



# PROCHILD

Discussion paper  
Unaccompanied and separated  
minors in return process





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## Abbreviations

|       |  |
|-------|--|
| AVR   | Assisted Voluntary Return                                  |
| BIA   | Best Interest Assessment                                   |
| SCEP  | Separated Children in Europe Programme                     |
| CRC   | Committee on the Rights of the Child                       |
| SWC   | Social Welfare Centre                                      |
| DIPC  | Department for International Police Cooperation            |
| EC    | European Commission  |
| EU    | European Union   |
| FRA   | The European Union Agency for Fundamental Rights           |
| IMSWC | Inter-municipal Social Welfare Centre                      |
| IOM   | International Organization for Migration                   |
| LCP   | Law on Criminal Procedure                                  |
| KIRS  | Commissariat for Refugees and Migration                    |
| MFA   | Ministry of Foreign Affairs                                |
| MLEVS | Ministry of Labour, Employment, Veteran and Social Affairs |
| MLSP  | Ministry of Labour and Social Policy                       |
| MoI   | Ministry of Interior                                       |
| MoI   | Ministry of Interior                                       |
| MYLA  | Macedonian Young Lawyers Association                       |
| NPM   | National Preventive Mechanism                              |
| NGO   | Non-Governmental Organizations                             |
| RS    | Republic of Serbia   |
| SOP   | Standard Operating Procedures                              |
| SWC   | Social Welfare Centre                                      |
| TC    | Transit Center   |
| UAM   | Unaccompanied minor  |
| UASC  | Unaccompanied and Separated Children                       |
| UMC   | Unaccompanied Migrant Children                             |
| UNHCR | United Nations High Commission for Refugees                |

# FOREWORD

Discussion paper **Unaccompanied and separated minors in return process** is the result of one of the activities on the project “Towards more effective protection of unaccompanied and separated migrant children - PROCHILD”, and aims at enhancing the system of protection of separated and unaccompanied migrant children through direct support, civil society and institutional capacity building, and contribution to the improvement of policies of the Republic of Serbia and the Republic of Macedonia.

Martina Smilevska - Kcheva participated in the collection of data and development of the documents on behalf of the Macedonian Young Lawyers Association (MYLA), while Aja Fukuda, Gordana Grujičić, Zorana Teodorović and Miroslava Jelačić comprised the research team of Group 484. Aleksandra Veselinović also contributed to the research by providing her consulting support.

The list of people who we are grateful to is rather long. First of all, we would like to extend our gratitude to the Embassy of the Kingdom of the Netherlands in Serbia which supported our work throughout the project. Being the holder of the activities on the project, Group 484 owes great gratitude to partner organisations including Macedonian Young Lawyers Association and the Dutch Council for Refugees. We are also very grateful to the people we interviewed and who provided us with valuable information. Within a wider consultation process, representatives of state authorities, local governments, other non-governmental and international organisations have also provided their contribution.

The authors advocate for gender equality and the use of gender language. The publication predominantly uses masculine gender to name the actors for the purpose of easier following of its content.

# I INTRODUCTION

Regardless of whether it is about tens, hundreds or thousands of people arriving to the territory of a country, protection and treatment of unaccompanied and separated minors<sup>1</sup> draw special attention and interest. Their position, protection modalities and available services have been subjects of the debates taking place not only within the international community, universal and regional systems, but also at national levels. In the Republic of Serbia and the Republic of Macedonia, for many years the issue of their position occupied the attention of only a small number of experts, while the occurrence of migrant-refugee crisis has actively involved greater number of actors in providing care and reflections on the legislation that would regulate their treatment and available services. Key issues in 2015 included satisfaction of basic human needs, identification, ensuring safe transit to the desired destination countries and minimising the risk of various types of abuse. In 2016, after the change of policies and the 'political climate' regarding refugees and migrants, the discussion on the protection modalities was directed more towards the status-related issues, the institution of guardian protection, foster care, education, but also integration as one of the mechanisms of durable solutions. Opening the issue of durable solution also necessarily involves consideration of the possibilities for implementation of return procedure.

Minors must never be returned to the countries of 'transit' or 'origin' unless it is clear that there is no risk of subsequent return to a place where they may face persecution, harm or ill-treatment. Decisions by which return is the only option, colloquially speaking, may be regarded as a 'last line of defence' of the state from potential violations of non-refoulement, and indirectly, other fundamental rights. Therefore, it is essential that the standards of protection and implemented procedures are at the highest level. In its General Comment no.6 on Treatment of unaccompanied and separated children outside their country of origin,<sup>2</sup> the Committee on the Rights of the Child clearly stated that no return should take place if it violates the principle of non-refoulement. It also argued that based on the Convention of the Rights of the Child, regardless of the migration status of the child, return should not occur if it would result in violations of the fundamental human rights of the child. Before returning an unaccompanied minor, an assessment should be carried out on an individual basis taking into consideration the best interests of the child and his or her particular needs, the current situation in the family and the situation and reception conditions in the

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1 The abbreviation UAM will be used throughout this document to denote both unaccompanied and separated children, while within the next section more attention will be paid to the conceptual differences between these terms and their definitions in the effective legislation of the Republic of Serbia and the Republic of Macedonia.

2 General Comment no.6 on Treatment of unaccompanied and separated children outside their country of origin, CCRC/GC/2005/6.1 September 2005.

country of return. This assessment should ideally be carried out by a multi-disciplinary and experienced team and involve the child's appointed guardian.<sup>3</sup>

According to the European Commission progress reports for 2016,<sup>4</sup> due attention is paid to the issue of return, and the Republic of Serbia and the Republic of Macedonia are expected to take significant steps in this field. In both systems there is a lack of norms which would more closely regulate the issue of return in general, and consequently the norms which would provide certain guarantees regarding the treatment of minors and unaccompanied minors. Although the practice of the majority of EU Member States is not to return unaccompanied minors forcibly, the legal framework transposing the standards of the EU Return Directive 2008/115/EC<sup>5</sup> in this regard needs to be provided, regardless of the fact that majority of countries opt for application of voluntary return procedure in case of UAM. Furthermore, although the majority of voluntary returns are carried out with the support of the International Organization for Migration (IOM), in the form of assisted voluntary return program, it is necessary to regulate the question of voluntary return in general in regulations. Further to this, sine qua non condition for both countries in the context of protection of minors is to create legal conditions for the 'delay' of removal of unaccompanied minors until they turn 18. The Return Directive expressly allows Member States which do not wish to return/remove third-country minors staying illegally on their territory or are restrained from removing the unaccompanied minor due to the best interests of the child to grant at any moment a permit or authorisation in accordance with national law (e.g. a temporary permit for a minor to stay until the age of 18). The Return Directive obliges, however, Member State to say either "A" (grant a permit or a legal right to stay) or "B" (carry out return procedures). This is a straightforward approach, aimed at reducing "grey areas" and improving legal certainty for all involved.<sup>6</sup>

Moreover, attention must be paid to establishing standards for the so-called 'transition period' in which an unaccompanied minor at the age of 18 loses a corpus of rights guaranteed for UAM, and it is necessary to provide for the standards which make this transition to the general regime applicable to adult migrants less painful and easier. The adoption of legislation is only a precondition for the establishment of

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3 Children's rights in return policy and practice in Europe-A discussion paper on the return of unaccompanied and separated children to institutional reception or family, UNICEF, 2015

4 Serbia 2016 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2016 Communication on EU Enlargement Policy (COM(2016) 715 final).

5 Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1473666673497&uri=CELEX:32008L0115>

6 *Unaccompanied minors in Belgium, reception, return and integration arrangements*, European migration network, Belgian contact point;

functional procedures. The second stage is certainly the creation of institutional and infrastructural conditions for the application of the prescribed standards.

The document gives a brief overview of basic available statistics, the most relevant legal regulations, as well as experiences related to the reported cases of return so far. Additionally, attention is also paid to the announced reforms in the field of migration, which affect the issue of return as well. Finally, concluding observations and recommendations which can be equally applied to the systems of the Republic of Serbia and the Republic of Macedonia were presented. Comparative review of the systems in the Republic of Serbia and the Republic of Macedonia offers the possibility of improving national systems by applying already tested methods, but also the opportunity for greater unification of procedures and consequent facilitation of cooperation in this field.

The purpose of this document is not to provide a comprehensive overview of the legal framework and/or the reported cases of return so far, but to serve as a basis for reflection and to initiate dialogue on the issue of the return of unaccompanied and separated minors. Special sensitivity and vulnerability which distinguishes them, as well as the complexity of the return process itself, require this issue to be highly ranked on the list of priorities of migration policies of the Republic of Serbia and the Republic of Macedonia. The aim to be pursued is the establishment of a functioning return procedure which follows a balanced and holistic approach in compliance with the rights of the child, with full respect for the child as an individual in all decisions taken during this procedure. It is crucially important to structure the decision making process in such a way to consistently implement the principle of the best interests of a child, as the basic pillar of their protection.

## II DEFINITION OF UAM

“Unaccompanied minor shall be understood to mean an alien under 18 years of age who was unaccompanied by parents or a guardian on his/her arrival in the Republic of Serbia, or who was left unaccompanied by parents or a guardian after arriving in the Republic of Serbia.”(Law on Asylum,<sup>7</sup> Article 2)

“UAM is defined as an unaccompanied and separated child (UASC) who is a foreigner on the territory of the Republic of Macedonia, under 18 at the time of identification, and who is not accompanied by his/her parents or by a guardian appointed in compliance with the law, or who, upon his/her arrival in the Republic of Macedonia, was left without such company” (Standard Operating Procedures for dealing with unaccompanied and separated children in the Republic of Macedonia)

According to the General comment no. 6 - Treatment of unaccompanied and separated children outside their country of origin, *unaccompanied children* (also called unaccompanied minors) are children, as defined by Article 1 of the Convention,<sup>8</sup> who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. *Separated children* are children, as defined by Article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

In contrast, EU law defines unaccompanied children as children who arrive unaccompanied by an adult responsible for them, whether by law or practice of the Member State concerned, and for as long as they are not effectively taken into the care of such a person; it includes children who are left unaccompanied after they enter the territory of a Member State. The legal status of separated children does not differ, but they form a special sub-group of children among the unaccompanied ones that requires specialised protection. In EU Member States, separated children are generally considered to be ‘unaccompanied’ upon arrival. However, in some instances children are registered as accompanied without assessment of their relationship with the accompanying adult. This entails risks for the children and does not ensure their right to protection, to which separated children – like unaccompanied children – are entitled.<sup>9</sup>

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7 Law on Asylum, ‘Official Gazette of RS’, no. 109/2007

8 “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”- Convention on the Rights of the Child

9 Current migration situation in the EU: separated children, The European Union Agency for Fundamental Rights (FRA) 2016

The definitions which are valid in the systems of the Republic of Serbia and the Republic of Macedonia do not coincide neither with the conceptual definition deriving from the universal system of protection, nor with the EU system. And while the Republic of Macedonia on a declarative level recognizes separated children as a sub-category of unaccompanied minors, closer definition of the concept of unaccompanied minors is not sufficiently precise, and does not contain the basic indicators on which to conclude that these were separated children. On the other hand, the definition of the concept as set out in the legislation of Serbia entirely omits the category of separated children. Apart from the need to harmonise valid conceptual definitions with generally accepted definitions, it is also necessary due to the fact that these definitions leave room for different interpretations with regard to the scope of application - in terms of persons they refer to and the quality of protection which has to be provided. The treatment of children in both categories – separated and unaccompanied – should be similar, despite often involving different circumstances. Despite the fact that usually separated children fall under the national legislative framework applicable to unaccompanied children, a few differences in the implementation of legal provisions result in differences in their actual treatment – mainly with regard to accommodation and guardianship/legal representation.<sup>10</sup>

For the purpose of this document, both categories shall be denoted in this text by the term UAM, except in those situations where it is necessary to point to a certain kind of standards or treatment specific only for unaccompanied or for separated children.

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10 Current migration situation in the EU: separated children, The European Union Agency for Fundamental Rights (FRA) 2016

# III STATISTICAL DATA

## Serbia

Despite the fact that only estimates and approximate numbers are given where (irregular) migrants who are on the territory of a country are concerned, it is almost impossible to give even a rough estimate for the year 2015. In addition to a number of people who avoided contact with the competent authorities, the available statistical data were also influenced by the established practice - the registration of all persons who have found themselves on the territory of the Republic of Serbia on the basis of the provisions of the Law on Asylum, regardless of the mode of entry and irrespective of the intention of seeking asylum/transit to other countries. Moreover, deficiencies in the system of monitoring the statistical data about migration, which were pointed out by numerous stakeholders in the past, have not been eliminated.<sup>11</sup> Statistical data related to 2015 are specific and their analysis must be approached with special care.

In early 2016, the situation dramatically changed in terms of the number of people registered and in recent months, we have been talking about several thousand persons residing on the territory of the Republic of Serbia - in asylum centres, reception centres on the border between the Republic of Serbia and Hungary, institutions for the accommodation of unaccompanied minors, and other places which have been recognized, since 2015, as 'traditional' places where larger numbers of migrants and refugees gather. Latest estimates by State Secretary of the Ministry of Labour, Employment, Veteran and Social Affairs indicate that there are around 5600 migrants in state facilities and around 1000 outside of these, in the country.

As a result of this practice, the presence of people who remained in the Republic of Serbia with unregulated status has been recorded. As predicted, with the passage of time, the number of persons residing in illegal status in the Republic of Serbia is growing, which poses a new challenge for the institutions of the system and all other stakeholder active in the field of migration. It still remains unclear which categories of people are taken into account when the situation in the field of migration on the territory of the Republic of Serbia is analyzed. Currently, the presence of a number of people who have not expressed their intention to seek asylum has been recorded, and people who have been granted accommodation in one of the facilities for the reception of migrants and asylum seekers, among whom there are recorded cases of people who were issued a decision on cancellation of residence on the territory of the Republic of Serbia. Furthermore, a category of persons who expressed their intention

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11 In more detail: *Challenges of the asylum system*, Group 484, 2014.

to seek asylum and are bona fide asylum seekers, waiting for a decision on the request for asylum, can be distinguished. Additionally, as a consequence of the practice of the competent authorities of Hungary to grant transit for up to 30 people daily, another group of people that can be distinguished are the people who reside in one of the housing facilities or in unofficial camps at the border with Hungary, and who are on the lists for border crossing. Among them, there are people who have a certificate of intent, but there are also cases of people who have not undergone the process of registration and certificate issuance. Finally, persons who cannot be classified into the category of those who reside either legally or illegally can be identified too, as they do not have a certificate of intention which regulates their status. At the same time, none of the available actions which, in accordance with legal regulations, can be initiated against persons who do not have legitimate grounds for residing on the territory of the Republic of Serbia, has been taken against them, which de iure puts them into the category of irregular migrants.<sup>12</sup>

The most accurate statistics are available through the asylum system, and according to these, the situation in 2016 does not differ from the period before the refugee-migrant crisis.<sup>13</sup> All of the abovementioned fully applies to the UAM category and to 'general population' of migrants and refugees in the territory of the Republic of Serbia. Furthermore, despite the fact that unaccompanied minors in Serbia are separately defined, there is no obligation to register separated children under a different category. In some cases, separated children are reportedly registered as accompanied, although practice is also to register separated children as unaccompanied.

UNHCR figures for the period from September 2015 to November 2016:

|  | <b>Boys</b> | <b>Girls</b> | <b>Total</b> |
|--|-------------|--------------|--------------|
| <b>Registered minors – asylum seekers</b><br>September 2015 – November 2016                | 94,310      | 57,944       | 152,254      |
| <b>Registered minors – certificate of entry to RS<sup>14</sup></b><br>January – March 2016 | 20,870      | 15,027       | 35,897       |
| <b>UAM – asylum seekers</b><br>September 2015 – November 2016                              | 3,847       | 1,216        | 5,063        |
| <b>UAM – certificate of entry to RS</b><br>January – March 2016                            | 155         | 57           | 212          |

<sup>12</sup> *Migrants with irregular status in the Republic of Serbia - current issues and prospects*, Group 484, 2016.

<sup>13</sup> *Ibid.*

<sup>14</sup> Certificates of entry to the territory of RS issued from December 2015 to March 2016. According to the MoI statistics, in period from December 2015 to 15 February 2016, total number of issued certificates for minors – 34741, including 17244- Syria, 9495 Afghanistan, 7954 – Iraq, 48 - other.

## Macedonia

In 2016, Macedonia continued following the practices of the EU countries and neighbouring countries, by limiting entry at the borders to those defined as economic migrants. Since November 2015, the Macedonian authorities and border officials have allowed entry only for persons coming from Syria, Afghanistan and Iraq since only they are considered to be refugees in need of international protection. Following the EU-Turkey Agreement on 7 March 2016, safe passage via Balkan route for refugees and migrants was officially closed. With the closure of the route, as of April 2016, the registration procedure within the TC Vinograd on the southern border with Greece stopped. No person since then has been registered in the Republic of Macedonia. As of October 2016, the estimated number of stranded persons is around 200.<sup>15</sup>

From 1 January 2016 to 07 March 2016, when the border was closed for all refugees, almost all refugees were registered, including both accompanied and unaccompanied children. During the reporting period a total of 89,152 persons were registered and issued certificates of having expressed the intention to seek asylum at the Transit Centre Vinograd which is adjacent to the southern border. A third of all registered refugees were children, namely 34,302, with a daily average of 519 children registered. There were 9089 children from Afghanistan, of which 5893 were male and 3196 were female. There were 17913 children from Syria, of which 11044 were male and 6896 were female. There were 7300 children from Iraq, of which 4556 were male and 2744 were female.

There were 232 children registered as unaccompanied minors of which 209 were male and 23 were female. On average, 3 unaccompanied minors per day were registered in this period. Of these, 125 children were from Afghanistan, of whom 119 were male and 6 were female. There were 80 UASC from Syria of whom 67 were male and 13 were female, and there were 27 UASC from Iraq, of whom 23 were male and 4 were female.

|   | Boys   | Girls  | Total  |
|---|--------|--------|--------|
| <b>Registered minors</b><br>January – March 2016  | 21,493 | 12,836 | 34,329 |
| <b>Registered UAM</b><br>January – March 2016   | 209    | 23     | 232    |
| <b>UAM issued certificates of having expressed the intention to seek asylum</b><br>September 2015 – November 2016 | 12,341 | 4,864  | 17,205 |
| <b>UAM - Asylum seekers</b><br>September 2015 – November 2016   | 41     | 7      | 46     |

15 The former Yugoslav Republic of Macedonia 2016 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2016 {COM(2016) 715 final}

A common issue and concerning practice during the registration procedure, identified by MYLA, was the fact that children were often registered on the documents of their aunts or uncles. The police registered children in this way based on the verbal statement that the child and the adult are related, without further examining the familial link. The Ministry of Labour and Social Policy (MLSP) conducted Best Interest Assessment (BIA) for all unaccompanied minors who entered Macedonia.<sup>16</sup> In certain number of cases, the MLSP ascertained that it would be in the best interest to appoint a guardian and initiate an asylum procedure, and as other solution, the MLSP decided that it would be in the best interest that the child continues with the group of refugees he/she was travelling with. Most of these cases refer to children who are 16 years old or older, and are travelling with relatives, friends, or persons from their country of origin. Such unaccompanied children were registered on the same registration document as their closest relative or issued a separate document if there were over 16.

Some Member States only allow accompanying adults to become guardians if family ties are proven through documentary evidence. For example, in Hungary, the authorities only assign the adult arriving together with a separated child as a legal guardian if the adult is a family member. In such cases, the adult must prove his/her family connection to the child, and only documentary evidence is accepted.

In the Netherlands, all cases of separated children are referred to the national guardianship authority (NIDOS) and are assigned a guardian. Following a best interests assessment and a risk assessment, when there are no signs of abuse or exploitation and there is no other reason to immediately separate a child from the accompanying adult, they are accommodated together. The accompanying adult assumes the role of a foster parent. The guardian monitors the child's situation and continuously assesses the relationship with the adult for one year. After this period, based on the guardianship authority's assessment of their relationship and the accompanying adult's ability and willingness to assume responsibility for the child, a final decision is taken – e.g. guardianship is transferred to the accompanying adult, guardianship remains with NIDOS, or the child is placed in another accommodation.

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16 MYLA's lawyers and translators were also present and provided assistance during these interviews. More information available at: <http://myla.org.mk/field-reports/>

# IV LAWS AND BY-LAWS RELEVANT FOR RETURN PROCEDURES

## Serbia

In the Republic of Serbia, in addition to the concluded Readmission Agreements<sup>17</sup> there is no other legislation which regulates return procedure, neither voluntary nor forced. According to the concluded Readmission Agreements,<sup>18</sup> the Republic of Serbia is obliged to readmit and safely return not only the citizens of Serbia, but also all other foreign citizens and/or stateless persons who do not meet, or no longer meet, the conditions for entry, stay or residence in the territory of concerned requesting state<sup>19</sup>, provided the requirements specified in the Agreement are fulfilled. On the other hand, Contracting States are also obliged to act in the same way and in accordance with the provisions of the agreement, when the Republic of Serbia appears as a requesting state.<sup>20</sup> Administrative Affairs Directorate of the Ministry of Interior (Moi), in charge of monitoring the implementation of the Agreement, does not possess the records on the number of minor foreign citizens and stateless persons, unaccompanied by parents or guardians, for whom a request for readmission has been sent to the competent unit of the Ministry of Interior by foreign authorities. Further, records have not been kept on the number of foreign unaccompanied minors for whom the Ministry sent requests.

The Constitution of the Republic of Serbia,<sup>21</sup> Article 39, paragraph 3, prescribes that *"...A foreign national may be expelled only under decision of the competent body, in a procedure stipulated by the law and if time to appeal has been provided for him and only when there is no threat of persecution based on his race, sex, religion, national origin,*

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- 17 Serbia signed the Readmission Agreement with the European Union, then bilateral agreements with the countries in the region (Bosnia and Herzegovina, Macedonia, Albania and Montenegro), countries such as Canada, Moldova, Switzerland, Norway, etc. All the agreements are accompanied by respective protocols which further define the procedure of their implementation.
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  - 19 The requesting state is a contracting state which has submitted a request for readmission or a request for transit.
  - 20 The agreement aims at providing the conditions for an organized, reciprocal and institutionalized admission of the citizens of Contracting Parties, third-country nationals and stateless persons, which do not have the right to enter, stay or reside in the territory of a certain country, as well as for transit of the third-country nationals and stateless persons to their countries of origin or another third country. Contracting parties have to ensure the application of the provisions of the Agreement whenever the conditions are met, and in a manner based on the standards of human rights protection at all stages.
  - 21 The Constitution of the Republic of Serbia, 'Official Gazette', no. 83/2006

*citizenship, association with a social group, political opinions, or when there is no threat of serious violation of rights guaranteed by this Constitution."*

The Law on Migration Management<sup>22</sup> only provides for the competence of the Commissariat for Refugees and Migration to *submit proposals to the Government of the Republic of Serbia regarding the voluntary return programmes*. On the other hand, Law on Foreigners<sup>23</sup> within Article 46 regulates the issue of time limit for forced removal, while Article 47 prescribes the obligation of observing the *non-refoulement* principle in case the requirements for forced removal are met. The Law on Foreigners does not contain any provisions defining the category of unaccompanied minors, but recognises unaccompanied minors as persons with special needs. It is stipulated that the competent authorities shall take into account the specific needs of foreigners who are categorized as persons with special needs only during the implementation of forced removal procedure. Article 52, which regulates the issue of accommodation of underage migrants to reception centre for foreigners, in its paragraph 2 includes the provision stating that *underage foreigner may not be returned to the country of origin or to a third country willing to receive him/her, until appropriate reception has been ensured*. Although this provision does not specifically talk about the UAM category, according to *argumentum a fortiori* interpretation, it may be applied to this category as well. According to the provisions of Article 46, the competent authority by a special decision determines the time limit within which a foreigner who illegally resides in the Republic of Serbia is obliged to leave its territory, and, if necessary, a specific border crossing point for him may also be determined. Under paragraph 2 of this Article, an appeal against such a decision does not postpone its execution. Although *stricto sensu* it is not the issue of return procedure, the provisions of the Law on Foreigners, Law on State Border Protection<sup>24</sup> and the Law on Misdemeanours<sup>25</sup> regarding the misdemeanour responsibilities and imposition of protective measure of removal of UAM due to his/her illegal stay or illegal crossing of the border of the Republic of Serbia are also relevant.<sup>26</sup>

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22 Law on Migration management, 'Official Gazette of RS', no. 107/ 2012

23 Law on Foreigners, "Official Gazette of RS", no. 97/2008.

24 Law on the Protection of the State Border, "Official Gazette", nos. 97/2008 and 20/2015 - other law.

25 Law on Misdemeanours, "Official Gazette of RS", no. 65/2013;

26 In more detail: *Challenges of the asylum system*, Group 484, 2014. *Migrants with irregular status in the Republic of Serbia - current issues and prospects*, Group 484, 2016.

## Macedonia

As in case of Serbia, important documents are the readmission agreements signed between the Republic of Macedonia and 13 countries and between Macedonia and the European Union<sup>27</sup>

The Law on Foreigners of the Republic of Macedonia is the basic legal document that stipulates the return procedures for foreigners. However, the law as such does not contain separate measures when it comes to return of unaccompanied minors. Generally prescribed procedures apply for this category of foreigners. However, certain safeguards are in place.

A foreigner who, in accordance with this Law, has to be forcibly returned from the country shall be taken by authorized officers of the Ministry of Interior to the state border, sent over the border, handed over to the representatives of the foreign country whose citizen he/she is or to the representatives of the foreign country from which he/she arrived. If justified reasons require so, the foreigner can be transferred to a third country and not to his/her country of citizenship. Prior to his/her forcible return, the foreigner shall be subjected to a medical examination.

However, a foreigner cannot be forcibly returned to a country where his/her life or freedom would be threatened due to his/her race, religion, nationality, membership of a social group or political opinion, or he/she would be subjected to torture, inhuman or degrading treatment or punishment. The only procedure that can guarantee this is the asylum application process which can only be initiated if there is a will of the foreigner to initiate it. In cases when the foreigner is a minor, it is the guardian that

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27 Agreement between The Government of the Republic of Macedonia and The Government of the Kingdom of Sweden on Readmission of persons (Official Gazette Number: 43/2007); Agreement between the government of the republic of Macedonia and the government of the republic of Moldova on the readmission of persons with unauthorized stay (Official Gazette Number:10/2009); Agreement between the Government of Macedonia and the Government of the Federal Republic of Germany on taking over and transit of persons (Official Gazette number: 9/2004); Agreement between the Government of The Republic of Macedonia and the Government of Montenegro readmission agreement (Official Gazette number: 115/2012); Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorisation; Agreement between the Government of the Republic of Macedonia and the Government of the Republic of Serbia on taking people with illegal entry or residence (Official Gazette number: 117/2011); Agreement between the Macedonian Government and the Hungarian Government for taking people who illegally residing on their territories (Official Gazette number: 42/2004); Agreement between the Government and the Government of Romania to take over their own nationals and foreigners. (Official Gazette number: 42/2004); Agreement between the Government of the Republic of Macedonia and the Republic of Albania (Official Gazette number, 40/2005); Agreement between the Macedonian Government and the Government of the Kingdom of Denmark to pursue their own nationals and foreigners who are illegally residing on the territories of the Parties (Official Gazette number: 27/2007); Agreement between the governments of the Benelux countries (Belgium, the Grand Duchy of Luxembourg, Netherlands) and the Government concerning the taking of persons residing (Official Gazette 37/2007); Agreement between the Government and the Government of the Kingdom of Norway to take on persons residing in their territories (Official Gazette 27/2007)

decides, using all available sources of information, whether it is the best interest of the minor to engage in the asylum procedure.

The Ministry of Interior is the authority responsible for making a decision on expulsion of a foreigner from the Republic of Macedonia within 30 days, in accordance with Article 28 of the Law Amending the Law on Foreigners.<sup>28</sup> The decision determines the time limit within which the foreigner is obliged to leave the territory of the Republic of Macedonia, as well as the period of entry ban into the country which cannot be shorter than six months nor longer than five years. The foreigner has the right to submit an appeal against the decision on expulsion (and against the entry ban) to the State Commission for Deciding in the Administrative Procedure and Labour Relations Procedure in Second Instance within eight days as of the day of receipt of the decision. The appeal against the decision lodged by the foreigner does not postpone the execution of the decision. The decision of the State Commission for Deciding in Administrative Procedure and Labour Relations Procedure in Second Instance should be made within 15 days as of the day of lodging the appeal. An administrative dispute can be initiated against the decision of the State Commission for Deciding in Administrative Procedure and Labour Relations Procedure in Second Instance with a competent court in accordance with the Law on Administrative Disputes.

A foreigner, who is obliged to leave the territory of the Republic of Macedonia by a decision of the Ministry of Interior, shall be obliged to leave the territory of the Republic of Macedonia on a voluntary basis immediately or within the specified period. The voluntary return, shall be an assisted or independent return of the foreigner to his/her country of origin, transit, or a third country which is based on his/her free and informed decision regardless of the fact that the alternative of such a decision is his/her forcible return. A foreigner who does not act in accordance with the decision made or if certain circumstances indicate that he/she has no intention to leave the territory of the Republic of Macedonia on a voluntary basis, shall be forcibly returned from the Republic of Macedonia. A foreigner may be forcibly returned from the territory of the Republic of Macedonia only if the decision binding him/her to leave the country is executive.

According to the Law on Foreigners, in case a minor person, who is a foreigner under 18 years of age, enters the territory of the Republic of Macedonia contrary to the provisions of this Law, and is unaccompanied by his/her parents or a guardian, or, upon his/her arrival in the Republic of Macedonia he/she is left unaccompanied and does not apply for asylum, the authorized officers of the Ministry of Interior shall immediately inform the diplomatic and consular mission of the country of citizenship

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28 "Official Gazette of the Republic of Macedonia" no. 217/2015

for the purpose of establishing his/her nuclear family members. In case it is impossible to deliver the minor immediately to the body of the country of citizenship due to objective reasons, he/she shall be accommodated in a special room for minors within the Reception Centre and the Centre for Social Work shall be informed thereof. A guardian, in accordance with the Law on Family,<sup>29</sup> shall be assigned to the minor. The minor shall be provided with legal aid, social support, medical and psychological care, as well as the right to education in educational institutions of the Republic of Macedonia during his/her stay in the Reception Centre.

The Law on Foreigners also stipulates that a minor person who is a foreigner cannot be returned to his/her country of origin or to a third country which agrees to accept him/her, until appropriate conditions for his/her admission are provided in that country. The above provisions affect the unaccompanied and separated child migrants, regardless of whether they intend to seek asylum in the country, or are only transiting through it. The Law on Foreigners further provides that: *A minor cannot be returned to a third country where his/her return would be contrary to the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the Convention for the Protection of Human Rights and Fundamental Freedoms.*

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29 Official Gazette of the Republic of Macedonia\* no. 80/1992, 9/1996, 38/2004, 33/2006, 84/2008, 67/2010, 156/2010, 39/2012, 44/2012, 38 / 2014, 115/2014, 104/2015 and 150/2015

# V WORK EXPERIENCE<sup>30</sup>

## Serbia

Well-being of UAM is the responsibility of child protection authorities, and the Ministry of Labour, Employment, Veteran and Social Affairs (MLEVS) is responsible for this issue in Serbia. The Law on Social Welfare<sup>31</sup> recognizes an unaccompanied foreign or stateless child as a beneficiary of social welfare. In accordance with the Family Law,<sup>32</sup> appointing guardians is a sole responsibility of the social welfare centre and a guardian is assigned, among others, to children without parental care.

In July 2015, when the number of migrants in the country rapidly started to increase, the MLEVS issued the binding Instructions on the procedures of social welfare centres and social care institutions for the accommodation of beneficiaries, relating to the provision of protection and accommodation to unaccompanied migrant minors.<sup>33</sup> The Instructions confirmed the role of the social welfare centre in accommodation and taking care of UAM.

After analyzing the scope and content of social welfare institutions' procedures for providing assistance and support to unaccompanied refugee/migrant children, as well as the operation of these institutions in line with the mandatory instructions, it was concluded that there was a need to develop a new binding document that would be to the benefit of the most vulnerable groups of refugee/migrant children, and that would ensure continuous, coordinated, comprehensive and clear response to children's needs, and regulate activities of all actors involved in the organisation of protection and support. Consequently, as a result of cooperation between the Ministry of Labour, Employment, Veteran and Social Affairs, key international and national CSOs, the Standard Operating Procedures for Protection of Refugee/Migrant Children (SOP), which provide the basis for coordinated action of all actors in the identification and support of particularly vulnerable refugee/migrant children were adopted. SOP define organisational response model, the roles and responsibilities of all actors, uniform criteria and procedures, providing answers to the questions "who does what, when and how". The use of the SOP aims primarily to ensure children's physical and emotional security,

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30 Information on the work of social welfare institutions was collected on the basis of a short questionnaire which Group 484 sent for the purpose of gathering information. Group 484 owns information on concrete social welfare centres / other institutions of social welfare which were directly involved in the stated cases. The data provided in this section for Macedonia are gathered through MYLA's daily work on individual cases and communication with the relevant state institutions.

31 The Law on Social welfare "Official Gazette of RS", no. 24/2011.

32 Family Law, "Official Gazette of RS", nos. 18/2005 and 72/2011.

33 [http://www.ombudsman.rs/attachments/4398\\_Odgovor%20Ministartvo%20za%20rad%20BK.pdf](http://www.ombudsman.rs/attachments/4398_Odgovor%20Ministartvo%20za%20rad%20BK.pdf)

prevent the separation of children from parents and families, mitigate and reduce risks of harm and injury to children, facilitate fast identification and adequate protection of particularly vulnerable children, in particular separated and unaccompanied children.<sup>34</sup> Unlike SOP for Macedonia, which have been estimated by the European Commission as comprehensive, SOP for Serbia are primarily intended for cases of mass inflow and focus on situations that may be considered as primary reception and short-term care for minors. Certainly, guidance on the implementation of procedures for the assessment of the best interests of the child, coordination between all involved stakeholders, the risks to which children are exposed may, with certain adjustments, have its application when analyzing options of a durable solution.

According to the announcements of the competent Ministry, the process of drafting new Instructions regulating the activities of social welfare centres is under way. The Instructions should respond to the challenges of the situation regarding the prolonged detention of minors in the territory of the Republic of Serbia and provide for four ways of achieving the best interests: 1) unification with family/family members in another country (whereby the members of the family include relatives of the first degree); 2) transfer to a third country, if there are particularly justified reasons for it; 3) entering the asylum procedure; 4) return to their country of origin. The Instructions emphasize the necessity of active participation of child in determining his best interests, including the obligation of the authority involved to inform the child about all the circumstances of his case, and in connection to it, to ensure communication in a language that the child understands by hiring a court interpreter, or another person who can credibly prove his knowledge and who is required to provide an appropriate statement on personal data protection. The instructions will also regulate the issue of a legal representative of unaccompanied minors in procedures of determining their best interests. It provides that a legal representative of a minor may be a natural person appointed to him/her with prior consent of the guardianship authority, and that the legal representative is obliged to report to the competent SWC about all the measures taken which produce legal consequences for the child.

A guardian is responsible for the child's well-being and representing his interests in procedures before relevant bodies and institutions. Consequently, there is his obligation related to possible forced or voluntarily return of the UAM.

With respect to the legally binding definition of UAM in Serbia, temporary guardians are in most cases appointed but there is certain flexibility in practice so some of the separated children do not have guardians but rather are kept together with the group they arrived with in reception centres that accommodate adults and families as well.

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34 The Standard Operating Procedures for Protection of Refugee/Migrant Children, 2016. page 8

According to the information from the report of the National Preventive Mechanism on visits to social welfare centres in Pirot and Dimitrovgrad in October 2015, *when appointing a temporary guardian, foreign nationals were not interviewed, nor was it checked whether they meet all legal requirements.* It was established that the procedures of assigning temporary guardians to unaccompanied minors were not implemented properly by social welfare centres, as they appointed foreign citizens as guardians, although they did not have any possibility to precisely identify them, nor to find out if there were any obstacles for executing the guardianship-related duties in each individual case. A recommendation was also addressed to the Ministry of Labour, Employment, Veteran and Social Issues to amend the *Instructions in such a way as to further regulate the procedure for determining personal characteristics and abilities needed to perform duties of a guardian of unaccompanied minor migrants. The Ministry will provide instructions to social welfare centres and social welfare institutions on how to act in the case that it is not possible to determine whether there are any obstacles for performing relevant duties referring to a person who accepted to be a guardian.*<sup>35</sup>

Regarding the issue of appointing a guardian, a shortcoming in practice also appears in cases of referral of UAM to the Operational unit for accommodation of unaccompanied minors. Specifically, if an UAM is found on the territory that is under the regional jurisdiction of Pirot social welfare centre, the minor is assigned a temporary guardian who is a professional employee of the abovementioned centre. During the reception to the operational unit, there is no time coincidence in terms of direct reception of the child and the “transfer” of guardianship to the professional employees of the Institute. Social welfare centre in Niš decides on the appointment of a temporary guardian, and from the moment of a child’s arrival to the moment of making a formal decision, a certain period usually passes, during which the direct supervision is performed by a professional employee who is not formally assigned as a temporary guardian. The ‘gap’ between the legal and actual situation is especially unfavourable for professional employees who directly perform the tasks of guardianship because it can raise the issue of their responsibility in different situations of extraordinary circumstances regarding UAM which may occur.

A crucial measure to provide protection and assistance to UAM and to ensure their best interests is the appointment of a legal guardian. In its General Comment on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin of 1 September 2005 (Comment No. 6), the Committee on the Rights of the Child sets standards in this regard. Paragraph 21 prescribes that the “appointment of a competent guardian as expeditiously as possible” serves to safeguard one of

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35 NPM, Report on the visit to the Regional Centre of border police towards Bulgaria, Border Police Station Pirot, Police Department in Pirot and Social Welfare Centres in Pirot and Dimitrovgrad, October 2015

the core principles of the CRC, that is, “ensure respect for the best interests of an unaccompanied or separated child.” Moreover, in order to address protection needs, Comment No. 6 requires states to “create the underlying legal framework and to take necessary measures to secure proper representation of an unaccompanied or separated child’s best interests.”<sup>36</sup> There are continuous efforts and strong willingness of the majority of representatives of social welfare system and guardians themselves to improve their knowledge and skills related to the child protection. However, specific trainings on the international standards regarding the return of children and UAM were not available to them.

Describing their scope of work, representatives of the social welfare centres briefly state that: *“The role of a guardian in the procedure is the assessment of the best interests, coordination with all actors involved in resolving the status of a minor, representing the best interests and the provision of family and legal protection, presence during the interviews and conducting interviews.”* *“The role of a guardian is to take care of the children’s rights and living conditions during their stay in an institution of social welfare, as well as to work on the cooperation with all relevant state organizations and NGOs, Commissariat for Refugees, UNHCR, and the Red Cross in order to ensure a safe and secure way for family reunification as soon as possible. During the readmission procedure, a guardian accompanies the child until he is reunited with his parents.”*

Although the issue of return is not prevailing in public discussions about the situation of unaccompanied minors, a number of cases have however been recorded in the Republic of Serbia, which are certainly not enough to be able to talk about the established practice, but which, on the other hand, may serve as illustrative examples for analysis.

Based on the social welfare system’s documentation, returns of UAM upon readmission agreements were conducted in 2016. Most of the cases were happening with Bulgaria. According to the data from the Institute for Education of Children and Youth in Nis, a total of 11 unaccompanied foreign minors who stayed in the Operational unit for accommodation of unaccompanied minors, which operates within the Institute, were returned under the readmission procedure within the period between 1 January, 2015 and 1 December 2016. Of the total number, 10 foreign minors were from Afghanistan and one foreign minor was from Bangladesh. They were all male and they were all returned to the Republic of Bulgaria. The readmission procedure would last between two to three weeks depending on how long the acceptance by Bulgarian side

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36 Closing a Protection Gap: Core Standards for Guardians of Separated Children in Europe (*Defence for Children International*, 2011) is particularly noteworthy. Based on relevant legal instruments and standards and on the analysis of existing research information, it sets out 10 core standards for legal guardians with respect to the role and responsibilities of the guardian, the guardian and the separated child, and the qualifications of the guardian.

would last. In the meantime, children would be accommodated at the social welfare institutions. According to the data of the Institute for Education of Children and Youth Belgrade, in 2015 one girl was voluntarily returned to Switzerland (originating from Afghanistan, citizen of Switzerland). In 2016, by 1 December 2016 - one boy was returned to Morocco, one boy to Iran, one girl to Albania and one girl to Bulgaria. Neither institutes nor employees who are, according to the decision of a regionally competent social welfare centre assigned as guardians, are not directly involved in the procedure of implementation of readmission agreements. Specifically, if there is a request, or a positive response of the country which the Republic of Serbia addressed, they are approached by a regionally competent social welfare centre (according to geographical area, or border crossing at which readmission is executed) which takes over the minor. In such cases, institutes do not receive a copy of the document issued by the acting authority informing them that actions will be taken towards a minor with regard to the implementation of readmission agreements. Not even social welfare centres whose professional employees at the time of implementation of the readmission procedure act as temporary guardians of UAM, possess this kind of document. In order to implement the readmission procedure, Police Directorate in Pirot issues a travel certificate to foreigners, after which border police hand them over them to the Bulgarian authorities.<sup>37</sup> Additionally, according to the information available to Group 484, it cannot be determined with certainty whether the social welfare centres (temporary guardians) provide the representatives of the Ministry of Interior of the Republic of Serbia who carry out the readmission procedure with any information regarding the psychological and physical condition of the child, or whether they are introduced to the real state of things in terms of the environment to which the child is being returned to and/or measures to be taken towards him. It remains unclear whether the centre representatives attend, as a rule, each direct hand-over of the minor.

Some of the representatives confirmed that guardians were accompanying the children to reunite with parents. However, the possibility of a guardian accompanying the child migrant in the return procedure is very unlikely if we take into consideration that appointed guardians manage huge caseload (up to 60 cases). In this situation, it would be impossible to leave the rest of the children in order to accompany one or two to their country of destination. In such a situation, it is possible to transfer this role to another adult who should obtain the approval of centre for social welfare and whom the child trusts. Various EU practices show that child participation is very important with regard the escort issues.

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<sup>37</sup> According to NPM data, from the beginning of 2016 until July, Police Directorate in Pirot issued 117 travel certificates for foreigners (mainly Afghanistan). The report on the visit to the Police Directorate in Pirot and to the Regional Centre of the border police towards Bulgaria

According to social welfare centres, returns in an effort to restore family links were also conducted. Typical examples are cases when a child is reunited with his parents on no man's land between Serbia and neighbouring countries on the migration route. Thus, a five years old boy from Syria was united with parents at no man's land at the border between Serbia and Bulgaria. An eight-months old girl from Afghanistan was also returned to her parents at the border crossing between Serbia and Bulgaria.

Regarding the identification of a parent or guardian, social welfare centres state that: *"Measures for identification of a parent or a guardian of a child are be taken in cooperation with the Directorate for Foreigners, police stations, while the Standard Operating Procedures and the law applicable in the social welfare system of the Republic of Serbia are observed. If necessary, the Centre for Protection of Trafficking Victims is also included, and often a team of experts is formed, made up of employees of governmental and non-governmental sector."* *"Special interviews are conducted with minor migrants and persons claiming to be their parents or guardians. Based on interviews, presented attitudes, behaviours and all the information available about them (the possibility of checking through the embassy does not exist in the case of migrants from Afghanistan who make up 95% of our residents), a social worker assesses whether an adult is responsible and whether he/she takes adequate care of the child's best interests, especially about his/her health and basic needs. In case there are indications of a possible human trafficking, the Centre for Protection of Trafficking Victims is immediately informed thereof, as it is the authority competent for identification of potential victims."*

Under the Convention on the Rights of the Child, State Parties have an obligation to facilitate family contact and family reunification where appropriate. An assessment must be made as to whether the child's best interests are indeed served by the tracing of and placement in the family. It cannot be assumed that option of reunification is necessarily always in a child's best interests and should automatically lead to a decision in favour of return. The Separated Children in Europe Programme (SCEP), 'Statement of Good Practice' states that "tracing [...] should only be done where it will not endanger the child or members of the child's family in the country of origin" and that "tracing must only be undertaken on a confidential basis and with informed consent".<sup>38</sup> Additionally, the Inter-Agency Guiding Principles on Unaccompanied and Separated Children<sup>39</sup> can be used as a 'check list' of important indicators and necessary steps which need to be taken into account when it comes to procedure of family tracing.

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38 Separated Children in Europe Programme, 'Statement of Good Practice,' 3rd ed., 2004.

39 The Inter-Agency Guiding Principles on Unaccompanied and Separated Children, International Committee of the Red Cross, Geneva, 2014

Particular challenges have been encountered in practice when the legal guardian does not fulfil his or her duties with an adequate sense of professional ethics and responsibility, which has at times led to irreparable harm to the interests of unaccompanied minor asylum seekers in Serbia. In a case from early 2016, an unaccompanied minor from Bangladesh was not allowed to enter the asylum procedure and was readmitted to Bulgaria in spite of wishing to express the intention to seek asylum in Serbia.<sup>40</sup> In this case, legal representatives addressed the European Court for Human Rights with the a request for interim measure in line with Rule 39 of the Rules of Court, with a purpose to prevent the forced return to Bulgaria. At the time when the decision on return was passed, many current reports testified about the negative practice regarding the Bulgarian authorities' treatment of migrants and asylum seekers.

Apart from the illustration of the necessity of assessing the risk from *non-refoulement*, the above stated case testifies about the importance of legal aid available to UAM, particularly in circumstances where professional employees in social welfare in Serbia still do not have the necessary knowledge and skills for the evaluation of all the factors affecting the best interests of children on the move.<sup>41</sup> NGOs that provide free legal aid are mostly focused on informing about the possibility to apply for asylum in Serbia and on identifying 'genuine' asylum cases. When UAMs are concerned, the EU standards go into direction that *the legal basis between the guardianship provided for asylum seekers and the "assistance" required for UAM in the return process differ, close links between the requirements laid down in the asylum acquis and in the Return Directive exist and the need for continuity of assistance in asylum and return procedures was emphasized.*<sup>42</sup>

Right to appeal with suspensive effect is defined within the Return Directive. This standard is envisaged along with the right to legal representation, language assistance and consideration of the view of a child based on their age and maturity.

Opposite to the presented case, voluntary return, in best interest of the child when possible, should be taken into consideration as an option before expulsion order, readmission, and forced return. According to our knowledge, a single case of voluntary return was executed and it refers to a 17-year-old-boy from Iraq, who was, in cooperation with the embassy of this country and the police, returned to the country of origin. The practice related to return is mostly relying on the practice of assisted voluntarily return, and as in most of the countries, the main actor in Serbia that deals with the question of assisted voluntary return (AVR) is the International Organization

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40 Source: Belgrade Centre for Human Rights

41 The Standard Operating Procedures for Protection of Refugee/Migrant Children, 2016

42 EC Directorate-General Home, Comparative Study on Practices in the Field of Return of Minors, December 2011, p.20, available at: [http://ec.europa.eu/home-affairs/doc\\_centre/immigration/docs/studies/Return\\_of\\_children-final.pdf](http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/studies/Return_of_children-final.pdf)

for Migration (IOM). According to available data, 40 people agreed to return voluntarily by the end of August 2016<sup>43</sup> and only few cases are related to return of UAM.

In one of the IOM cases, a procedure for return of separated children in Iraq lasted for three months. A boy was identified to be accommodated in the Reception Centre in Presevo, together with his uncle. Social welfare centre of Presevo was involved in the case, securing the child's best interests and accessing the parental capabilities of the uncle. Following the procedures, the guardian/social welfare centre assessed that uncle can be his escort. This was also in line with the child's wishes, since the child was consulted on this matter.

In a case with is still current, the AVR procedure was initiated against the minor P. H, aged 15, from Iran, who expressed intention to return to his country of origin. Locally competent Social Welfare Centre assigned a temporary guardian to him. "P. H. is currently in one of the reception centres. The temporary guardian established contact with his associate from the IOM, who completed the documentation and forwarded it to the IOM Office in Tehran. In case of a positive answer, the documents will be sent to the embassy in Belgrade which, in cooperation with IOM, organizes the return of a child to the country of origin. The underage P. H. is in regular contact with the guardian who regularly visits the minors and contacts with the associates from the IOM and the Commissariat for Refugees. He is provided with psychosocial support by temporary guardian, and a field social worker who is also visiting daily."

In enabling a sustainable return, the first concern is obtaining the commitment of the UAM to his return. The following elements are important in this regard: In the first place, the timing must be right. Often, it is impossible to speak to the UAM about a return until the return becomes a reality. From the beginning, as part of the support, there must be a discussion of life in the country of origin and the family and, if possible, from the beginning of the support, contact is maintained with the family. In making return plans, the issue that needs to be taken into consideration relating to the return is the care to be provided within a family, with regard to whether it is safe for the UAM and whether there are opportunities for him to develop. For this reason, depending on the age, permission is needed from the child about his place of residence and the possible transfer of guardianship.<sup>44</sup>

IOM programme of assisted voluntarily return relies on government infrastructure for accommodation of UAM and government, international and domestic NGOs' support

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43 Serbia 2016 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2016 Communication on EU Enlargement Policy (COM(2016) 715 final).

44 Nidos foundation website: [www.nidos.nl](http://www.nidos.nl)

for informal education, access to health care, psychosocial support, recreational and leisure activities. IOM's main responsibility is to identify the beneficiary of AVR, obtain documents, contact embassies, secure travel arrangements and notice local actors that will follow-up the reintegration process of a child.

In case of the UAM, IOM AVR programmes require consent of the appointed guardian and decision that confirms that voluntarily return is in child's best interests, identification and assessment of family in the country of origin and consent of parents/a guardian in the country of origin. The role of the legal guardian is of outmost importance to the work of IOM in the context of return of an UAM from the host country to the country of origin (or a third country). In order to provide voluntary return assistance to UAM, IOM requires confirmation from legal guardians in the country of origin and in the host country. This is needed for the preparation of voluntary return to the host country and to secure concrete arrangements for care.

According to the information of IOM Office in Serbia, a preparation of the regional SOP for voluntary return is under way, and it will inter alia also contain the most important standards that must be respected in the implementation of the voluntary return procedure. Besides the representatives of IOM, the representatives of the Commissariat for Refugees and Migration, as well as the Ministry of Interior of the Republic of Serbia, participate in their development. During 2017, the development of Standard Operational Procedures for Serbia is planned, after which the development of specified procedures on the voluntary return of minors will follow.

Implementation of AVR, including voluntary return, requires a series of measures whose application requires a certain period of time which may last for several months and sometimes years. Moreover, in some situations, even despite the unequivocal will to return to the country of origin, measures taken by the competent authorities and the assistance of IOM, AVR cannot be implemented.

For these reasons, it is very important for a state to have precisely regulated issue of the status of persons who are waiting for the voluntary return and the associated rights and obligations. Currently, in the Republic of Serbia there are no regulations governing their situation and solutions which have been applied so far are the result of ad hoc actions of the competent authorities. The present legal gap could produce negative consequences both in relation to migrants, and the competent authorities.

The number of UAMs' voluntarily return cases is not significant, but it has already showed an increasing trend due to a longer time of stay. Also, AVR and information related to the programme is accessible in reception and asylum centres or within the centres for accommodation of UAMs. UAMs that decide, for various reasons, to stay out of the institutions lack adequate access to information on the AVR programme.

Judging by the experience of other countries, the number of people who opt for AVR is to some extent affected by the functionality of the system in combating irregular migration. If it appears certain to the migrants who do not have legal grounds for residence that, due to such status, that measures will be taken against them, resulting in their expulsion from the territory and forced return, and that their repeated illegal entry to the territory shall be detected and punished, migrants in larger number opt for voluntary return, thus avoiding the forced return. In some cases, material and financial resources which can assist their reintegration serve as additional motivation.

UNHCR also notes the absence of such a system, although it was in 2012 Report: *"somewhat mitigating circumstance which is a small risk of deportation to their countries of origin because the procedure of removal from the country has not been determined, but it is upon them, generally, to independently leave the country."* Within the context of removal of UAMs, an issue may also be raised regarding the adequacy of the established practice of imposing the protective measure of removal of UAM without interviewing them and securing unambiguous guarantees that the conditions provided for by ratified international conventions are met, as well as the provisions of the Constitution and the provisions of national legislation regarding the return. Having examined the decisions of misdemeanour courts from 2015 and 2016, and although the majority of the courts recorded positive practice of not imposing the protective measures of removal, there have been cases in which, in addition to sanctions, the protective measure of removal from the territory of RS was also imposed.

In the proceedings before the Misdemeanour Court in Zajecar, besides the measure of warning, a protective measure of removal of the foreigner from the territory of the Republic of Serbia lasting for one year was also imposed, and in doing so, as it was stated in the rationale...*the opinion of the Social Welfare Centre was not requested although it should have been having in mind the particularity of the proceedings ...and the Centre itself does not have a database about the person concerned and is not able to conduct an interview with his family because it is on the territory of another state.*<sup>45</sup>

Besides examining the reasons for which the risk of non-adherence to the non-refoulement principle may be excluded, misdemeanour courts should be particularly careful when using their possibility to impose the protective measure of removal, provided for by the Law on Misdemeanours,<sup>46</sup> taking into account the provisions of Article 52, paragraph 2 of the Law on Foreigners. With regard to UAM, in order to impose such a measure, it is necessary to provide facts within the proceedings that doubtlessly prove that the country of origin or a third country would ensure an appropriate

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45 Misdemeanour Court in Zajecar, case 4 no. 1/15

46 See: Foreign unaccompanied minors in the Republic of Serbia, Humanitarian Center for Integration and Tolerance, Novi Sad, 2014.

reception. Furthermore, in the proceedings that are conducted, when imposing the measure of cancellation of stay, neither the court nor the competent authority, MoI of RS, does not examine the possibility of entering another country, although the Law on Foreigners prescribes that a foreigner is considered to have left the Republic of Serbia when he/she enters another state which he/she is permitted to enter. If the procedure involving examination of circumstances of the return and/or reception of a minor to another country has not been implemented by competent social welfare services before initiating a misdemeanour proceedings, representatives of guardianship authorities, who are obliged to directly participate in misdemeanour proceedings, have the opportunity to notify the acting court on the obstacles that exist to reception or on the obligation to examine the circumstances relating to the reception.

In the case before the Misdemeanour Court in Pirot, besides the measure of warning, no measure of removal from the territory was imposed, but instead, on the proposal of the Social Welfare Centre, the UAM concerned was referred to the Reception Centre of the Institute for Education of Children and Youth in Nis. In the rationale of the court decision it is stated that based on the interview that was conducted ....*a representative of the social welfare centre found out that the person concerned had been abused by the Bulgarian police when entering the territory of the Republic of Bulgaria, which was why the representative believed that the readmission procedure would not be acceptable for the person concerned.*<sup>47</sup>

2016 is also marked by adoption of the Decision of the Government of the Republic of Serbia on the education of police and military forces, with the aim, as further specified by the Government statement *"to protect Serbia's borders against migrants and illegal activities of migrant smuggling"*. The task of the police and military forces is *"to prevent illegal entry from the direction of the Republic of Bulgaria and the Republic of Macedonia, as well as to bring to justice the human smugglers who conduct such illegal activities on the territory of the Republic of Serbia"*.<sup>48</sup> According to the statement made by Minister Aleksandar Vulin, from October 2016, 10,000 people have been prevented from illegally entering the territory of the Republic of Serbia.<sup>49</sup> Having in mind that there is no independent border monitoring mechanism established in Serbia and that civilian bodies are not constantly present at border lines, we cannot interpret the effects of the measures applied at borders with great certainty - whether the *non-refoulement* principle is adhered to, as well as the prohibition of collective expulsion, obligation to enable approach to the territory for the persons requesting international protection, standards ensuring that entry into the country for unaccompanied and separated minor migrants will never be refused.

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47 Misdemeanour Court in Pirot, case 1 no. 42/16

48 Source: <http://www.srbija.gov.rs/vesti/vest.php?id=269495>

49 Source: <http://www.reporter.rs/2016-10-08/n1info/srbija-sprecila-10000-migranata-da-ilegalno-udju-u-zemlju-41912395.html>

Unfortunately, certain number of reports, mainly NGOs' reports, mention detected cases of push-backs from Serbia and other regional countries.<sup>50</sup>

## Macedonia

In the period January to March 2016, MYLA identified growing protection needs for unaccompanied children, due to the increased number of push-backs, bad weather conditions, and lack of effective access to the asylum procedure. As a response to the growing need of effective protection of children, particularly unaccompanied refugee children, the Macedonian government adopted National Inter-Agency Standard Operating Procedures for Unaccompanied and Separated Children in November 2015, developed in cooperation with MYLA and UNHCR. This SOP is aimed at coordinating the protection response in relation to unaccompanied and separated children. It includes clear instructions and guidelines on identification, referral, assistance and protection, legal status of the UAM, family reunification, integration, repatriation, voluntary assistance, dealing with vulnerabilities in the criminal proceedings. In addition, it defines which state institutions are responsible for such cases, and which NGO's and international organizations can provide assistance during the referral. The key state institution responsible for UASC is the Social Welfare Centre that appoints social workers as legal guardians for the unaccompanied children.

According to the SOP for dealing with unaccompanied and separated children, separate chapter is dedicated to the measures to be undertaken by the competent institutions for the purpose of finding the parents of the UAM, or at least one of them, or close relatives, for the purpose of family reunification. The first measure in the process is family identification, followed by risk assessment conducted in case of a decision in favour of family reunification, locating the family and informing them about the UAM, preparing for the UAM's return and ultimately return/ handing-over. According to the SOP regarding UAM there are six procedures that need to be conducted during all of which should be acted in the best interests of a child. The procedure regard the initial *identification and referral phase, than the accommodation and initial assistance, status regulation, family reunification – return, local integration, involvement in criminal procedure*. Taking into consideration the significant vulnerability of UASCs, and with the aim of protecting their rights in compliance with the laws and ensuring that all proceedings and actions undertaken by the administrative bodies are undertaken in accordance with the principle of acting in the best interests of the child, immediately after the a police officer of the Ministry of Interior receives the notification/report (whether orally, in writing, or by phone) that a minor/child foreign national has been

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50 Push-backs are very often misinterpreted as 'informal readmission' even by professionals, even though it is a grave breach of rights and non-refoulement principle.

found unaccompanied by his/her parents, relatives of legal age or another adult person, they must be the competent IMSWC-SWC in order to involve an authorized social worker before conducting an interview with the minor. The measures and activities to be undertaken by the Inter-Municipal Social Welfare Centre in regard to the UAM include: Appointment of a guardian; General risk assessment; Initial medical examination; Care and accommodation; Needs assessment; Development of a plan for assistance; Adaptation and stabilization. During all of this proceedings and interpreter as well as a legal representative should be provided to the UAM.

According to the SOP family reunification is a top priority throughout the procedure for processing UAMs and all the planned and undertaken measures are aimed at creating conditions for family reunification in the best interests of the child. The *first measure* is family identification which can be done by the Ministry of Interior, the Social Welfare Centre or relevant international organizations like the Red Cross. The *second measure* is a risk assessment analysis that needs to be conducted in case of a decision in favour of family reunification. The risk and security assessment is carried out by responding to the questions of a questionnaire divided in several checks. The security checks for risk assessment are carried out by the IMSWC/the guardian through the LMSP/contact official, ex officio, in coordination with MOI. The MOI/DIPC, through international police cooperation with Interpol/Europol/Selek and in direct police cooperation with the country of origin or destination of the UAM's parents/close relatives, performs the necessary security checks. The assessment of social inclusion risks for the UASC is to be carried out by the IMSWC/guardian and the expert team through UNHCR/IOM/NGO. The *third measure* is locating the family and informing them about the UAM which can be done by the guardian, in collaboration and with the assistance of the MOI, MFA, Red Cross, UNHCR and IOM. The *fourth measure* is preparing for the UASC's return which involves drafting of the decision by the guardian, issuing of the necessary documents by the MOI, informing of the UAM. In all cases and throughout the entire procedure for reunification, the rule should be taken into consideration that the UASC must not be returned to a third country where their return would be contrary to the LCP, the Convention against Torture and Inhuman or Degrading Treatment or Punishment, and the European Convention on Human Rights. The last, *fifth measure*, is the return / handing-over of the UAM which encompasses: organising/securing/selecting appropriate means of transportation; appointing an escort (a social worker or a medical person); Handing over the UAM to the parent(s) or close relatives for whom a decision has been adopted for family reunification; the hand-over is to be conducted in the country of reception or in the Republic of Macedonia; handing over the UAM to the competent institution/organisation stated in the decision for family reunification, and the handing over is done in the country of reception; sharing all documentation. Before leaving, the UAM should be provided with all the necessary means needed for their return, amongst which are to be included: travel documents; ticket(s) for their trip; phone numbers and

contacts in case of emergencies; personal items; an escort / responsible person; money. If the identified and located parent(s) or close relatives are unable, for various reasons, to undertake the family reunification in the Republic of Macedonia, the UAM will be taken by the institutions of the Republic of Macedonia in the country of reception. For this purpose a return plan for the UAM is drafted, incorporating the following: obtaining approval from the country of reception; agreeing and defining terms for carrying out the return; identifying the UAM's escort; planning and securing funds for carrying out the return; agreeing and securing means of transportation; planning and agreeing with the social service in the country of reception that will participate/mediate in the handover; completing the documentation that will be shared with the country of reception; securing the budget for carrying out the return; providing transportation. In practice, according to information obtained from the Social Welfare Centres, no case has been processed according to it.

According to information provided by the IOM Mission in Macedonia the AVR Procedure for unaccompanied minors is as follows. This procedure differs from the normal AVR Procedure and the initial step before the decision for return is made a Best Interest Assessment and a Best Interest Determination of the best interest of the child needs to be made. These evaluations need to be made in collaboration with the child, her/his guardian and every organization involved in the case (in the country where the child is currently located and the country where the child needs to be returned to).

It is necessary to seek confirmation from the legal guardian, and the other partners involved, that it is in the best interests of the child to return, and that it is safe for them to go home. In addition to the before mentioned assessments, the AVR Procedure involves family tracing (in the country of origin/return) and can support the process of collection of relevant information upon request by legal guardians and other responsible entities that assess the minor's family in order to make an eventual decision on return. These activities are being conducted as well by the IOM missions in each country in collaboration with the responsible competent authorities.

According to the report which is based on the family assessment, an opinion is formed regarding the return of the child. In some cases if the competent authorities consider that the family cannot take care of the minor (for example if the family participated in human trafficking activities, have a serious medical condition that requires treatment or if they cannot be found) they appoint a guardian capable of taking care of the minor.

Like in the AVR Procedure regarding adults, in this procedure as well it is taken into account whether the voluntary principle (i.e. if the child does not feel pressure to back

from the family) and non-refoulement (namely whether there is a risk of persecution as well as torture, inhuman and degrading treatment or punishment).

An important remark regarding Macedonia is that in 2016, no unaccompanied minor has taken part in this procedure i.e. has been returned to another country. This year in Macedonia, a total of 32 persons have been part of the AVR Procedure, out of which 13 were children. The countries of origin of the persons are: Iraq 29, Iran 1, Egypt 1, Morocco 1 and 20 of them were male and 12 were female. According to IOM no UAM has been part of the Assisted Voluntary Return Procedure (AVR Procedure).

As in Serbia, the cases of push backs were also detected. At the southern border MYLA identified a total of 418 persons who were pushed back to Greece or not allowed entry into Macedonia by the authorities and those pushed back, out of whom 51 were children with families from Syria, Afghanistan and Iraq, whereas unaccompanied children were not pushed back, were allowed to enter the Transit Center Vinograd. The border police and the authorities have recognized the special protection needs of unaccompanied minors and have therefore reported all identified children to the social workers of the MLSP for further referrals.

At the northern border, MYLA identified 8 unaccompanied children who were forcibly returned from Serbia in an informal procedure. All of the children were male, out of whom four were from Afghanistan, three from Syria and one from Iraq. In accordance with the SOP, MYLA referred the children to the MLSP and assisted in conducting the Best Interest Assessment (BIA). The competent state institution, in this case the MLSP, acted only in one of these cases. A 16-year-old boy from Syria, who was separated from his brother in Slovenia and was pushed back to Croatia, Serbia and lastly Macedonia, was referred by MYLA to the MLSP on 19/02/2016. Almost one month later, the MLSP transported the boy to Skopje and accommodated him in a safe house for vulnerable individuals. Upon accommodation, he was appointed a guardian from the Centre for Social Welfare, through whom the child was able to submit an application for asylum. The guardian also initiated the procedure for family reunification, so the boy could join his brothers in Germany. With regards to the other 7 unaccompanied children who were pushed back, which MYLA identified and referred, the responsible authorities did not take any further action. The minors left the Transit Centre Tabanovce on their own without the knowledge of the authorities or organisations present.<sup>51</sup>

The key challenges that MYLA has identified in these cases has been the slow response time and lack of adherence to the SOP of the state agency responsible for unaccompanied minors, i.e. the Ministry of Labour and Social Policy. According to the

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51 Even though the Centre for Social Welfare is responsible for handling cases of unaccompanied minors, due to the lack of human capacities, the Ministry of Labour and Social Policy has taken over such responsibilities.

SOP, the MLSP should take responsibility over an unaccompanied child and appoint a guardian immediately following the identification or referral. However, the practise in TC Tabanovce has shown that one of the children was appointed a guardian more than a month after his identification and referral, while the others were not supervised and left the centre on their own, leaving them exposed to human trafficking, arrest, immediate push backs, and mistreatment.

# VI ANNOUNCED REFORMS

## Serbia

According to the EC Progress Report for Serbia, 2016... *Legislation on the return of unsuccessful asylum seekers and apprehended irregular migrants, transposing the Return Directive, remains to be adopted... A robust return mechanism, in line with EU requirements, still needs to be put in place... Further equipment and refurbishment are needed to accommodate vulnerable categories, such as women with children and unaccompanied minors... The number of people effectively returned to their country of origin remains low so far, though Serbia benefits from a programme for Assisted Voluntary Returns run by the International Organisation for Migration. 40 people had agreed to return voluntarily by the end of August 2016. Serbia needs to set up a robust return mechanism for people who have received a final decision rejecting their asylum application. However, Serbia still needs to conclude readmission agreements with a number of source countries for irregular migration, such as Morocco, Bangladesh and Pakistan. According to the country's statistics, 4.726 third country nationals returned to Serbia under readmission agreements in 2015; up to the end of May 2016, 13 third country nationals had returned to Serbia under readmission agreements.*

As it has already been mentioned, judging by the contents of the annual Progress Report for Serbia and the statements of national and European officials,<sup>52</sup> the European Union will attentively monitor all the measures taken with regard to the return process. Despite such circumstances, the Action Plan for Chapter 24, which is doubtlessly an umbrella strategic framework for the reforms in the field of migration, besides the measures related to the conclusion of bilateral readmission agreements and accompanying technical agreements, and measures that are generally aimed at enhancing capacities of the authorities concerned (study visits, reports on the expert missions and reports on trainings), does not include the provisions that particularly relate to the return issue, nor consequently to the return of UAMs.

On the other hand, it is positive that two umbrella laws in the field of asylum and status of foreigners, whose adoption has been announced,<sup>53</sup> include a number of provisions whose application refers to the return procedure and protection of UAM.<sup>54</sup> This is particularly important due to the fact that, based on the standards set up within the EU, and above all by the Return Directive 2008/115/EC, the applicable legislation may be assessed as insufficient.

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52 Meeting of the Convention for Chapters 24, 27. December 2016

53 Current Draft Laws' versions are available at the website of the Mol of RS, [www.mup.gov.rs](http://www.mup.gov.rs)

54 It is still uncertain when the drafts will enter parliamentary procedures and become law proposals and what will their contents be at the end of this legislative process.

Draft Law on Foreigners introduces a number of provisions regulating the return procedure in more detail. The Draft contains several provisions that are relevant for both return procedure in general, including the time limits related to the return, and for the forced removal in particular, including the position of unaccompanied minors. It is particularly encouraging that there are some provisions that explicitly regulate the adoption of the decision on return and the possibility of appeal, right to free assistance, and the exceptions to the application of the provisions on forced removal.

Unaccompanied minors are recognised as particularly vulnerable persons, but the definition of the term 'UAM' is the same as in the currently applicable Law on Asylum. The opportunity has been missed to define the term 'UAM' in such a manner as to include both unaccompanied children and separated children or to add the definition of the term 'separated children' to the Draft. Moreover, despite the interdependency of the abovementioned umbrella laws and the fact that there is often a subsidiary application of their provisions, the Drafts provide different definitions of UAM.<sup>55</sup>

The Article that sets up the principles to be observed within the return procedure, also explicitly prescribes the standard which includes the necessity of child's Best Interest Assessment, and that before making a decision on the return of an unaccompanied minor it is necessary to provide an appropriate assistance of the social welfare service to children and youth (Art. 75).

The *non-refoulement* principle with regard to UAM is embodied in the provision that an *unaccompanied minor must not be forcibly returned except in case when the competent authority believes that the minor will be returned to a family member, appointed guardian or appropriate institution for the reception of children.*

During the time period envisaged for the voluntary return, all the persons are entitled to urgent medical assistance in line with the provisions of the law regulating health insurance issues, and with regard to minors, they are also entitled to fundamental education.

A positive novelty is that the Draft introduces the possibility of granting temporary stay permit for humanitarian reasons. Besides the fact that the Draft explicitly provides for mitigating circumstances with regard to meeting requirements as compared to other kinds of temporary stay, it lists the reasons for providing these, such as, among others, *delay of forced return lasting for a year and more, then for a minor that has been abandoned...or has been left without parental care for other reasons or left without escort... serious and justified reasons of humanitarian nature* (Art. 61). Some of these provisions can definitely be applied in the situations when the only solution is making a return

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55 In more detail: <http://grupa484.org.rs/cemi/>

decision and it is assessed that it would be in the UAM's best interest to delay the execution of such decision until he/she turns 18 or later.

The current Draft provide for insufficient guarantees with regard the accommodation of an unaccompanied minor in the Shelter for Foreigners, as the institution for accommodation of foreigners under enhanced police supervision. Unlike for families with children, the Draft does not contain provision which would clearly set up the standard of providing unaccompanied minors with such accommodation only exceptionally, as a measure of last resort (Art. 92).

The Draft Law on Asylum defines an unaccompanied minor as a foreigner under the age of 18, who is not accompanied by a parent or a guardian or an adult who is responsible for him/her when entering the Republic of Serbia, or who has been left unaccompanied by a parent, or a guardian or an adult responsible for him/her after entering the Republic of Serbia. Moreover, it introduces and defines the term of minors separated from parents in more detail - *a foreigner under the age of 18, who is not accompanied by a parent or a guardian or an adult who is responsible for him/her when entering the Republic of Serbia, or who has been left unaccompanied by a parent, or a guardian or an adult responsible for him/her, but not necessarily by other relatives, after entering the Republic of Serbia*. A shortcoming is that the Draft does not contain a single provision that regulates their position or envisages special measures that need to be taken.

Furthermore, the Draft sets out the responsibilities of the Commissariat for Refugees and Migration (KIRS) for implementation of voluntary return programme for foreigners whose asylum application has been rejected or refused, or whose asylum procedure has been suspended, or when the protection has ceased for one of the reasons provided for by the law. In addition, it prescribes that *KIRS shall consider relevant reports on the situation in the country of origin, inform the person concerned thereof and enable him/her to make an informed decision on return*. It is positive that the same Article of the Draft provides that the persons who opt for voluntary return will keep the rights guaranteed to them by this Law until the day of their return to the country of origin (Art. 86).

In compliance with this provision, for the persons who have been in the asylum procedure or who have enjoyed some of the legally prescribed forms of protection, and who opt for a voluntary return, the Draft guarantees a much larger corpus of the rights than the corpus envisaged by the Draft Law on Foreigners with regard to voluntary return (for the purpose of reminding: the right to urgent medical assistance, and in case of minors, right to education). Whereas these persons are *de facto* in the same situation, and having in mind that even the fact such as *bona fide* relation with the host country cannot be a determining factor (even a person who has legally been staying in the territory of Republic of Serbia can opt for a voluntary return, but the

circumstances and reasons for which he was entitled to stay have changed), the merit of such a solution and *de iure* unequal position is at question.

## **Macedonia**

According to information obtained from the Secretariat for European Affairs, Government of the Republic of Macedonia, in 2017, Standard Operating Procedures for the Reception Centre for Foreigners regulating its work will be adopted and SOPs for voluntary return will be developed. Implementation of pilot activity to assist voluntary return to countries of origin. In addition, Readmission Agreements with the Republic of Turkey, Kosovo and the Russian Federation will be concluded. The negotiations for signing Protocols to implement Readmission Agreement with the EU, Greece, Latvia and Lithuania will be finalised.

With the purpose of continuous harmonization of the national legislation with the EU measures in the area, a new Law on Foreigners should have been adopted in 2015/2016 including among others the 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. However, this process was postponed and it is supposed to be finalized in 2017. In addition to this adoption of a new Law on Asylum and Temporary Protection, the adoption of the Strategy for Integration of Refugees and Foreigners (2015-2025) is also expected in 2017.

# VII CONCLUSION REMARKS AND RECOMMENDATIONS

## Conclusion

In the situation when it is still a challenge, particularly for the Republic of Serbia, to ensure a humane reception of all the persons who find themselves on the country's territory, it is difficult to focus on those segments of migration policy whose scope of application is currently small, and which will become more current in the forthcoming period. However, the migration phenomena, due to its complexity and certain level of unpredictability, requires proactive reflection and action. that include planning. Furthermore, for the purpose of establishing a functional migration management system, it is necessary to take all of its elements into consideration, regardless of current circumstances and some policies' scopes of application. Therefore, durable solutions issue should be introduced at this moment as a subject of debates on migration due to the fact that besides the need to define legal framework, we will face the challenge of establishing functional mechanisms for full implementation of the adopted regulations. If we add the particular vulnerability of UAM to this, the issue of return of unaccompanied minors is undoubtedly one of the most sensitive issues in the field of migration. It is encouraging that at least declaratively there is a consensus that they need to be treated as children above all, and only then in accordance with migration regulations and that in line with the fundamental principles of the Convention on the Rights of the Child, the child's best interests must be a primary consideration in all actions regarding the child, regardless of the child's migration or residence status.

With regard to return, adhering to the minimal standards requires action that ensures the following: the best interests of the child should be taken into account in all steps leading to the return of the child to his or her country of origin. Return is not an option if it risks leading to the violation of the child's fundamental human rights. If no parents or members of the extended family are identified, return should only take place with advance secure, concrete, and adequate care and reintegration arrangements in the country of origin. Non-rights-based arguments such as those relating to general migration control, must not override best-interest consideration in return decisions. Returns to countries where the child's security, protection – including against refoulement – and welfare cannot be guaranteed, must not be envisaged.

The Republic of Serbia and the FYR Macedonia will face the challenge of establishing the system that fully adopts the abovementioned minimal guidance for operation. As a prerequisite, it is necessary to establish a comprehensive system for conducting

return, which is sensitive enough to to the special position of UAM. The return topic makes us reflect on two key open issues: a certain number of persons that are in a unique “legal limbo” because, under the regulations and established practice, they may not be categorised under any of the categories of the persons staying legally, or illegally, and there is a lack of precise and comparative statistical data. These issues directly affect the monitoring of compliance with the obligations related to the provision of protection, and with the return-related requirements imposed by the European Union to the Republic of Serbia and the Republic of Macedonia. If a country does not have precise information on the status of the persons to which the policies and measures should apply, the question is to what extent can compliance with the imposed requirements be adequately explained/disputed. Moreover, the lack of reliable statistical data additionally hinders the situation, so the question is what may be considered to be a reliable basis for monitoring the compliance with the obligations related to the provision of appropriate protection, and to the planning of measures and envisaging necessary resources.

## **Recommendations:**

In regard to normative and strategic framework:

- » It is crucial to introduce the definition of unaccompanied minors and/or separated children in the legal systems of the Republic of Serbia and the Republic of Macedonia, which would be in accordance with the standards set out with the UN protection system, and/or standards set out within the EU. It is necessary to introduce such a definition uniformly in all the provisions directly regulating the treatment of UAM.
- » To avoid ambiguities, statistical data on UAM should be kept more precisely. Moreover, parameters for statistical monitoring of UAM category should be formulated more adequately and in compliance with the changed definitions of the term.
- » It is pivotal for both legal systems to adopt two key umbrella laws as soon as possible - the Law on Foreigners and the Law on Asylum and Temporary Protection, which need to be fully mutually consistent, and the relevant by-laws that need to be consistent with the provisions of these laws. It is necessary to provide appropriate human and infrastructural capacities for their full implementation.
- » The legal systems need to provide for stronger legal guarantees with regard to the return procedure, such as the suspensive effect of the appeal, right to legal remedy, legal assistance, special standards for vulnerable groups, assessment of the risk of non-compliance with the non-refoulement principle, etc.

- » It necessary to define in more detail the guidelines for the treatment of UAM with regard to return (forced return in particular), and equally important, uniform protection standards that need to be adhered to in each individual case.
- » It is necessary to develop and adopt legal regulations that would make legal basis for providing a status to persons who for personal circumstances or circumstances in third countries and/or countries of origin must not/cannot be returned.
- » It is necessary to regulate the issue of so called 'transition period' for UAM by defining standards which would make this transition to the general regime applicable to adult migrants less painful and easier. In addition, institutional and infrastructural conditions for the application of the prescribed standards need to be provided.
- » The legal systems need to include clear guidelines on the provision of free legal aid to UAM, the role and obligations of legal representatives, and on mechanisms for monitoring the quality of the assistance provided. They must be granted access to the return case file and be able to challenge return decisions before a court; their appeals must have suspensive effect on the return.
- » It would be desirable that the Action Plan for Chapter 24 is revised in future by drafting a detail plan of measures aimed at establishing a functional system for return. In the development process, it is desirable to consult non-institutional stakeholders as well, who are directly involved in the return procedure and in the protection of the rights of particularly vulnerable migrants.

Treatment practice, education and strengthening institutional capacities:

- » In order to avoid the situations of legal uncertainties and ad hoc responses, it is necessary to *explicite* provide for the corpus of rights and obligations for the persons who, based on freely expressed will, opt for voluntary return, or for the possibility of assisted voluntary return. The guaranteed rights and obligations need to be guaranteed on equal basis to both the persons who have been under the asylum procedure previously, and to those to whom the provisions regulating the movement and stay of foreigners applied.
- » Further efforts should be invested in strengthening cooperation and practical implementation of the readmission agreements concluded by the countries in the region. It is particularly necessary to intensify a dialogue on the implementation of the Readmission Agreement between the Republic of Serbia and the Republic of Macedonia. In this regard, for the purpose of protection of UAM, it is necessary to provide for comparative systems for statistical monitoring of migration movements in the territories of both countries, and the mechanisms for exchange of information on vulnerable migrant categories - key information on mental and physical condition of the persons who are in the return process.

- » With regard to the Republic of Serbia, consistent implementation of the provisions of the Law on Social Protection and Family Law is necessary with regard to the appointment of a temporary guardian, for all the minors that could be categorised as UAMs. In addition, when appointing a temporary guardian, it is necessary to pay attention to the standards and guidelines set out by international organisations and bodies monitoring the compliance of accepted Conventions. In the Republic of Macedonia, it is necessary to ensure a consistent application of Standard Operational Procedures, and adoption of SOP for the return procedures for UAM, as soon as possible.
- » In FYR Macedonia Establishing separate professional, child-protection body within the Centre for Social Work that should conduct the assessment of return conditions. The international missions, such as IOM, that currently is the only actor that supports voluntary return are not enough. The country has to have its own formal structure which will be adequately equipped and trained. A follow-up plan should be established for every minor in order to ascertain that the protection of the child is guaranteed following the return.
- » In the context of the Republic of Serbia, educational activities for courts related to the imposition of the security measure of expulsion would be desirable, particularly with regard to the obligation of re-examining personal circumstances of UAM, and Article 52, paragraph 2 of the Law on Foreigners, and the non-refoulement principle.
- » Taking in consideration the vulnerability and the special conditions that need to be in place for adequate return, monitoring by independent institutions such as the Ombudsman and/or CSOs needs to be ensured.

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