of internal capacities in all the countries. Indirectly, the “convergence” of the systems will also affect migration trends in the region and reduce the unfavourable trend of “migrants in the WB limbo”.

In the process, it seems particularly important that the region uses the potential of the regional approach to particular issues while respecting the specificities that arise from internal frameworks. Having in mind the magnitude of the challenges posed by migration, as well as the real individual capacities, strengthening regional cooperation and joint participation in debates within the European Union could be of particular importance for improving the situation in certain areas of migration.

## Legal Framework

- Further gradual harmonisation of domestic legislation with the EU acquis is required, while preserving the attained level of rights and freedoms already guaranteed by national regulations. It is also crucial to take into account the particularities of the national legal order in this process.
- Ensuring further conditions for the implementation of new i.e. amended regulations are necessary.
- National regulations governing the position of foreigners should contain certain more favourable conditions for regulating temporary status (e.g. temporary residence for humanitarian reasons) and foreigners who have been the subject of smuggling, and who are ready to cooperate with the competent prosecuting authorities regarding the detection of this criminal offence.
- Through legislation, the discretionary powers of public authorities that treat foreigners and other migrants should be minimised by prescribing precise possible legal conditions under which such powers are exercised.
- Through legislation, enhanced guarantees should be introduced for the protection of vulnerable groups, especially unaccompanied and separated children.

## Policy Framework

- New strategies and action plans need to be adopted instead of the expired ones. In addition to valid strategic documents, it is very important that the adopted strategic goals are further operationalised through the accompanying action plans.
- The latest data on the situations in the countries should be used when developing strategies.
- Analyse the existing regional cooperation and its results in the strategies and accordingly set new goals for regional cooperation, as well as identify where the cooperation should be improved.
- It is crucial that the envisaged measures and activities should be accompanied by a financial projection of the costs of implementing the measures, as well as the forecasting of possible sources of funding, both through the use of national funds and through donor funds.

### **Institutional Framework**

- Improve the mutual coordination of competent authorities responsible for migration management, as well as their regional cooperation with the authorities of the same competencies of neighbouring countries and the cooperation with international and civil society organisations.
- Establish and strengthen mechanisms for the periodic exchange of knowledge and experience, as well as organise regional training for civil society organisations dealing with migration and asylum in the Western Balkans region.
- Establish and strengthen mechanisms for independent and impartial border monitoring, as well as regional cooperation, training and exchange of knowledge and experience between border monitoring institutions and organisations.
- It is crucial to strengthen the role of independent institutions in the region in order to monitor the implementation of forced removal in the region and the implementation of measures related to the restriction of freedom of movement for migrants and asylum seekers.

### **Relations with Frontex**

- In the example of Albania, countries in the region should look at how the status agreement with Frontex works and prepare for its future conclusion and implementation, as well as for negotiating possible changes to the draft future status arrangements.
- Having in mind that Western Balkan countries are in the process of concluding status agreements with Frontex, and that the powers of representatives of this organisation are very broad, regionally it is necessary to consider the possibilities for establishing and strengthening control mechanisms.

### **Access to the Territory**

- Decisions to refuse entry should include a brief explanation of the reasons the entry has been denied so that a foreigner can adequately complain about them.
- Efficient legal remedies should be provided against decisions to refuse entry into the country, preferably in a language the foreigner understands, and provide that in justified cases legal remedies have a suspensive effect.
- Administrative proceedings against a second-instance decision refusing entry should be urgent.
- Asylum seeking should be allowed at border crossings as well, while respecting international and regional human rights protection standards.
- Take measures to temporarily resolve the status of irregular migrants, such as introducing tolerated stay, issuing a decision to postpone forcible removal, a temporary residence for humanitarian reasons, etc. and clearly identify their rights and obligations in line with their vulnerability.

### **Access to the Asylum Procedure**

- Foreigners returned under readmission agreements should not be automatically denied the opportunity to seek asylum upon their return to the requested country.
- Migrants who have entered the country and who want asylum should be given access to the asylum procedure.

### Returns

- An appeal against a return decision should have an automatic suspensive effect.
- If states are not able to implement return decisions, it is not appropriate for the authorities to make return decisions in cases where the prerequisites for voluntary return have not been fulfilled (without assessment, without guarantees, etc.) but other modalities such as tolerated stay should be considered.
- In the event of an entry ban for reasons of security of unlimited duration, the possibility of its periodic review should be introduced.
- Consider options for reviewing the prescribed maximum length of migrant detention and avoid taking the maximum detention period automatically, but adopt the more favourable solutions that already exist in the Western Balkan countries.
- Avoid the detention of underage migrants and consider the possibility of unaccompanied minors not being placed in detention but in other alternative accommodation, taking into account international and regional standards for the protection of children in migration.

### Readmission

- Under the readmission agreements with the EU, the Western Balkan countries should accept third-country nationals, and not only their own nationals.
- The Western Balkan countries should fully respect and implement the bilateral readmission agreements they have mutually concluded.
- The Western Balkan countries should continue their efforts to conclude readmission agreements or at least working agreements with the countries of origin of the largest number of migrants, and it would be also useful to consider the possibility of a single regional agreement of the Western Balkan countries with the countries of origin.

### AVR

- Migrants interested in returning to their country of origin should be ensured the access to an efficient voluntary return procedure.
- Support measures should ensure that voluntary return is based on the full voluntariness and motivation of migrants, with a mandatory assessment of the overall security situation in the country of origin.

### Informal Return

- In order to comprehensively and reliably monitor and present the unlawful treatment and informal return in the Western Balkan region, it is necessary for the relevant civil society organisations and international organisations that monitor and research this phenomenon to establish a regional approach and a regional methodology, as well as mechanisms for exchange, comparison and analysis of collected data at the regional level.

## 12. About BRMC

The Balkan Refugee and Migration Council (BRMC) is an informal coalition of five civil society organisations from Bosnia and Herzegovina, Macedonia, Kosovo\* and Serbia. The members of the coalition are prominent CSOs with specific competences demonstrated through long-standing work in the asylum and migration policy area, both at the national and regional level. These are Belgrade Centre for Human Rights, Civil Rights Program Kosovo\*, Group 484, Macedonian Young Lawyers Association, Vaša prava BiH.

The coalition was established in December 2017 as a joint and carefully considered initiative of five organisations which had already cooperated on many occasions, also as members of the European Council on Refugees and Exiles (ECRE) and its working group for the WB.

The establishment of the BRMC was strongly supported by ECRE and the Dutch Council for Refugees (DCR), as they advised the BRMC's initial strategic planning process, while DCR also secured the funds for those first steps of the initiative.

This initiative has been grounded in extensive and long-standing work of its member organisations within their respective countries but also in several ad hoc and project-based transnational efforts. However, the BRMC was conceived and established with the primary aim of providing additional value to the national work of its members, promoting common regional aspects of several major migration issues and regional cooperation in the field of asylum and migration.

### 12.1. Member organisations

#### **Belgrade Centre for Human Rights (BCHR)**

The Belgrade Centre for Human Rights (*Beogradski centar za ljudska prava*) was established by a group of human rights experts and activists in February 1995 as a non-profit, nongovernmental organisation. The main purpose of the Centre is to study human rights and humanitarian law, to disseminate knowledge about them and to educate individuals engaged in this area. Ever since 2001, the Centre has engaged with migration policy and practice in Serbia and Montenegro, and Serbia following the dissolution of the State Union. However, these activities have increased exponentially starting of 2012, in which BCHR became the UNHCR's implementing partner with the main purpose of providing free legal aid on asylum and integration for all those in need of it and advocating for better migration and asylum policies in the country. In addition, the Centre has brought a number of cases before the European Court of Human Rights. For its achievements in the area of human rights, the Centre was awarded the *Bruno Kreisky Prize* for 2000. The Belgrade Centre is a member of a number of coalitions and networks such as the Association of Human Rights Institutes (AHRI), Human Rights Houses, the European Council of Refugees and Exiles (ECRE), the European Legal Network on Asylum (ELENA), etc.

#### **Civil Rights Program Kosovo (CRP/K)**

The Civil Rights Program Kosovo (CRP/K) was founded by the Norwegian Refugee Council (NRC) in 1999. CRP/K continued with its activities under this framework until 2004 when since 1 December of the respective year it has functioned as an independent nongovernmental organisation. As from this year, CRP/K has conducted its activities as nongovernmental human rights based organisation and it is an implementing partner of the United Nations High Commissioner for Refugees (UNHCR), in implementation of the projects related to free legal aid in the territory of Kosovo\*.

CRP/K is an organisation that provides free legal aid and counselling for returnees, asylum seekers, displaced persons in Kosovo\*, persons at risk of statelessness and persons who are considered to be vulnerable in the realisation of their civil rights. The assistance is provided without discrimination of any kind. CRP/K represents its beneficiaries in the procedures before the court.

CRP/K objective is to enhance the protection of human rights and freedoms, to address legal obstacles through the representation of interests of its beneficiaries, to facilitate access to gender and diversity sensitive information and necessary documentation with the aim to promote equal access to services for all communities in Kosovo\*.

#### **Group 484**

Group 484 is a Belgrade-based nongovernmental organisation whose core expertise is in the fields of migration and interculturalism. The organisation has over 20-year-long experience in diverse migration-related projects and it has been operating in more than 70 towns in Serbia, assisted refugees, displaced persons, asylum seekers and vulnerable migrants, provided educational services to various stakeholders, managed sub-granting schemes, facilitated networking at the national and the Western Balkans level, produced numerous policy analyses and research papers, and realised many advocacy and awareness-raising efforts related to the advancement of migrants, asylum seekers, refugees, and internally displaced persons. Group 484 representatives participate in national and international conferences dealing with migration issues, and provide consultancy and training services to government and public institutions, international and local organisations.

#### **Macedonian Young Lawyers Association (MYLA)**

Macedonian Young Lawyers Association (MYLA) is a nongovernmental, non-profit and non-political professional organisation of lawyers established in December 2003 aiming to strengthen the contribution of young lawyers in promoting the legal profession and fulfilling the principle of the rule of law.

Primarily founded to guide young lawyers towards their legal careers from the point of graduation, during the years, MYLA has transformed itself into a unique organisation that actively protects human rights and the rule of law principle through the utilisation of the knowledge and capacity of young lawyers.

#### **Vaša prava Bosnia and Herzegovina (VP BiH)**

Vaša prava BiH is a local, nongovernmental and non-profit organisation with its headquarters in Sarajevo. The association was originally founded in 1996 as a network of information and legal aid centres under the auspices of the United Nations High Commissioner for Refugees (UNHCR), with its mandate to ensure safe, legal, and dignified return of refugees and displaced persons to their pre-war homes. Registered at the state level in 2005, today Vaša prava represents the largest free legal aid provider and one of the largest nongovernmental organisations in the region. Since 1996 the association has provided aid to some 450,000 refugees, returnees, displaced persons, minority groups, and vulnerable groups among the local population in legal matters such as property repossession, social, economic and cultural rights, discrimination in access to employment, utilities, education, and social welfare, as well as other human rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and other international legal instruments.

## 12.2. Associates

In order to cover the entire WB region, BRMC has established cooperation with the Albanian Helsinki Committee from Albania and the Civic Alliance from Montenegro, which are BRMC`s associates and with whom BRMC has formal cooperation agreements.

### **Albanian Helsinki Committee (AHC)**

The Albanian Helsinki Committee (AHC) was founded in 1990 with its mission to promote and protect human freedoms and rights and to strengthen the rule of law in the country. AHC has provided important contribution for informing and legal education of citizens on different issues relating human freedoms and rights and organised civic forums with different topics of public interest. Over the years, AHC has filed several requests to the Constitutional Court, which have resulted mostly in successful cases as the Constitutional Court has abrogated some of the laws, partially or entirely. In order to better respect and protect citizens' rights and freedoms, AHC carries out lobbying, advocacy and monitoring activities to improve the quality of good governance by the public authorities at the central and local level.

### **The Civic Alliance (CA)**

The Civic Alliance (CA) was established in 2011 with the goal of establishing a quality and efficient civil and democratic society through capacity building and support for civic initiatives, protection and promotion of human rights, and control of state institutions. CA currently has 3 active programmes; human rights and justice programme, media programme and political studies school. In January 2019, as executive partner of the UNHCR, CA began to provide free legal aid to foreigners who have applied for international protection, as well as to foreigners who have received some form of international protection.







**BALKAN  
REFUGEE AND  
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Ministry of Foreign Affairs of the  
Netherlands