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PERSPECTIVES FROM SOUTHEAST EUROPE



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PREFACE

Nikolina Milić, Alina Trkulja

The collection of research papers in front of you, titled **Children in Migration: Perspectives from South East Europe**, resulted from **Children in Migration South East Europe (CIMSEE)**, a two-year-long project implemented by the Global Campus South East Europe (GCSEE) of the Zdravko Grebo Center for Interdisciplinary Studies, University of Sarajevo.

Back in 2020, when the idea of this volume originated, a UNICEF report highlighted that some 45,650 children in migration, including 12,800 unaccompanied or separated children (UASC), were present in Greece, Italy, Bulgaria, and Southeast Europe (SEE) at the end of 2019.1 The available data also indicated that migrant and refugee children in these countries face considerable challenges including, but not limited to, access to basic rights and protection, access to asylum, social inclusion, social care, education, health, and psychosocial support. Considering the scarcity of academic research on these issues at the time, we saw potential within the GCSEE network to fill the gap and provide interdisciplinary analysis of specific concerns related to migrant and refugee children in the SEE region.

One of the primary goals of the project was to produce research and disseminate knowledge on key issues and challenges related to the rights of children in migration in South East Europe among democracy and human rights students and alums, other university students, academia, relevant stakeholders, and the wider public. The aim was to bring together contributions that, by shedding new light on the core aspects of child protection, would have important theoretical implications and provide valuable knowledge for designing evidence-based interventions and social policies.

In this process, the alums of the European Regional MA Programme in Democracy and Human Rights in South East Europe working with children in migration as professionals or dealing with migration-related topics as professors from the partner universities, such as the University of Belgrade, or professionals in partner organisations within the GCSEE network, were invited to submit their contributions. As a result of this collective effort, the publication includes nine informative chapters covering a range of topics, broadly structured into two sections: I Identification of Children and the Right to Asylum and II Child Protection, Alternative Care and Education.

Prof. Nevena Vučković Šahović, a member of the United Nations Committee on the Rights of the Child (2003–2009), contributed to the volume with the introductory chapter on the general measures to implement the rights of children in migration in South East Europe, providing an overview of their implementation in the countries of this region.

As the author stressed, all relevant international standards emphasise the importance of an undifferentiated approach to all children on the move, whether they are refugees or migrants. Even though for most children on the move the SEE countries were merely transit countries, the States analysed in this chapter did not fully comply with the obligations they undertook by ratifying the Convention on the Rights of the Child (CRC).

Ana Ćuća and **Antonija Pindulić** examined the impact of the European Union's (EU) policies on violations of the child's best interests principle at its external border in South East Europe. Focusing on the situation between Croatia, Bosnia and Herzegovina, and Serbia from 2019 to 2020, when the use of pushbacks of children, among other refugees and migrants, as a border and immigration management practice was common, the authors applied the 'black letter' methodology to offer a legal analysis of the primary sources on the assessment of the best interests of the child under international, EU and Council of Europe (CoE) law.

Nermina Jerković focused on the issue of the identification of trafficking victims among accompanied migrant children in Bosnia and Herzegovina (BiH) by questioning the family links between children and the adults they are travelling with through BiH. Grounding her findings in interviews with human rights defenders, as well as investigators and experts in the prevention of human trafficking, the author depicted the identification of accompanied children as a 'Pandora's box' that no stakeholder seems to be willing to open. At the same time, the existing procedures hinder the identification of trafficking victims among accompanied children and thus enable their unimpeded movement through the region.

Milena Šošić and **Mersiha Behlulović** analysed the norms and practices of age assessment of UASC in BiH and Serbia and their compliance with the international human rights standards from a comparative perspective. The focus was on analysing the normative framework and established practices of age assessment to examine how they influence the ability of relevant authorities to abide by the obligation to respect, protect, and fulfil the rights of UASC in the age assessment process. The research indicates that UASC transiting through Serbia and BiH are in protracted vulnerability due to the lack of formal age assessment procedures.

A group of authors from the University of Belgrade, a GCSEE member, **Prof. Nevenka Žegarac**, **Prof. Anita Burgund Isakov**, **Natalija Perišić**, and **Violeta Marković** examined the organisation of the response system in Serbia from 2015 to 2020, including new services developed for children affected by migration and forced displacement, to contribute to a better understanding of their potential from a child rights perspective. This chapter also discusses the types and nature of services for children established since the beginning of the increased influx of migrants and refugees in Serbia in 2015 up until 2020, as well as their adaptation in the context of social policy and the capacities of local social services in line with international standards for child protection.

Tara Kalaputi identified key challenges related to the identification, assignment of legal guardianship, and access to accommodation for UASC in BiH, critically assessing the role of the State and non-State actors in the provision of child protection services in the first two years of major migration flows through the country. The author pointed out that while humanitarian actors primarily facilitated children's access to protective and assistance services, there remains a dire need for a more prominent inclusion of the State and the creation of joint strategies that address their particular needs.

Denica Markova analysed the provision of alternative care for asylum-seeking UASC in Bulgaria. By examining migration, deinstitutionalisation and child protection processes and practices, supported by relevant input from an online survey, this chapter shows that asylum-seeking UASC have been left out of the deinstitutionalisation-related reforms in Bulgaria. The research offers insights into some of the factors contributing to their exclusion and argues that recent reception improvements contribute to maintaining the dominant institutional care responses for these children.

Bojan Stojanović and **Meris Mušanović** analysed the guardianship of UASC in Serbia in the context of migration. The authors focused on the main shortcomings while also exploring ways of improvement in order to respond adequately to the complex needs of UASC passing through or staying in Serbia.

In the final chapter of the volume, **Iva Partsaleva** investigated the development of the Bulgarian model for the provision of education to refugee children, its achievements, and persisting challenges, focusing on a paradigm shift from access to schools to quality education for refugee children in the context of the COVID-19 pandemic.

Special thanks go to distinguished professors and experts from the GCSEE network, namely Gvozden Flego, Wolfgang Benedek, Anna Krasteva, Carmelo Danisi, Wouter Vandenhole, and Lisa Maria Heschl, for providing blind reviews of individual chapters in this collected volume.

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GENERAL MEASURES TO IMPLEMENT RIGHTS OF CHILDREN IN MIGRATION IN SOUTHEAST EUROPE: STATES' OBLIGATIONS UNDER THE UN CONVENTION ON THE RIGHTS OF THE CHILD

Nevena Vučković-Šahović

ABSTRACT

The countries of Southeast Europe (SEE) faced an influx of refugees from Syria, Afghanistan, Libya and Iraq, but also migrants from Sub-Saharan Africa, many of whom were children, some unaccompanied by their family members or friends. International standards stress the importance of a non-distinctive approach to children on the move, whether they are refugees or migrants. Even though for most of the children on the move the SEE countries were just transit ones, the States analysed in this article did not fully comply with their obligations undertaken by ratification of the Convention on the Rights of the Child (CRC). The analysis is based on the documents submitted by the six SEE states, in the process of the CRC implementation reporting: Albania, Bosnia and Herzegovina, Croatia, Montenegro, North Macedonia and Serbia. The SEE States basically failed in fully implementing the CRC's Article 4, that puts an obligation to the parties to introduce legislative, administrative and other measures to implement the provisions of that Treaty. The six SEE states seemed to not have been fully prepared for such an influx of children on the move but have also been under pressure due to the general European response to the problem. Apart from legal and administrative problems the SEE States faced in dealing with children on the move, they also met with societal issues of fear that Asian and African refugees and migrants would undermine domestic 'values' and cultures. Some media played along with the mainstream political narrative, contributing to a general feeling of anxiety, rather than working towards a better understanding of the situation in which refugees and migrants are. All these elements must be taken into consideration by any of the SEE countries, since children in migration will not disappear, as wars, poverty or any other reason forces them to move. That requires that the SEE States rethink measures of implementation of those children's rights, which are, in the first place, obligations for our States.

Key words: *Children, refugees, migrants, States, Convention on the Rights of the Child, obligations, Committee on the Rights of the Child, legislative and administrative measures*

INTRODUCTION

The countries of Southeast Europe (SEE) have long known movements of people such as emigration, displacement, relocation and immigration, yet the mid-2010s brought an unprecedented 'crisis' (Lems, Oester & Strasser, 2020: 315-335). When in the course of 2015, refugees from Syria, Afghanistan, Iraq, Libya, but also migrants from Sub-Saharan Africa, moved through the SEE, the countries of the region were perceived as 'transit.' However, due to the fast closure of Hungarian, Croatian, Slovenian and Macedonian borders by 2016, the people on the move got stranded in the region, some of them forced to stay, which made countries in the SEE, who came up with temporary solutions, faced with increasing challenges of establishing long-term solutions (Bogucewicz, 2020: 151). The crisis was portrayed by the media through the imagery of rivers of people crossing borders on foot, many of them families with children. A lot of them were children without the company of adult family members. Initial sentiments of compassion soon turned into a general fear of 'migrants'. The fear was generated mostly by the media, but under political influence; like with the COVID-19 pandemic later, the governments seemed to have been caught unprepared, despite national laws and infrastructures, and often reacted clumsily, at times harshly and with limited respect for the human rights of those people and children on the move.

As thousands of children, out of whom at least one-quarter unaccompanied (UNHCR, 2022), are present each year in the countries of SEE, international attention to their well-being remains high, but improvement of the realisation of their rights is constantly challenged. Children on the route, or at destination are too often exposed to prejudice, trafficking and all forms of exploitation, deprivation of liberty, lack of health and education services, expulsions, disappearances and even deaths, of which consequences are often worse than events and threats at their countries of origin (Ceriani Cernadas, 2015: 336).

Advancements are mostly slow, and even regressions are noted. The COVID 19 pandemic has contributed to numerous setbacks in the implementation of the State's measures to make the rights of children on the move a reality. In such context, long-term solutions should be well planned, and based on international and national legal systems in place, i.e., the systems that enable full protection of human rights of every individual and especially children, as the most vulnerable.

No matter whether children are in transit or not, whether they are migrants or refugees, international law clearly demands the highest standards of realisation of their rights. By virtue of ratification of the Convention on the Rights of the Child (CRC), the SEE States have committed to respect those highest standards, first of all, to set in place and maintain general, overall measures of implementation. The States' obligations to implement international standards is what puts them at the top of the responsibility chain. Even though there is a strong global migrant movement that shifts the view to the grassroots

level-government direction, along with civil society actors (Rother & Steinhilper, 2019: 24), this article focuses on the State, and its responsibility towards children in migration. By underlining the primary responsibilities of the States, this Article puts the child in migration at the centre of attention, as do the CRC and its monitoring body: the Committee on the Rights of the Child (the Committee).

Much is said and written on the issue of children in migration in SEE, but less so on a holistic overview of the State's obligations to enable legal and administrative infrastructures for the realisation of the rights of those children in our region. This article aims to analyse general measures of implementation (GMI), including legislative and administrative, that States in the SEE have, or should have in place, to make the implementation of international standards on the rights of children in migration possible.[1] This analysis is based on the premise that the SEE States should, as a priority, introduce and improve existing measures to make the rights of children in migration a reality. It could prove useful to the Governments, and other stakeholders, including international organizations, to undertake urgent activities to implement those measures. The State party reporting procedure under the CRC points out a need for a review of the general measures for the CRC implementation for children in migration, and for fast action that must be taken. Hence, the main source for this policy research is found in the primary sources of the reporting process, under the CRC, and the methodology used is based on the analysis of the jurisprudence of the Committee, including its interpretative documents, such as the general comments (GCs).

1 CRC, COMMITTEE AND CHILDREN IN MIGRATION

The CRC has just marked its 32nd birthday. In conjunction with other international treaties, as well as with numerous international documents relevant for children in migration, it now serves as a major international document that the States have committed to. A call for recognition of the importance of a rights-based approach to migrant children is getting louder in the activities of international organizations, as well as in academic articles (Sulima, 2019: 156). The CRC's monitoring body - the Committee, has contributed to the issue with its jurisprudence, such as the Concluding Observations (COB), as well as with numerous interpretative documents, so that the States have a clear understanding of their obligations to children in migration. Even though the CRC only contains a single provision on refugee children (Art. 21), the Committee has confirmed the application of all rights of the child to all children, including migrant children, internally displaced, or generally - all children on the move. The Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding human rights of

1 The States reviewed in this article are: Albania, Bosnia and Herzegovina, Croatia, Montenegro, North Macedonia and Serbia.

children in the context of international migration (GC 3/22) (paragraph 6 (b)), recall the New York Declaration for Refugees and Migrants in which the Heads of State and Government 'undertook to protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration at all times to the best interests of the child, and to comply with their obligations under the Convention on the Rights of the Child' (para. 32). Further, underlying the non-discrimination principle, the Joint General Comment 3/22 reminds the States that:

> the Convention on the Rights of the Child obliges States parties to respect and ensure the rights set forth in the Convention to all children, whether they are considered, inter alia, migrants in regular or irregular situations, asylum seekers, refugees, Stateless and/or victims of trafficking, including in situations of return or deportation to the country of origin, irrespective of the child's or the parents' or legal guardians' nationality, migration status or statelessness (para. 9).

Building on the premise that all children on the move have equal rights outlined in the CRC, the Committee sends a message to all States parties that basic principles of non-discrimination, best interests of the child, right to life, survival, development and respect for the views of the child, must apply, without any distinction whatsoever, to all children, nationals and non-nationals. Moreover, the States must guarantee in their laws, and enforce for every child, all other rights, such as access to health services, right to education, protection from violence, right to a family environment and non-separation, as well as civil and political rights.

To which extent do SEE States parties to the CRC understand and respect the rights of migrant children and their obligations? The answer can be sought in the reporting process under the CRC, in which States provide, every five years, periodic reports on the implementation of that Treaty. Those reports are always challenged by reports of other stakeholders, such as international organizations, civil society, independent human rights institutions and children. The outcome of each procedure is crowned by the Committee's Concluding observations that consist of a number of recommendations to the State party. In the Concluding Observations, the Committee recognises the improvements in laws and practices that States have made, as well as gaps and factors that impede implementation, followed by recommendations for further improvements. Rights of children in migration are high on the Committee's lists of concerns and recommendations, particularly in the SEE.

Moreover, recent jurisprudence of the Committee under the Optional Protocol to the CRC on a Communication procedure (OPIC), seems to revolve around the issues of children in migration, in particular, the right to family reunification and non-separation, non-refoulment, determination of the age of unaccompanied minors and refugee status. More than two-thirds of the views adopted so far by the Committee are related to violations of the

rights of migrant children. The views of the Committee provide a wealth of guidance for the States, in organizing measures to deal with children in migration. The Communication procedure can be used only if the State has ratified the OPIC; even though Albania, Bosnia and Herzegovina, Croatia and Montenegro have ratified the OPIC, Serbia and North Macedonia have only signed it, and are delaying ratification. So far, there have not been Committee's decisions on a case submitted against the four SEE States that have ratified the OPIC.

2 GENERAL MEASURES OF IMPLEMENTATION: INFRASTRUCTURE FOR THE REALISATION OF THE RIGHTS OF THE CHILD AS STATES' OBLIGATION

No right of the child, including rights of children in migration, can be implemented unless there is an infrastructure in place. To make any improvement plans, it is necessary to map the situation, develop means for such mapping (develop indicators and other monitoring tools), collect data and undertake research. That cannot be done unless there are State and independent institutions with staff that is well educated in specific areas of the rights of the child. Even this is not enough unless there is good coordination among those stakeholders, alongside coordination and cooperation with international organisations and civil society organisations (CSOs). For such endeavours, all stakeholders need resources, first of all financial, so that human and organizational resources can be improved. Such solid infrastructure must be based on law. The State, therefore, must not only review its current legislation, but must improve it and make sure it is implemented. Access to justice and judiciary need strong reforms so that no child violation is unattended, and no perpetrator unpunished for such violations of child rights.

One of the ways to challenge the just described elements of infrastructure for children in migration in a State is to assess the system concerning the CRC's GMI. Article 4 of the CRC requires States parties to undertake concrete steps to put into effect the principles and provisions of the Convention. From the moment of ratification, States parties agree to be bound by and to implement a series of obligations to ensure that all children under their jurisdiction are able to fully enjoy the rights recognized in the Convention. In its first guidelines for initial reporting from 1991, the Committee identified articles relating to the GMI (CRC/C/5). The Committee clarified the concept of GMI and the related requirements of States parties in the Guidelines for Periodic Reporting, and in its General Comment No. 5:

> Article 4 requires States Parties to take 'all appropriate legislative, administrative and other measures' for implementation of the rights contained therein. Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental. In addition, the Committee on the Rights of the Child has identified a wide range of measures that are needed for effective implementation,

> including the development of special structures and monitoring, training and other activities in Government, parliament and the judiciary at all levels" (para. 1).

While it is the State that takes on obligations under the Convention, it needs to engage all sectors of society and, of course, children themselves.

For the consideration of the reports on the implementation of the CRC at the national level, the Committee divides articles of the CRC into nine clusters. General Measures of Implementation (GMI) is the first cluster. The Committee connects the obligations under Article 4 to those under Article 42, which is the obligation to make the content of the Convention widely known to children and adults, as well as the obligation under Article 44(6), to make State reports widely available within the State party. In addition, general principles of the CRC formulated in Article 2, to respect and ensure the rights in the Convention to all children without discrimination, and Article 3(2) – to undertake, and to ensure the child such protection and care as is necessary for his or her well-being – are also considered as general implementation obligations for the States parties.

The Committee developed the following list as a minimum set of States' measures: a review of reservations; ratification of other relevant international treaties; legislative measures; and justiciability of rights and administrative measures. Administrative measures are data collection and analysis; development of indicators; coordination of implementation; decentralization, federalization and delegation; monitoring implementation; State and independent stakeholders; national plans of action; making children visible in the budgets; training and capacity building; cooperation with civil society; international cooperation and independent human rights institutions. The following chapter offers an insight into each of the measures in the selected SEE States, as they pertain to children in migration.

3 INFRASTRUCTURES FOR THE REALISATION OF THE RIGHTS OF CHILDREN IN MIGRATION IN SEE: SUCCESSES AND MISSING LINKS

In recognition of the importance of the GMI for children in migration, the CRC and Convention on the Protection of the Rights of All Migrant Workers and their Families (CMW) Committees, devoted a whole section of the joint General Comment 3/22 to the GMI for the protection of children in international migration, stating the importance of children in international migration being treated, *"first and foremost"*, as children (CMW/C/GC/3-CRC/C/GC/22: Section II, para 11). That request comes with the reminder that all children are equal, regardless of their origin or any other status. Another general reminder relates to the States' obligations to protect the rights of all children within their jurisdictions, 'including those who come under its jurisdiction while attempting to enter its territory' (*ibid*, Section II, para 12). That is an important obligation that many States seem to disregard, making visible distinctions between 'their' and 'other'

children, as well as children on the territory, as opposed to children at the border, or on a transport vessel. The most comprehensive request is for States to integrate the CRC into their policies, practices, migration-related frameworks and other measures (*ibid.*, Section II, para 13), of course, under the assumption that such frameworks and measures are in place.

3.1 REVIEW OF RESERVATIONS

According to Article 51 of the CRC, States parties are entitled to enter reservations at the time of ratification of, or accession to the Convention, as long as the reservation is compatible with the object and purpose of the CRC. The Committee insists that States parties review and withdraw the reservations that they have entered, particularly if they are incompatible with the object and purpose of the CRC. The reservations, initially placed by most of the SEE States, have all been withdrawn, and none of them relate directly to children in migration (United Nations, 2022).

3.2 RATIFICATION OF OTHER KEY INTERNATIONAL HR INSTRUMENTS

Due to the indivisible and interdependent nature of the international human rights treaties, the Committee consistently recommends States parties ratify three optional protocols (OPs) to the CRC, as well as the other major international human rights instruments. Apart from the CRC and the OPs, certain international treaties are more relevant than the others for the topic of children in migration. The one to start with is the 1951 Convention, relating to the Status of Refugees. All SEE States reviewed in this paper are States Parties to the 1951 Convention, relating to the Status of Refugees and its 1967 Protocol. The other important treaty is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW). Unfortunately, only Bosnia and Herzegovina and Albania are its States parties, that is, they have ratified it; Serbia and Montenegro have only signed it, while Croatia and North Macedonia have not yet made a move towards ratification (OHCHR, 2022c). However, the non-ratification of the CMW does not relieve the four States of obligations under the CRC, and of respect for the Committee's GCs.

3.3 LEGISLATIVE MEASURES

Article 4, of the CRC provides that, 'States parties shall undertake all appropriate legislative... measures for the implementation of the rights recognized in the present Convention.' Consequently, under the cluster of GMI, the Committee asks that the States parties adopt all necessary legislative measures to conform with their treaty obligations.

This requires that States parties ensure that national laws, including any local or customary law, are fully compatible with the CRC. To that end, States parties should regularly review domestic legislation, practice and related administrative guidelines to ensure full conformity with the principles and provisions of the CRC. Such review must reflect a holistic approach, as well as the interdependence and indivisibility of human rights, and the rights of the child. Consequently, any system of customary, regional or local law must also be reviewed, and made compatible with the CRC. Some States have opted for integrating the rights of the child in their Constitutions, but such a solution does not automatically guarantee the respect for all rights of the child.

So, the States parties to the CRC should, as a minimum, incorporate the CRC rights into domestic legislation, and they should ensure that the provisions of the Convention are given legal effect within their domestic legal systems. Sometimes, it is difficult to directly apply the provisions of the CRC, even in countries that have a monist system (actually all SEE States reviewed here do), since many of the CRC's provisions are very broad, and have somewhat vague and programmatic content. Judicial authorities are quite impeded as a result. Ideally, each State party to the CRC should adopt a separate child rights act with an umbrella legal status. Such child rights acts should highlight the unique status of children in migration, without limiting protection to refugee children only, as discussed earlier. In cases of conflict between CRC provisions and customary law, the Convention should prevail. As confirmed by the Committee, predominance should always be given to the CRC, in the light of article 27 of the Vienna Convention on the Law of Treaties (CRC/GC/2003/5: para. 20).

To this end, it is very important to keep updating analyses of compliance of national legislation with international standards, making sure that national legislation incorporates all international standards on the rights of children in migration. There is a prevailing stereotype that legislation in the SEE countries is good, but it is the practice that lags behind. But that is not the case, since there are many gaps in national laws that apply to children in migration, and ample space for analysis and improvements. In its Concluding observations to Serbia, the Committee states that it 'remains concerned at the inadequate harmonisation of legislation and the absence of a comprehensive children's act, noting that the reluctance to enact such an act poses a significant challenge to advancing children's rights in the State party' (CRC/C/SRB/CO/2-3: para. 6). That directly affects children in migration; hence the Committee's addition of a related concern that:

> Vague references in the Law on asylum in relation to the special treatment of refugee and asylum-seeking children, along with the absence of a proper identification procedure and an insufficient number of interpreters at the border, increase the risk that unaccompanied children will not be identified as such when entering the country; Under current regulations there is no separate asylum procedure for unaccompanied children, resulting in delays in the appointment of legal representatives (*ibid.*, para. 56).

3.4 JUSTICIABILITY OF RIGHTS

In its famous Statement, 'For rights to have meaning, effective remedies must be available to redress violations', the Committee sends a crucial message that guaranteed, but not implemented rights of the child, are essentially just a sort of public pretence (CRC/GC/2003/5: para. 24). In fact, the justiciability of rights, i.e., the ability to claim rights through judicial means, is the basis for a redress of violations. In relation to children in migration, this also means that States parties must ensure that there are effective, child-sensitive procedures available to such children and their representatives. The OP for individual complaints is an added value to the justiciability of the rights enshrined in the CRC.

A basic requirement for the availability of remedies to redress violations of the rights of children in migration is that they have access to justice in any country. Access to justice is both a fundamental human right, and an essential prerequisite for the enjoyment and protection of other human rights of all people, including children in migration. Indeed, justice systems have an important role to play in combating the discrimination of children in migration, or when their rights concerning education, health and social protection have been violated. Children's access to justice is also key to achieving the Sustainable Development Goals (SDGs). Target 16.3 of the SDGs provides that the rule of law should be promoted at the national and international level, and that 'equal access to justice for all' (i.e., adults and children alike) should be ensured (SDSN, 2022). It is associated with economic growth and investment, as well as equity and social justice. Limited access to justice for children in migration is well documented in the SEE States, often resulting in the inability of those children to claim their rights and defend themselves from injustice. Access to justice must be guaranteed by law in a clear way that avoids vague definitions and references, like in the previous example of Serbia.

The most sensitive element of the child's access to justice, in cases of migration, is the availability of access to asylum procedures, as well as appropriate information and assistance. The Committee recommends Montenegro 'ensure the effective implementation of the Law on Foreigners, including by ensuring that asylum procedures are fair, efficient and child-sensitive and are used systematically to identify and refer unaccompanied or separated children to appropriate protection and support services' (CRC/C/MNE/CO/2-3: para.52(a)). As for appropriate assistance, the Committee is concerned that, in Croatia, 'asylum-seeking children are not provided with free legal aid or other appropriate forms of assistance for all stages of the process' (CRC/C/HRV/CO/3-4: para. 56(d)), and recommends such assistance be instead provided (CRC/C/HRV/CO/3-4: para. 57(d)).

4 ADMINISTRATIVE AND OTHER MEASURES

4.1 DATA COLLECTION AND ANALYSIS, DEVELOPMENT OF INDICATORS

UNICEF, UNHCR and the International Organization for Migration (IOM) report that analyses of available data on children in migration, in Serbia, among others, indicate that there is a lack of systematic data collection; that it is not properly, or at all, disaggregated by age and sex, and that information on unaccompanied girls is particularly scarce (IOM, 2019: 3).

Data collection and analysis, and the development of indicators are essential for conducting assessments of the State on the rights of children in migration. However, such data collection is realistic only in a State that has a developed system of regular collection of disaggregated data on child rights, developed according to all areas of the CRC (CRC/GC/2003/5: paras. 48-50). It is unlikely to expect that a State that has poor data on children in the health care system, or on violence against children, will have a very good data collection system for children in migration. Without sufficient data, it is impossible to know exactly where the obstacles in the implementation are, or to recognise the progress achieved. It is also a challenge to design policies, programs and strategies if a government and its agencies are not realistic, not only in the capital, but in all regions of the country, including remote areas. In its Guidelines for Periodic Reports, the Committee asks the States for detailed statistical and other data on all rights of the child; notes improvements, but more often suggests stronger efforts (CRC/C/58/Rev.3: para 14).

Once collected, data should be systematically evaluated to identify discrimination, and/or disparities in the implementation of the CRC, which is particularly important regarding children in migration. The collection and public dissemination of qualitative and quantitative data on all children in the context of international migration should be part of a systematic and comprehensive rights-based approach, aimed at the protection of the rights of children in migration. The Committee recommends that data are disaggregated 'by nationality, migration status, gender, age, ethnicity, disability and all other relevant statuses to monitor intersectional discrimination' (CMW/C/GC/3-CRC/C/GC/22*: para. 16). The data collection is best served if accompanied by indicators to measure the implementation of the rights of all children in the context of international migration, 'including through a human rights-based approach to data collection and analysis on the causes of unsafe migration of children and/or families' (*ibid.*). All information collected must be available for all stakeholders, including children, civil society organizations and other concerned actors.

Another missing link in relation to data collection on children in migration is full respect of their privacy rights and data protection standards, especially biometric data, which 'should only be used for child protection purposes, with strict enforcement of appropriate

rules on collection, use and retention of, and access to, data' (CMW/C/GC/3-CRC/C/GC/22: para. 18). Due diligence regarding safeguards in the sharing of data between authorities, and/or countries, must be assured. It is a challenge for each State to prohibit the sharing and use for immigration enforcement of personal data collected for certain protection, remedy, civil registration, access to services or other reasons.

In its COB to Albania, the Committee encourages the State party to 'strengthen its efforts to set up a comprehensive data collection system with the support of its partners and analyse the data collected, as a basis for assessing progress achieved in the realisation of child rights and helping design policies and programmes to implement the Convention and the Optional Protocols thereto' (CRC/C/ALB/CO/2-4: para. 18). More specifically, the Committee requires Albania to 'study the impact of migration on children as previously recommended by the Committee on Migrant Workers' (CMW/C/ALB/CO/1, para. 38), as well as 'to provide children with all the necessary social services for them to fully enjoy their rights under the Convention' (*ibid.*: 75). In response to the Committee's recommendations, Albania reports on the steps taken to improve the data collection on children in migration:

> Order No.300/2015 "On the Approval of National Statistics on Migration and International Protection" provides for improved unification, collection, compilation of national statistics on immigration and asylum and international protection. The Electronic Foreign Data Registry produces statistics on foreigners with regular residence, disaggregated by age, sex and citizenship, as well as on those with irregular status. An Asylum Seekers Database is developed related identification of disaggregated data on children (CRC/C/ALB/5-6: para. 226).

4.2 COORDINATION OF IMPLEMENTATION

The Committee requires governments to establish intersectoral coordination among the public authorities, but also in its cooperation with civil society, and with children themselves. When the States parties present their reports, the Committee too often notes a lack of effective coordination within the government. The CRC covers all aspects of child's life, which requires coordinated activities of all sectors of administrative activity. As various ministries, without very strong coordination, are in charge of matters related to children, implementation is often hectic and inefficient. Well-coordinated activities increase the visibility of children and build permanent mechanisms of coordination. The Committee notes:

> There are many formal and informal ways of achieving effective coordination, including for example inter-ministerial and interdepartmental committees for children. The Committee proposes that States parties, if they have not already done so, should review the machinery of government from the perspective of implementation of the Convention (CRC/GC/2003/5: para. 38).

In establishing strong, institutional coordination, States sometimes over-centralise decision-making policies, but having excessive decentralisation (often in federal States) is another threat to coordination. These two extreme situations can lead to a disregard for differences at the provincial and territorial level.

Unfortunately, the SEE States parties to the CRC struggle with maintaining fully operational coordination bodies, which is reflected in an inability to keep all sectors aware and engaged in cases of children in migration. Therefore, the Committee encourages States parties to establish a comprehensive child system at all levels, so that the situation of children in migration is approached holistically, always addressing the complex situation of those children, including via assessment of the situation in their countries of origin, transit, destination and return (CMW/C/GC/3-CRC/C/GC/22: para. 14).

The Committee welcomed progress in the SEE States, in their attempts to coordinate implementation across State departments, as well as with other stakeholders, but recommended improvements in all six States. The most common concern is a non-comprehensive approach to coordination due to unclear roles of States' bodies and departments. In Albania:

> The Committee reiterates its concern (CRC/C/15/Add.249 para. 8, 2005) about the multitude of actors involved in the implementation of the Convention at the national and local levels and the limited capacity of the State Agency for the Protection of Children's Rights to effectively ensure coordination among those multiple bodies. Furthermore, the Committee notes with concern the lack of coherence between the existing child rights institutions which negatively impact the effective coordination of programmes and strategies for the implementation of the Convention (CRC/C/ALB/CO/2-4: para 11).

Another concern is the insufficient allocation of human, financial and operational resources to coordinate activities, as in Bosnia and Herzegovina: 'The Committee takes note of the efforts made by the State party, including the establishment of the Group for the Promotion and Protection of Child Rights by the Ministry of Human Rights and Refugees and the renewal of the mandate of the Council for Children in 2012' (CRC/C/BIH/CO/5-6: para. 9). Similar concerns were raised in the case of North Macedonia: 'While noting the reform of the National Commission on the Rights of the Child in September 2007 elevating its members to the rank of State counsellors, the Committee is concerned that this body is not sufficiently active in the planning of policies and setting of priorities for the implementation of the Convention' (CRC/C/MKD/CO/2: para. 10), and the Committee recommended "the State party ensure that the National Commission on the Rights of the Child take the lead in the planning of policies and setting of priorities for the implementation of the Convention. The National Commission should be provided with the human, technical and financial resources necessary for the exercise of its mandate effectively' (*ibid.*: para 11).

4.3 DECENTRALISATION, FEDERALISATION AND DELEGATION

Decentralisation of power, through devolution and delegation of government, does not, in any way, reduce the direct responsibility of the State party's Government to fulfil its obligations to all children within its jurisdiction, including children in migration. The States in the SEE are rather centralised, yet they do have regions and municipalities that are, in fact, first responders to children in migration, such as places close to the State borders. Too often, such regions and municipalities do not have the necessary financial, human and other resources to discharge responsibilities for dealing with children in migration. This particularly applies to unaccompanied migrant children. Such situations place high responsibilities on local authorities, in particular, as indicated, those at the States' borders. Therefore, there must be safeguards to ensure that decentralization or devolution does not lead to discrimination in the enjoyment of rights by children in migration in different regions. 'The Committee urges the State party to reinforce the coordination role of the State Agency for the Protection of Children's Rights by ensuring that the Agency has high status, sufficient authority and adequate human, technical and financial resources to effectively coordinate actions for children's rights across different sectors and from the national to the local levels' (CRC/C/ALB/CO/2-4: para. 12). Coordination seems even more challenging in BiH, where the Committee expressed concern about the 'coordination of the implementation of the Convention at the national, entity, district and cantonal levels', and 'urges the State party to provide the Group for the Promotion and Protection of Child Rights with sufficient authority and resources to strengthen the coordination role of the Ministry of Human Rights and Refugees in all activities related to the implementation of the Convention at cross-sectoral, national, entity, district and cantonal levels'. In its COB to North Macedonia, the Committee recommends that 'the composition and methods of work of the Commission should allow sufficient avenues for the effective participation of local-level government, civil society and children' (CRC/C/MKD/CO/2: para. 11).

4.4 MONITORING IMPLEMENTATION, STATE AND INDEPENDENT STAKEHOLDERS

No State strategy or coordination for all children, including those in migration, is possible without data collection and the ongoing monitoring. Self-monitoring and evaluation are obligations for Governments, but the Committee stresses the importance of independent monitoring of progress towards implementation by, for example, parliamentary committees, CSOs, academic institutions, professional associations, youth groups and independent human rights institutions. Normally, each government ministry is in charge of monitoring the situation in their domain, however, overall monitoring aiming to enable a broad overview of the situation for children is imperative. In some States, it is the coordinating bodies that compile results of departmental monitoring. In its GC no. 5, the Committee stresses the need for regular impact assessment, in particular when a law or budget is proposed (CRC/GC/2003/5: para. 45).

More specifically, for children in migration, monitoring requires that 'authorities responsible for migration and other related policies that affect children's rights systematically assess and address the impacts on and needs of children in the context of international migration at every stage of policy-making and migration' (CMW/C/GC/3-CRC/C/GC/22: para. 14).

It seems that in its COB, the Committee pays greater attention to independent monitoring, assuming that State monitoring is sufficiently reflected when there is good coordination, planning and data collection. Independent monitoring is perceived as monitoring by national human rights institutions, Ombudsman or the likes (NHRI), and the role of other stakeholders in monitoring is often overlooked in the CRC reporting process. The States, in their reports, also give more space to independent monitoring by an NHRI. The Committee's primary concern is with the actual function and legal and factual capacity of NHRIs to deal with the rights of the child. In its COB to Albania: 'The Committee expresses concern that the position of the People's Advocate (Ombudsperson) has remained vacant for more than a year and that the Children's Department created in 2004 within the Ombudsperson's Office has been inactive in the recent past' (CRC/C/ALB/CO/2-4: para. 19). Following up recommendations, Albania amended the Law on the Ombudsman and established the Section for Children's Rights Protection. However, there is no information in the State report on involvement with the issue of children in migration in that country (CRC/C/ALB/5-6: para. 41).

While there is no clear information on NHRI's activities related to children in migration in the CRC reporting procedures, other sources, such as decisions and recommendations of the NHRIs in the six States of the SEE, provide evidence of concern over those children. Acting upon communication of an unaccompanied child from Afghanistan, the Serbian Ombudsman issued recommendations to authorities, clearly outlining a failure of the social justice system to understand and act (Communication no. 132-2806/2017). A review of the activities of NHRIs concerning the rights of children in migration fall outside the scope of this paper and require further research.

4.5 NATIONAL PLAN OF ACTION – STRATEGIES

Following the first World Summit for Children, held in 1990, related to the particular commitments set by nations attending the Summit, States were encouraged to develop national plans of action. A bit later, in 1993, the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, called on States to integrate the CRC into their national human rights action plans (para. 21). In 2002, the United Nations General Assembly (UNGA) held a Special session on children, adopting the Outcome document that also commits States 'to develop or strengthen as a matter of urgency if possible by the end of 2003 national and, where appropriate, regional action plans with a set of specific time-bound and measurable goals and targets based on this plan of action (...)' (UN General Assembly, 2002: paras. 59 and 61(b)).

However, those were political commitments and the Committee in its GC no. 5 Stated that States parties have a legal obligation to make strategies for the realisation of the rights enshrined therein. For such a strategy to be effective, it must relate to all rights of all children under its jurisdiction and must be rooted in the CRC (CRC/GC/2003/5: para. 29). Such national policies need to prioritise child rights issues and must be constantly evaluated and renewed. Priority in such plans of action should be based on the needs of every child, including the most vulnerable ones, such as children in migration. Actually, a priority target of national plans of action should be the development of a system of GMI that ensures that there is an infrastructure for the realisation of the rights of all children. That can be achieved only by taking positive and proactive actions. The development of a plan of action should be all-inclusive, with all stakeholders participating. It must be published and available in all languages and forms, including in child-friendly versions. Its evaluation must be regular and independent, and results made public and broadly disseminated.

After the initial political commitments and CRC obligations, many States parties to the CRC developed some national plans of action for children. Some take their obligations seriously, understanding the usefulness of mapping, planning and acting towards the improvement of the lives of all children. A regular cycle of development, realisation and evaluation of such strategies brings progress for every society.

Unfortunately, not all States take their obligations towards children with the same level of commitment; some States never adopt a comprehensive strategy, some never renew it, or allow for long periods before renewal. States also often make sectoral strategies, such as on health, protection from violence, child labour, poverty reduction, education or development. Some States decentralise the task and resort to regional strategies, which is acceptable, as long as there is a comprehensive strategy on the rights of the child. Without such a continuously renewed overall strategy, there is always a risk of overlaps and contradictions between sectoral and local strategies.

Ideally, each State should incorporate the rights of children in migration into its holistic child rights strategy. However, specific strategies on refugees and migrants, with a focus on children are also important. Albania reports the adoption of the National Strategy on Migration and its Action Plan 2019-2022, which will 'further strengthen the migration legislation and management structures, improve migration-related data collection, and address emigration from the country.' Such vague information does not provide evidence of the effects of the Strategy on children in migration, but the following CRC review process might reveal more information. Some States, such as Serbia, have not adopted a strategy on children since 2015, so children in migration are left out of holistic planning. Croatia reports that 'In 2018, the GRC adopted a Protocol on Treating Unaccompanied Children, and appointed an Interdepartmental Committee for the Protection of Unaccompanied Children to achieve efficient interdepartmental collaboration' (CRC/C/HRV/5-6: para. 272) However, the National Strategy for Children's Rights has expired in

2020 (ibid.: para. 2(a)), and we are yet to see when the new one will be adopted, and to which extent it will target children in migration.

4.6 MAKING CHILDREN VISIBLE IN THE BUDGETS

In order to implement the rights enshrined in the CRC, children must be made visible in budgets, and States must allocate enough resources for children. Such obligations require adequate budgetary analysis. In its jurisprudence, the Committee has paid much attention to the identification and analysis of resources for children in national and other budgets. The Committee stresses that 'adequate resources, including budgetary, aimed at ensuring effective implementation of policies and programmes,' should be part of the policies and practices to be developed and implemented to fulfil the rights of all children in the context of international migration (CMW/C/GC/3-CRC/C/GC/22: para 18). Resources are not only financial, but human and organizational as well. No strategy for child rights or children in migration can be realized without the financial commitment of the State. Even when the State seeks additional resources through international cooperation, it must commit a visible part of its budget to children in migration. Too often, States in the SEE do not plan expenditures for children in migration, including special resources for, for example, unaccompanied children. The resources are necessary for all measures of implementation, so this one serves as an enabler of all other measures and reflects the real readiness of the States to deal with children in migration. For example, the Committee recommends that Croatia allocates 'adequate financial and human resources to improve the guardianship system for unaccompanied and separated children' (CRC/C/HRV/CO/3-4: para. 57(d)). In the case of North Macedonia, 'the Committee is concerned that no specific funds have been earmarked for the implementation of the National Action Plan on the Rights of the Child and that the funds earmarked for the implementation of the 2010 Programme for Compulsory Health Insurance for All Citizens are insufficient' (CRC/C/MKD/CO/2: para. 16) and recommends the State 'allocate or earmark funds for the implementation of the National Action Plan' (*ibid.*: para. 17(a)).

4.7 TRAINING AND CAPACITY BUILDING

The Committee pays significant attention to training and capacity building. States parties have the obligation to develop training programs for all those involved in the implementation of the CRC, including government officials, parliamentarians and members of the judiciary, as well as all those working with and for children. For such training to be effective, it must be envisaged in a systematic way. One short training does not serve the purpose, so education on special aspects of situations and solutions related to children in migration must be ongoing and reflected in professional training curricula, codes of conduct and educational curricula at all levels.

Trainings must sensitise professionals to view children in migration as rights holders. The professional working with and for children in migration should have a better understanding of the CRC, its contents, its requirements and the new opportunities it opens for the effective respect of the right of children in migration to participate in social life and to express their opinion in all decisions that affect them. The Committee highlights the need for 'continuous and periodic training of child protection, migration and related officials on the rights of children, migrants and refugees and on statelessness, including intersectional discrimination' (CMW/C/GC/3-CRC/C/GC/22: para. 18).

As the two Committees note, children in migration suffer constantly from 'multiple and intersecting forms of discrimination, throughout the migration process, including in and after returning to the country of origin, and/or as a result of their migration status' (*ibid.*: para 23). The States' duty is to invest efforts into combating discriminatory behaviours that reflect xenophobia and racism. The best way to do that is through training and education, including the use of media and other forms of dissemination of such knowledge. This in particular applies to States' efforts to promote the social inclusion and full integration of families affected by international migration into the host society. Knowledge about migration has to be improved, and activities against negative perceptions regarding migrants are essential in protecting children affected by international migration and their families from violence, discrimination, harassment and bullying, and fulfilling their access to rights (*ibid.*). In its COB on the periodic report of Bosnia and Herzegovina, the Committee expresses serious concern about 'hate speech against asylum seekers and refugees in the media and the inadequate prosecution of perpetrators of such conduct' (CRC/C/BIH/CO/5-6: para. 43(e)) and recommends that the State 'develop campaigns to counter hate speech against asylum seekers and refugees, particularly children, and ensure the investigation, prosecution and punishment of perpetrators' (*ibid.*: para 44(f)).

Lack of training leads to the lack of capacity to deal with the protection of the rights of children in migration. The Committee identifies 'the lack of capacity of the authorities to implement the Law on Asylum (2016) with respect to the provision of guardianship for unaccompanied and/or separated children' (*ibid.*: para 43(b)) as a source of serious concern, and recommends that the State 'provide sufficient human, technical and financial resources to increase the capacity and improve the conditions of government-run reception centres to accommodate migrant and asylum-seeking children, including unaccompanied children, and ensure that the services provided by the reception centres are child-friendly and age-appropriate' (*ibid.*: para. 44(d)).

4.8 COOPERATION WITH CIVIL SOCIETY

CSOs play a very important role in legislative and administrative measures that States undertake to address the rights of children in migration. CSOs are often the first to meet

children at the State borders, but they are also crucial in assisting children in migration in the regulation of their status, by reuniting them with families, alarming the public when rights of those children are violated, and also organizing psycho-social support to children in migration and their families. More than that, they are strong implementing partners of the States and international organisations. Thanks, in most part, to CSOs, migrants' organisations started blooming, playing an important role in international processes and documents, such as the United Nations Global Compact (Rother & Steinhilper, 2020: 249). To fully implement the CRC, the Committee stresses the importance of cooperation with civil society including CSOs, and, in particular, with children and their organisations. It consistently recommends that States parties involve civil society, including children, throughout all stages of implementation of the rights of the child, including rights of children in migration. CSOs also use international avenues to, using the reporting process under the CRC and its OPs, draw attention to the situation of children in migration. The Committee underlines that the State needs to work closely with CSOs in the widest sense, and that it must respect the independence of CSOs, since that plays a crucial role in the process of implementation of the CRC (CRC/GC/2003/5: para. 58).

Children's organisations are growing in numbers and are demonstrating the capacity to lead initiatives. So, the Committee stresses that the States should:

> (...) adopt measures aimed at empowering children affected by international migration to participate on different levels, through consultations, collaborations and child-led initiatives, and at ensuring that civil society organizations, including children associations and child-led organizations, can participate effectively in policy dialogues and processes on children in the context of international migration, at the local, national, regional and international levels (CMW/C/GC/3-CRC/C/GC/22: para. 39).

It is well known that civil society is playing an important role in protecting the rights of children in migration; civil society is quite often a service provider, deals with training and education, data collection and research, facilitates access to justice for children in migration and is a loud advocate. Those organisations rely mostly on international funding for their activities, even though they often do what their government should.[2] Even though States parties to the CRC have an obligation to support civil society organizations in the implementation of the CRC, the States often disregard that obligation. In its COB to Bosnia and Herzegovina, the Committee notes:

> (...) the information provided by the State party on an initiative for governments at the entity and cantonal levels to introduce lower tax rates to civil society, the Committee recommends that the State party provide adequate support for services delivered by civil society organizations related to the promotion and protection of

2 For instance, Belgrade Centre for Human Rights in cooperation with the UNHCR Serbia: https://bit.ly/3CGGGQn.

> the rights of children and ensure the effective functioning of the advisory body of the Council of Ministers of Bosnia and Herzegovina to strengthen cooperation with civil society organizations' (CRC/C/BIH/CO/5-6: para. 15).

Similarly, in Montenegro, the Committee stated:

> While noting the State party's ongoing cooperation with civil society and the adoption of legislation enabling civil society organizations to provide social and child protection services to children, the Committee is concerned that such cooperation is limited and that these organizations do not receive the financial and capacity-building support necessary to implement activities for the promotion of children's rights' (CRC/C/MNE/CO/2-3: para. 17).

No evidence is found in the CRC reporting procedure to demonstrate the Committee's recognition of the importance that civil society plays in the protection of the rights of children in migration, however, the Committee highlighted the role of civil society in all GCs that deal with children on the move.

4.9 INTERNATIONAL COOPERATION

It is unsurprising that all relevant GCs devote separate sections on the importance of international cooperation. A comprehensive interpretation of the CRC is crucial in leading States to develop bilateral, regional and global cooperation in order to ensure the rights of children in the context of international migration. Addressing the needs of children in the context of international migration, and in safeguarding their rights, with the best interests of the child being a primary consideration, requires coordinated efforts among countries of origin, transit, destination and return (CMW/C/GC/3-CRC/C/GC/22: paras. 48-51). Unfortunately, an increasing number of cooperation agreements among States focus on restricting migration, which reflects negatively on children in migration. The SEE's policies on children in migration and State cooperation are often guided by local politics, with little concern for the well-being of children in migration. International political pressure stands in the way of better coordination and maintenance of children in migration-friendly measures in the SEE States. In spite of such pressures, the States do have obligations to implement the CRC and other relevant international law, so as to ensure:

> (...) safe, orderly and regular migration, with full respect for human rights and avoiding approaches that might aggravate their vulnerability. In particular, cross-border case management procedures should be established in an expeditious manner in conformity with the Convention on the Rights of the Child" and other respective international treaties (CMW/C/GC/4-CRC/C/GC/23: para. 64).

It is difficult to imagine, for example, resettlement programs to countries that host a large number of displaced persons, including children from other countries and who need assistance, without international cooperation that is built on acknowledgement, not a restriction of rights of migrant children. The Committee stresses that:

> (...) bilateral, regional and international initiatives should be encouraged in order to facilitate family reunification, implement best interest assessment and determination, and guarantee children's right to be heard and due process safeguards. Such initiatives should ensure access to justice in cross-border situations where children whose rights are affected in the country of transit or destination need it after they have returned to the country of origin or gone to a third country (Ibid.: para. 65).

The role of the UNHCR is highly recognised, and the Committee praises States for their cooperation with that organisation. In its COB to Serbia, 'the Committee welcomes the State party's continued cooperation with the Office of the United Nations High Commissioner for Refugees.' (CRC/C/SRB/CO/2-3: para. 56). Respective observations to Montenegro are similar (CRC/C/MNE/CO/2-3: para. 51). All six States reviewed in this article cooperate with UNHCR, but also with other inter-governmental organizations such as UNICEF, IOM, the United Nations Development Programme (UNDP), European Union (EU), Council of Europe and international CSOs like Save the Children, International Rescue Committee (IRC) and many more.

CONCLUSION

In the introduction to this text, it was stressed that the SEE States should, as a priority, introduce and, where needed, improve measures to enable the realisation of the rights of CIM. The analysis based on the CRC reporting procedure provides evidence of slow improvement in most of the six SEE States. How come all of those States still have problems in making an accelerated move towards the building an appropriate infrastructure that will meet the needs and protect CIM, in particular those that are unaccompanied or victims of violence? International recommendations are clear, but still, there seems to be a lack of resources, capacity, understanding and real political will. Part of the problem lies in a broader European response to children in migration and the general pressure that the SEE is exposed to, when dealing with refugees and migrants. The distinction between the two (refugees and migrants) deepened with the Syrian crisis and, in some views, lead to 'backlash against (if not breakdown of) the asylum system' (Lems, Oester & Strasser, 2019: 322). Like in the rest of Europe, the influx of refugees and migrants to SEE resulted in general fear and overprotective attitudes towards the preservation of domestic 'values' and cultures. Some media played along with the mainstream political narrative, contributing to a general feeling of anxiety,

rather than working towards a better understanding of the situation, in which refugees and migrants are.

Despite great efforts that international organisations, civil society, independent media and independent human rights institutions made, the States seem to be trapped in the legal, social and political atmosphere of their backyards, which they have created in the first place. Besides, they are very dependent on the broader European reaction to migrations in general. None of the EU States has ratified the CMW, and only two of the SEE reviewed in this text have done so, which is a fact greatly affecting the argument that all children in migration, no matter whether they are refugees or migrants, should be treated equally, and that real effort is needed for establishing and maintaining infrastructures for the implementation of their rights. One thing is certain: children in migration will not disappear. They will keep coming – sometimes driven by war or poverty or any other reason – in greater or smaller numbers, and the aim of any of the SEE States cannot be to quickly get rid of those children, but to rethink the measures of the implementation of those children's rights, which are, in the first place, obligations for our States. Better cooperation among the SEE States, as well as with international organisations (in the first place the UNHCR), can help them move forward, accept the permanency of the issue, respect international obligations, change the narrative and nurture empathy with children in migration. Only then can they significantly improve the GMI of the rights of children in migration and leave the circle of perpetuating the same mistakes.

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SECTION I

IDENTIFICATION OF CHILDREN AND THE RIGHT TO ASYLUM

BEST INTERESTS OF THE CHILD?: PUSHBACKS AS BORDER MANAGEMENT PRACTICE IN CROATIA IN LIGHT OF THE EU MIGRATION AND ASYLUM POLICY

Ana Ćuća, Antonija Pindulić

ABSTRACT

The article examines the impact of European Union's policies on the violations of the of child's best interests principle at its external border in South-East Europe. It focuses on the situation between Croatia, Bosnia and Herzegovina and Serbia – where the use of pushback of children as a border and immigration management practice is common – primarily focusing on the period of 2019-2020. The 'black letter' methodology is applied to offer a legal analysis of the primary sources on the principle of the best interests of the child assessment under the international, EU and Council of Europe's (CoE) law. This article argues that pushbacks as illegal practice have their roots in the shortcomings of the European Union's asylum and migration policy, specifically in its focus on securitisation and externalisation with no obligation to secure safe and legal pathways. Therefore, current EU migration and asylum policy is examined. Shortcomings are detected and suggestions for amending the policies to meet the international and regional obligations of the EU and its Member States and protect the children in migration and respect their best interests further specified.

Key words: *children, refugees, migrants, pushbacks, Croatia*

INTRODUCTION

The humanitarian crisis in 2015 transformed the role of the European Union (hereafter the EU) Member States located on its external borders. The activation of the so-called Balkan corridor had long-lasting implications on the future approach to the border management. Closing and shielding of Hungarian borders directed the movement of people in search of protection towards Croatia, Slovenia and Austria (Pollet & Mouzourakis, 2015: 33). In the winter of 2016, the centralised approach towards the humanitarian crisis shattered under national practices of border management. Changes in the border regimes greatly affected the migration policy of Croatia which no longer applied the policy of refugees 'passing through' but rather stopping them at the external border while relying on pushbacks (Tučkorić, 2018:19; Tučkorić, 2021: 22) as a border management practice. The role of Croatia as a protector of the external borders of the EU was further amplified due to its expected accession to Schengen in the future.

A significant change in Croatian border management practice was first noticed in 2017, when civil society organisations Centre for Peace Studies and Are You Syrious? publicly disclosed evidence of continuous pushbacks of refugees and other migrants from the border of Croatia to Serbia (2017). This border management practice transitioned to border areas of Croatia and Bosnia and Herzegovina (hereinafter BIH), applying to all groups, even the most vulnerable ones - children. The Border Violence Monitoring Network (hereinafter BVMN), an independent network of civil society organisations based in the Balkans which monitors human rights violations at the EU's external borders, documented 209 cases of pushbacks of children and unaccompanied children from Croatia in the period from January 2017 until April 2020 (BVMN, 2020: 9-10). Moreover, the Danish Refugee Council (hereinafter DRC), in their monthly snapshots from the border, documented 1,257 children being pushed back from Croatia to BIH during 2020, including 35,1% (441) children unaccompanied by their parents or primary caregivers (DRC, 2020).

The BVMN's recent report identifies types of violence used by Croatian authorities when conducting pushbacks of children whether they are with their families or unaccompanied. According to these testimonies, the Croatian authorities are resorting to the use of firearms (3%) as well as threatening with guns (3.5%), forcing them to undress (4%), pushing them on the ground (4.2%), exposing them to air-conditioning and extreme temperature in the police vehicle (5%), deliberate reckless driving (6%), insults (8%) and kicking (10%), destructing (12%) and alienating (16%) children's personal belongings, beating them with batons/hands/other (19%) while executing pushback of children (BVMN, 2020: 11). Data collected by the BVMN, and the DRC shows the multi-layered vulnerable situation of children in migration. Their vulnerability derives from the fact that they are subjected to severely dangerous situations refugees and other migrants face while trying to seek protection in the EU, as well as a childspecific vulnerability that further exposes them to violence, trafficking, exploitation and abuse.

In light of this, the article looks closely into the causes and serious consequences of pushbacks as a growing border management practice. It does so by applying the best interest of the child, an umbrella principle that sets out an obligation for each State party to the Convention of the Rights of the Child (thereafter CRC) to take into account all the relevant circumstances, possible implications and provide a safe space for a child to voice their views. It examines the roles this principle plays in Croatian authorities' border management. Afterwards, it examines the interplay of current EU policies and the violations that take place at its external borders. This is done through the analysis of the data, evidence and testimonies collected by national and international civil society organisations and activists in Slovenia, Croatia, and BIH.

The article focuses on the situation at the external border of the EU in South-East Europe: between Croatia and BiH and Serbia - where the use of pushback of children as a border and immigration management practice is common - primarily focusing on the 2019-2020 period. The 'black letter' methodology is applied to offer a legal analysis of the primary sources on the principle of the best interests of the child assessment under the international, EU and Council of Europe's (CoE) law. Finally, the authors move to examine the current EU migration and asylum policy - pointing out shortcomings and proposing suggestions for amending the policies to meet the international and regional obligations of the EU and its Member States and protect the children in migration and respect their best interests.

1 PUSHBACKS AND THE BEST INTERESTS OF THE CHILD PRINCIPLE

Pushbacks of children in migration at EU's external borders, a practice this article closely examines, interfere with the best interests of the child, children's procedural rights, and access to the system of international protection. They also have an effect on freedom from violence, abuse and torture. There is no internationally agreed definition of pushbacks. The EU's Fundamental Rights Agency (FRA) describes this non-legal term as the one used when a person or a group of persons is apprehended after an irregular border crossing and summarily returned to a neighbouring country without assessing their circumstances on a case-by-case basis (FRA, 2020: 4). The practice of pushbacks carried out by the authorities aims at 'preventing people from seeking protection on their territory by forcibly returning them to another country' (Belgrade Centre for Human Rights et al, 2017: 4). Moreover, the Special Rapporteur on the human rights of migrants proposed a working definition of pushbacks in the context of migration as:

> various measures taken by States, sometimes involving third countries or non-State actors, which result in migrants, including asylum seekers, being summarily forced back, without an individual assessment of their human rights protection needs, to the country or territory, or to sea, whether it be territorial waters or international waters, from which they attempted to cross or crossed an international border (Special Rapporteur, 2021: 34).

1.1 PUSHBACKS AS HUMAN RIGHTS VIOLATIONS

Understood as the authorities' practice of expelling persons of groups from State territory without accessing their cases individually, pushbacks are *ipso facto* unlawful. Moreover, they cause severe violations of human rights stemming from international, EU and national laws. Pushbacks carried out by the state authorities do not only violate the right to an effective remedy and due process but may violate the right to seek international protection and expose people to torture, inhuman or degrading treatment or punishment. Additionally, if carried out against a group, pushbacks may constitute a collective expulsion explicitly proscribed by Article 19 of the EU Charter of Fundamental Rights (hereafter the Charter) and Article 4 of Protocol 4 of the European Convention on Human Rights (hereafter the ECHR). Pushbacks may also violate the prohibition of torture, inhuman or degrading treatment or punishment either by active acts of such treatment or by the fact that, by carrying out pushbacks, authorities do not take into consideration the individual circumstances (*Hirsi Jamaa and Others v. Italy*, no. 27765/09, Grand Chamber judgment of 23 February 2012) leading to the disregard of the international principle of *non-refoulement*.

From the overview above it can be observed that pushbacks, as a non-legal term, widely describe a practice that, when carried out, constitutes violations of several internationally guaranteed rights under different international mechanisms. Pushbacks are therefore broader than the legally coined term of collective expulsions, but they constitute prohibited acts of collective expulsion. According to the case-law of the European Court of Human Rights (hereafter ECtHR), collective expulsion is elaborated as 'any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group' (*Andric v. Sweden*, no. 45917/99, 1, a decision on admissibility, 23 February 1999).

1.2 PUSHBACKS AS A VIOLATION OF THE RIGHTS OF THE CHILD

Taking into consideration the child-specific vulnerability mentioned beforehand, the act of pushback, as previously defined, may infringe a whole set of the rights of the child guaranteed under the CRC. Particularly, it deprives children of access to adequate information on their rights and relevant procedures as they are carried out outside of any legally provisioned procedures which is contrary to Article 17 of the CRC. Due to uncertainty and the lack of legal safety, it exposes children to direct psychological violence (MSF, 2018) while methods used in carrying out these pushbacks might on many occasions constitute physical violence, at times even amounting to torture (A/HRC/37/50: 55), contrary to Article 17 and 37 of the CRC. It may also in very extreme instances violate their very right to life under Article 6 of the CRC, in cases where the death is a direct or indirect consequence of the pushback (*M.H. and Others v. Croatia*, no. 15670/18, communicated on 11 May 2018). In cases where

families are separated during the pushbacks, it also violates the right to family unity (Article 9). Moreover, pushback of an unaccompanied child might form a violation of the right to special protection for children without families (Article 20). In addition, denial of access to the asylum system forms is a violation in itself and also deprives children of access to rights they would have as refugees (Article 22).

Above all, such an illegal practice used against children fails to ensure that the best interests of the child have been assessed, yet alone taken into consideration. Therefore, with notice that pushbacks form a violation of a whole set of human and children's rights, it is essential to focus on the central importance of the principle of the best interests of the child in protecting, respecting and fulfilling many other rights enshrined in CRC and ECHR and also rights defined in the Convention relating to the Status of Refugees.

1.3 THE CENTRAL ROLE OF THE BEST INTERESTS PRINCIPLE

The umbrella principle of the best interests of the child sets out an obligation for the State to take into account all the relevant circumstances, possible implications and provide safe space for a child to voice his/her will before assessing his/her best interests. Defined in Article 3 of the CRC, it transformed children into subjects that meaningfully participate in decision-making processes concerning their future. General Comment No. 14 of the Committee on Rights of the Child offers a more thorough understanding of the principle. According to paragraph 6 of the General Comment, the principle of the best interests of the child is of primary importance in all decision-making procedures concerning children. All decision-making procedures must be followed by the examination of the possible positive and negative impact of every possible decision. Additionally, all legal provisions should be interpreted in a way that would benefit the child and his/her best interests (CRC, 2013: 4).

By applying the above-mentioned scope of the principle of the child's best interests into the sphere of migration, signatory states must assure that all decisions regarding migration, access to state territory, residence and access to social rights follow a thorough assessment procedure of the child's best interests (CMW/C/GC/3-CRC/C/GC/22*, 2017a: 17-33). The duty to protect and to transform children into subjects of rights is transmitted from the realm of international law, the CRC, to the EU law. According to its founding treaties, the protection of children's rights is one of the key EU objectives. Article 3, paragraph 3(2), of the Treaty of the European Union (TEU) states that the EU is mandated with a promotion the rights of the child, while paragraph 5 of the same Article sets the objective of advancing the protection of child rights through its relations with the other countries. Aside from its founding treaty, the Charter moreover highlights the importance of the best interests of the child in Article 24. The EU's legal framework recognises child-specific vulnerability within its Common European Asylum System (hereinafter CEAS). More precisely, guided

by the best interests of the child in all procedures defined within the special Regulation (Article 6), the Dublin Regulation (OJ L 180, 29.6.2013, p. 31 corrected by OJ L 049, 25.2.2017, p. 50) sets guarantees for *minors*. The Return Directive (OJ L 348, 24.12.2008, p. 98–107) states that all decisions must be made taking into consideration the child's best interests and respecting the *non-refoulement* principle (Article 5). The Qualification Directive (OJ L 337, 20.12.2011, p. 9–26) stipulates that the best interests of the child should be assessed in all procedures concerning *minors* (Article 20(5)). Asylum Procedures Directive (OJ L 180, 29.6.2013, p. 96–116) sets guarantees for unaccompanied children that should be respected and fulfilled during the process of applying to international protection (Articles 7, 15(3)(e) and 25). This short overview of relevant Regulations and Directives which form CEAS shows that the current legal framework of the EU, although soon awaiting an extensive reform, does recognise the child-specific vulnerability and offers procedural guarantees that are aligned with the principle of the best interests of the child.

1.4 PUSHBACKS AND INTERFERENCE WITH THE BEST INTERESTS OF THE CHILD

Pushbacks, as can be seen, constitute several human rights violations of all its victims, regardless of their age. However, having in mind the child-specific vulnerability and extreme vulnerability of children who are migrating (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, 12 October 2010, § 103; *Rahimi v. Greece*, no. 8687/08, 5 April 2011, § 87; *Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012, § 91), it is crucial to analyse in which way the illegal practices of pushbacks, defined as above, violate a child's best interests as understood and guaranteed under international, EU and CoE law.

The starting point here is the concept of double vulnerability of children who are migrating, arising from the fact that they are vulnerable 'as children and as children affected by migration who (a) are migrants themselves, either alone or with their families, (b) were born to migrant parents in countries of destination or (c) remain in their country of origin while one or both parents have migrated to another country' (CMW/C/GC/3-CRC/C/GC/22*, 2017a: § 3). Due to this enhanced vulnerability, specific attention should be paid to respecting the principle of the child's best interests through all migration-related processes, ensuring implementation of policies, procedures and practices offering complete protection of children. Accordingly, procedures executed by migration authorities should in every procedural step take into consideration the needs of the child and his or her best interests (CMW/C/GC/3-CRC/C/GC/22*, 2017a: §§ 30-33).

Whereas the relevant legal framework is quite firm on allocating the responsibility of respecting a child's best interests towards relevant authorities, current border management practices show that the child's best interests lose the battle against national interests. This falsely constructed dichotomy between child's best interests and national interests depicted through border management practices is concretely visible through the ever-growing use of pushbacks all across

the borders of the EU. The state authorities often emphasise their obligation to control their borders even at cost of failing to comply with their obligation not to reject a child at a border or return the same child to a country for which there is substantial grounds to believe that a child could be at risk of irreparable harm (CMW/C/GC/3-CRC/C/GC/22*, 2017a: § 46).

Falsely constructed dichotomy between national interests, i.e., protection of borders and the principle of the child's best interests fails to take into consideration the individual, flexible and non-discriminatory nature of the principle of the child's best interests together with its exceptionless implementation in all procedures concerning children (CRC/C/GC/14, 2013). Assessment procedure of the child's best interests, in the context of children who are migrating, includes the obligation of the state authorities to assure 'access to the territory, regardless of the documentation they have or lack and to be referred to authorities in charge of evaluating their needs in terms of protection of their rights, ensuring their procedural safeguard' (CMW/C/GC/4-CRC/C/GC/23, 2017b: §§ 14-19).

Upon allowing access to territory, every child should be informed about eventual immigration proceedings and possible complaint mechanisms at their disposal. All these proceedings should be conducted in a child-sensitive manner by appropriately educated professionals, taking into consideration both child-specific vulnerability and double vulnerability of children who are migrating. State authorities must respect the child's right to be heard, allowing them to express their will and guaranteeing assistance of the translator if needed, as well as have access to free legal aid. Additionally, all the legal remedies in the appeal procedure should have a suspensive effect and proceedings including children should be taken as a priority and there should be no significant delays. Specific attention on respecting the principle of the child's best interests should be put in place when immigration procedures concern an unaccompanied child. On these occasions, an unaccompanied child should be granted a guardian who will not only represent the child in the mentioned proceedings but also duly inform the child about all the phases of the procedure (*ibid.*).

The assessment procedure of the child's best interests should be done according to the child's age. If state authorities wish to initiate an age determination procedure, such should be done 'in a prompt, child-friendly, gender-sensitive and culturally appropriate manner' (CMW/C/GC/4-CRC/C/GC/23, 2017b: §§ 4). Additionally, 'the benefit of the doubt should be given to the individual being assessed' (*ibid.*). Thus, when state authorities use pushbacks of children as border management practices, they fail to undertake the described assessment procedure of the child's best interests and they deny them access to the system of international protection and access to an effective remedy. This failure to respect the child's best interests brings, in itself, the failure of the state authorities to respect their *non-refoulement* obligations deriving from Article 33 of the 1951 Convention relating to the Status of Refugees.

Failure of the state authorities to undertake the assessment procedure of the child's best interests and accordingly proceed in assuring access and respect to rights guaranteed by the CRC has already been addressed by the Committee on the Rights of the Child. In 2019, the Committee through their decision on the case D.D. v. Spain set a precedent concerning pushbacks of unaccompanied children that applies not only to the Spanish-Moroccan border but on many borders across the world. According to the decision of the Committee on the Rights of the Child, Spain failed to provide special protection and assistance, guaranteed by Article 20 of the CRC, to the applicant who was an unaccompanied minor. By not allowing the applicant to apply for international protection and pushing him back, Spain exposed the applicant, an unaccompanied minor, to the risk of violence and inhuman or degrading treatment, violating its obligation defined by Article 37 of the CRC. The Committee on the Rights of the Child, by conducting pushbacks, failed to take into consideration the best interests of the child (*D.D. v. Spain*, no. 4/2016, §14.4, 12 of February 2019). The case of *D.D. v. Spain* represents the first communication brought by an individual to the Committee on the Rights of the Child against pushbacks. This case is a specimen of migration practices that fail to subject unaccompanied children to medical testing to determine their age, fail to recognise migrants or asylum seekers as children and therefore deliberately overlook the best interest assessment procedure.

Migration policies that heavily rely on securitisation and externalisation of migration often include the use of pushbacks as a border management practice. Such practice in its nature is contrary to obligations prescribed within the CRC that then transmit into other relevant regional and national legal frameworks. The assessment procedure of the child's best interests is pivotal when it comes to the protection of children rights. Without adequate assessment procedures, all rights granted to children remain a black letter on a blank piece of paper while turning children into victims of border management regimes across the world.

2 TRANSFORMATION OF THE BORDER MANAGEMENT PRACTICES IN SOUTHEAST EUROPE AT THE COST OF THE BEST INTERESTS OF THE CHILD

The extent and growing number of victims of pushbacks at the southeast borders of the EU show that the transformation of border management practices was not accidental. On the contrary, the following chapter shows how it is interlinked with the humanitarian crisis in 2015, followed by intensified securitisation of external borders of the EU. This transformation was not an isolated process but a consequence of the current EU policies on migration and asylum which prioritise securitisation and externalisation at the cost of the best interests of the child.

2.1 ZOOMING IN: THE EXTERNAL BORDER OF THE EU IN SOUTHEAST EUROPE

Contrary to the international, regional and national laws and human rights standards, pushbacks and chained pushbacks (constituting the practice of pushbacks through several countries) became a border management practice of many EU Member States since the beginning of the humanitarian crisis in 2015. Rising securitisation of the external borders of the EU led to an increased number of MS building fences and walls (UNHCR, 2017). FRA's latest report on fundamental rights compliance at the EU's external land borders shows how the practices of closure, pushbacks and collective expulsions are transforming into border management practices causing severe violations of human rights (FRA, 2020).

The severity of securitisation of the external borders of the EU is predominantly visible in South-East Europe - specifically the Balkans – on one of the longest EU external borders : the one between Croatia and its neighbouring non-EU countries: Bosnia and Herzegovina and Serbia. Politics around this border and its geographical position form specific circumstances for the EU and the refugees and other migrants at its borders, directly affecting the children in migration stranded at this EU border. Firstly, as other MSs geographically located at the external borders of the EU, Croatia is responsible not only for controlling the border but also, in most of the cases, for examining the majority of international protection applications based on the so-called *first country of entry* rule. Although the EU Dublin Regulation sets out the criteria for determining an MS responsible for the asylum application, in practice, Article 7, which provides that the Member State responsible will be the one where the 'applicant first lodged his or her application for international protection', is highly predominant (OJ L 180 29 June 2013, p. 31, corrected by Corrigendum, OJ L 049, 25 February 2017, p. 50). Said rule proved to be ineffective in 2015, directly resulting in over-burdening the asylum systems of the EU's Member States located at the EU's external borders but is still in force.

Secondly, Croatia is an EU Member State but not yet of the Schengen area. This means that this land border forms an external border of the EU but is not a 'Schengen border' - creating, in practice, sort of a double-border between the EU and third countries. The importance of protecting that specific border is multiplied by the surge of EU policies heavily relying on securitisation and externalisation of migration. Having in mind Croatia's eagerness to enter into Schengen, the EU is putting additional pressure and closely monitoring the actions of the Croatian authorities at the mentioned external border. While Article 4 of the Schengen Border Code requires to carry out the protection of the EU borders with the complete protection and respect of human rights, especially regarding the access to international protection, the focus on securitisation is rather visible in the European Commission's assessment of Croatia's readiness to join the Schengen Area. In the said assessment, the primary focus is the protection of the borders with the Commission seeming less concerned about the human rights violations reported at said border and

taking it into consideration on barely one out of fourteen pages of assessment. In particular, the European Commission did acknowledge that there are 'challenges' regarding the protection of human rights but still moved forward to giving a 'green light' to Croatian's accession to the Schengen Area (European Commission, 2019: 13-14).

2.2 CURRENT EU POLICY ON MIGRATION: EXTERNAL BORDERS IN SEE AND RIGHTS VIOLATIONS

The situation described in the previous chapters is the reason why many different actors are continuously raising their concerns and calling for the end of this extremely harmful practice. The violations are documented, and reported on, by the Croatian civil society organisations such as the Centre for Peace Studies and the Are You Syrious? group, as well as through the work of the Croatian Ombudswoman at the local level. Additionally, many different governmental institutions, as well as civil society organisations at international and regional levels, have raised their concerns regarding the documented severe human rights violations at this border. For example, the Council of Europe Commissioner for Human Rights has on several occasions called for the end of pushbacks, border violence, and impunity at Croatian borders, as well as intervened in the case pending at the ECtHR with the same line of argumentation (Council of Europe, 2020). Similarly, the UN Special Rapporteur on the human rights of migrants has reported on the human rights violations after the visit to BIH (OHCHR, 2019). Different international civil society organisations like Human Rights Watch (2020), Amnesty International (2019) and Médecins Sans Frontières (2017) continuously warn about the situation at this external EU border.

Significantly, similar concerns have been raised inside the EU institutions themselves. Commissioner Johansson called for accountability and establishing an independent monitoring mechanism in Croatia (EU, 2021), and Members of the EU Parliament have had debates regarding the situation at the EU's external borders, condemning what can be observed at the border between Croatia and BIH and Serbia (EU, 2019). However, many scholars, activists, as well as different organisations at international and national levels who have analysed the current CEAS, argue that the inadequacy of this EU policy directly results in harmful practices at the EU external borders and maintains the ongoing humanitarian crisis.

In the context of children in migration at the border between Croatia and BIH and Serbia, it is important to point out the lack of shared responsibility for the asylum system between the EU Member States and the externalisation of the asylum system.

Firstly, there is a significant amount of literature that analyses how the current CEAS and the Dublin Regulation result in a lack of responsibility for the common asylum system between the EU Member States (Küçük, 2019). The system where the 'first country of entry'

is responsible for the assessment of the application for international protection is placing all of the EU's responsibility on the Member States at its external border. This results in overburdening on the administration of these countries and consequently weakens their asylum reception conditions. Consequently, these Member States started building fences, walls and executing pushbacks and this is how the 'Dublin System fuelled Fortress Europe' (Armstrong, 2020). Croatia is among the countries who responded to this disproportionate responsibility anchored in the EU policy by implementing illegal practices which result even in the torture of children, pushing them constantly back to Serbia and BIH.

Then, on another hand, Serbia and BIH have become places of violation of rights of the children in migration by not being able to adequately respond to the humanitarian crisis and ensure appropriate living conditions to numerous refugees and other migrants who want to seek international protection on EU territory. This is, again, the direct consequence of another failure of the EU policy: the externalisation of the asylum system which is often described by experts in the field of migration as the 'backbone' of the EU migration policy (Costanza, Jassogne & Vandemeulebroucke, 2019; Vara & Matellán, 2021). The externalisation can be defined as a 'policy based on various measures aimed at delocalizing the external borders of Europe and at outsourcing the control to third countries, either departure or transit countries, for the purpose of blocking migrants as far as possible from the EU borders' (Costanza, Jassogne & Vandemeulebroucke, 2019: 7). This, accompanied by the practice of pushbacks from the EU's side of the border, creates a limbo where refugees are being kept outside the borders of the EU in inadequate conditions - which has particularly been raised attention to in the context of BIH (Deidda, 2020). Namely, the impact of the externalisation approach on the human rights of refugees and other migrants is immensely visible in BIH. In the words of Moreno-Lax and Giuffre, the current situation in BIH can be seen as an example of the so-called *'contactless control'*. Moreno-Lax and Giuffre define them as those which are 'all oriented towards curbing migratory flows, reducing human trafficking, and combating migrant smuggling, through the prevention of departure to (search protection in) Europe while their indiscriminate nature hampers access to a refuge for those in need of protection' (Moreno-Lax, Giuffre, 2017: 14).

The externalisation approach negatively affects children at the analysed border of the EU where they were not given access to exercise their rights and to seek international protection but are caught up in inefficient policies of waiving responsibilities. Therefore, disabled by the practice of pushbacks carried out by the Croatian authorities, both mentioned approaches of the EU asylum and migration policy are underpinned with a lack of access to the asylum system and no effective, safe and legal way to access the territory. As shown above, these practices put children's lives, bodily integrity and safety in danger and often coerce them to rely on the smugglers to enable them access to EU territory to be able to seek asylum. Therefore, to act in the best interests of children in migration at this EU external border, in South-East Europe, it is crucial to mitigate this risk by guaranteeing safe and legal pathways to seek international protection.

3 PROTECTING THE BEST INTERESTS OF THE CHILD BY AN OBLIGATION OF ENSURING SAFE AND LEGAL PATHWAYS

One of the central issues that forms barriers to children's access to the territory of the EU MS and puts at risk their well-being and lives is the lack of obligation to ensure safe and legal pathways to protection and/or access to the territory. While the EU resettlement programmes are an important tool in achieving the opening of the safe pathways to protection and shared responsibility of the EU Member States, this is still an ad-hoc initiative, and above all, the participation of Member States remains voluntary as defined in paragraph 16 of the preamble of the Regulation on establishing the Asylum, Migration and Integration Fund. The New Pact on Asylum and Migration (European Commission, 2020) is accompanied by the Commission's recommendation to increase the number of MSs who engage in resettlement schemes and humanitarian admission, by promoting resettlement, humanitarian admission and complementary pathways for those in need of international protection (European Commission, 2020). However, ensuring safe and legal access to protection and the asylum system in the EU should not be optional but obligatory because this derives from the international obligations and is a key-way to prevent human rights violations and tragedies at the borders of the EU. Moreover, the obligatory guarantee of the safe and legal pathways also derives from the EU law (TEU, Article 3(5)) which obliges the Union to aim to protect children's rights worldwide. Developing such 'legal pathways to protection' would aim to guarantee access to safety for children and their families fleeing persecution and other forms of serious human rights violations (Leboeuf, 2020).

3.1 BUILDING AND IMPLEMENTING A PALETTE OF LEGAL PATHWAYS

When creating and implementing the legal pathways, it is crucial to build a system that offers an expanded palette of possible pathways, as a one-size-fits-all approach cannot respond and recognise the different situations, backgrounds, needs and possibilities of the children in migration. These specificities include, for example, whether they are accompanied, have families in one of the MSs, have additional needs, are especially vulnerable, different reasons why they are migrating or seeking international protection, as well as objective situations in the countries where they reside or are fleeing from etc. Therefore, available safe and legal pathways are supposed to be expanded as much as possible to be able to recognise different realities and implement the adequate procedure - the adequate legal pathway. Hence, the variety of available pathways should be at disposal for the EU Member States to apply them interchangeably.

In the development of these mechanisms, it is essential to learn from good practices of different states and carry out an in-depth analysis of the safe and legal pathways proposed by civil society organisations and academics holding expertise in the field of children's rights, asylum and migration. The ones proposed, for example, include resettlement,

humanitarian admission programmes, private sponsorships/humanitarian corridors, humanitarian visas procedures (ECRE, 2017), relocation, family reunification, visa waiver, model of mutual recognition of asylum in the Schengen area and the EU countries and a model of diplomatic (extraterritorial) asylum (Kranjec, Pindulić & Vidović, 2020: 18-24).

Therefore, creation of any or all of these legal pathways needs to be agreed upon at the EU level and their implementation led with guiding principles of child's best interests, safety, solidarity, respect for human rights and fair sharing of responsibility between the Member States, as this was previously analysed and deemed as the main root cause of the violations of the best interests of the child at the observed external border. Enabling access to safe and legal pathways would surely reduce the need for irregular migration but as stressed by the ECRE, it would be 'illusory to think that such tools will be a realistic option for all protection seekers and will reduce irregular migration to zero' (ECRE, 2017: 10). Therefore, the state would always have the obligation to 'thoroughly assess and examine the international protection needs of those arriving on the territory outside of such channels' (ECRE, 2017: 10).

3.2 SETTING THE PRINCIPLE OF SUBSTANTIVE LINKS AS FUNDAMENTAL

All of the abovementioned legal pathways have the capacity of contributing to the safety of children in need of international protection and mitigating dangers they face when trying to reach protection. When implementing available pathways, besides the already mentioned guiding principles, it is of crucial importance to note and respect a child's 'substantive links between international protection seekers and individual EU Member States' (Kranjec, Pinduliæ, Vidoviæ, 2020: 18). Referring to the unaccompanied minors, this is to a lesser extent already prescribed in Article 8 of the Dublin Regulation stating that the country responsible for the asylum procedure would be the MS where a family member or a sibling is legally present, minding the child's best interests (OJ L 180 29 June 2013, p. 31, corrected by Corrigendum, OJ L 049, 25 February 2017, p. 50).

Therefore, the rules applying here should not be confused with family reunification, which is a stricter, lengthier and more formally burdening process. While it is in the interests of the child to be able to seek asylum in the country where they can reside with the persons close to them, the principle of substantive links, as proposed by different actors, would present a broader notion to better assess a child's needs and possibility for easier inclusion into the new society. Also, this principle should not only be limited to unaccompanied children since it is closely connected to respecting the child's best interests - a principle applicable to all children.

As explained by the Centre for Peace Studies, these substantive links to a Member State refer to the fact that 'a prior knowledge of the Member State's culture and language can make it significantly easier for a person seeking protection to access education, employment and other

vital options that are equally of interest to the future country of residence' (Kranjec, Pindulić, Vidović, 2020: 18). These are especially important for children where the better possibility for further integration within the specific Member State should be taken as crucial in respecting a child's best interests to have the least traumatic and hard shift, especially to the new educational institutions. This would enable children to faster build strong connections with their peers and pose fewer barriers to their integration. Special consideration, beyond the narrow concept of family reunification, should be given if a child already has family members and/or friends in a particular Member State. It would also help distribute the responsibility for processing the applications among the Member States. Therefore, in the allocation of responsibility, after the assessment of the best interests of the child, putting this method in place would aim at enabling the least traumatic shift for the child and his/her best chance to integrate into the new society, which is in the best interests of a child.

3.3 ENSURING ACCESS TO SAFETY WITHOUT EXPOSING CHILDREN TO DANGEROUS ROUTES

Within the palette of available legal pathways, in this subchapter, special attention will be given to those with the capacity to prevent exposing children to dangerous routes where they often face violence, injustice and other violations of their rights. Those pathways are either not developed or severely underdeveloped by the EU. Among them is family reunification which, in practice, showed to be lengthy and too narrow; the persons need to present documents they, in many cases, do not have access to because of the severity of the situation in the country they reside in. Therefore, this pathway needs to be broadened but also more simplified in defining family members.

However, one pathway could ease the way to seeking international protection for children to a greater extent, it being the humanitarian visas. In 2016, the European Parliament explored the possibility of introducing the EU humanitarian visa scheme (EU, 2016) and continued to discussion ever since (EU, 2018). It has defined a humanitarian visa as one allowing 'asylum seekers to legally access a third country and/or apply for asylum following expedited asylum procedures, with the merit of the application examined in situ' (EU, 2016: 2). Different authors frequently point out the Brazilian humanitarian visa scheme as an example of good practice. In 2013, Brazil (UNHCR, 2013) introduced and then simplified in 2019, (ANBA, 2019) the scheme of the 'special humanitarian visas for Syrians and other nationals affected by the Syrian conflict and who wish to seek refuge in Brazil' (UNHCR, 2013) which one requests at the numerous Brazil consular offices (ANBA, 2019). With due consideration and all the limitations of the current EU legal framework (EU, 2018), implementing a broad EU humanitarian visa scheme would not only decrease the need to take dangerous routes but prevent possible violations of the rights of the child at the EU border and, finally, have a good part in fulfilling EU's obligation under Article 3 (5) of TEU. If available, it will enable children and their families to escape prosecution, death or other dangers in the safest way possible,

by seeking protection at one of the consulates of the EU Member States. If approved, they would be able to safely travel to the country of refuge and start their asylum procedure there. It is important to note that not all refugee children flee war but that there are diverse reasons for needing international protection. In order to protect the best interests of these children, the EU would need to offer a broad humanitarian visa scheme available in the consulates of its Member States and not only in the countries affected by war. Although a good practice, the previously described 'Brazilian model' should just serve as an example to be built on in order to develop a system which would offer protection to children in different countries, to secure their safety, wellbeing and protection of their human and children's rights. This overview is not meant to offer a humanitarian visa scheme as the solution but as one of the potential solutions - if developed by having the best interests of the child at its core. It surely needs to be accompanied by a whole set of safe and legal pathways as described in subchapter 3.2. Therefore, the goal is to inspire developing more adequate asylum and migration policies which would be aimed to protect children's rights to an effect greater than the current ones, as well as prevent violations of their rights on their way to protection. The example of humanitarian visas could be used to spark inspiration and show the EU's available capacities in protecting children worldwide.

CONCLUSION

To quote Nelson Mandela: 'There can be no keener revelation of a society's soul than the way in which it treats its children' (May 1995). Whereas on the one hand societies across the world are well aware of the importance of the child's well-being, on the other, border management practices and regimes often strip the most vulnerable children of their basic rights. Such discrepancy portrays a picture of the world in which children's full enjoyment of all their rights and the respect of their fundamental human dignity remains a privilege.

As the article shows through the example of the South-East border of the EU (Croatian - Bosnian or Croatian – Serbian border), the current border management practices that heavily rely on pushbacks are in direct violation of the child's best interests. The wrongly constructed dichotomy between the child's best interests and border management practices led to the normalisation of border management practices that do not comply with the international obligations embedded in human rights and children's rights law. While it would be easier to pinpoint individual EU Member States as the main culprits of human rights violations occurring at the external border of the EU, the reality is that these practices are the direct product of the EU's inadequate migration policy. Until the EU puts the child's best interests *de facto* at the centre of its policies, meaning assuring the safe and legal pathways that wouldn't further expose children to violence, it is rather hard to envision current violent border management practices not being used. The EU has a legal duty to do more in ensuring respect, protection and fulfilment of human rights and children's rights, not only to protect the most vulnerable ones but to truly uphold its own proclaimed values of solidarity, human rights and the rule of law.

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"A PANDORA'S BOX": IDENTIFYING VICTIMS OF TRAFFICKING AMONG ACCOMPANIED MIGRANT CHILDREN IN BOSNIA AND HERZEGOVINA

Nermina Jerković

ABSTRACT

The Western Balkan migration route has expanded through Bosnia and Herzegovina in 2018. Given the mixed nature of contemporary migration throughout the route, the existing body of literature frequently portrays unaccompanied migrant children as particularly vulnerable, which is evident. However, very few research explored issues related to the accompanied ones (i.e., children who travel with adults), and especially the particular nature of their vulnerability to trafficking and smuggling. This article seeks to fill this void by questioning the family links between children and the adults they are travelling with in Bosnia and Herzegovina. It argues that the lack of documentation of persons (with children) who have an Attestation of the expressed intent for asylum in Bosnia and Herzegovina, together with the inaction of authorities, makes identification of possible victims of human trafficking among children in migration difficult, if not impossible. Research findings based on interviews with human rights defenders, as well as investigators and experts in the prevention of human trafficking, depict the identification of accompanied children as a 'Pandora's box' that no one seems to be willing to open. The existing procedures hinder the identification of accompanied children and thus enable their trafficking towards the European Union. The article also proposes several policies and practices that might change the current rules of this *"game"* to the best interest of accompanied children.

Key words: *accompanied children, mass migration, identification, trafficking, Bosnia and Herzegovina*

INTRODUCTION

Some 10,000 children have been recently reported missing after they stepped on EU soil (EMN, 2018: 10), which sends a strong signal that there are serious issues in identification practices, and that child protection systems do not adequately address the needs and protection of the rights of children in migration. Even the European Parliament recently stressed that many survivors remain undetected, traffickers unprosecuted, while the available official statistical data does not reflect the situation adequately (European Parliament, 2021). Because of the characteristic of contemporary migrations through the Western Balkans route, and the lack of proper identification in the countries *en route*, there is a nexus between asylum, migration and trafficking. As explained by the UNHCR and IOM, the lack of legal pathways coupled with, inter alia, limited means of support, the lack of personal documentation as well as insufficient access to adequate livelihood opportunities and education are all factors contributing to a higher risk of falling victim to traffickers (UNHCR, 2020: 6). That being said, it comes as no surprise that according to the findings of the IOM's survey, conducted in 2015, 14% of participating migrants said that they have been exposed to one of the trafficking and other exploitative practices indicators (*ibid.*).

Unfortunately, data about children in migration are frequently collected for just a small, compartmentalized subset of children (UNICEF, 2017). This data gap exists since 'people are difficult to track when they move, families with uncertain legal status are often missed in official statistics, and some of the worst violations of children's rights are regularly under-reported (UNICEF, 2017: 68). The most important reasons for the lack of evidence and identified cases of trafficking and exploitation, both in transit along the Balkan route and in destination countries, are the existing gaps and barriers to identifying and referral of the VOTs' (ICMPD, 2018: 54). Identification of children bears significant relevance both for their protection and for trafficking prevention. It is not a passive, one-way process done by authorities. On the contrary, identification is closely bound to whether those identified assess it as beneficial to them, introducing 'additional layers of complexity and complication' in identifying victims of trafficking in a population of the move (Brunkovskis & Surtees, 2019: 80). While a significant body of research focuses on unaccompanied or separated children (UASC), this article examines the identification of children (who will be referred to as accompanied children) travelling with an adult person, who might, or might not be their primary or customary caregivers. More concretely, this article analyses the current practices of identification of trafficking victims among refugee and migrant children being registered by Bosnia and Herzegovina authorities as accompanied.

After providing a contextual overview, the author briefly focuses on the international legislative framework on the protection of children in migration relevant for the Bosnia and Herzegovina case, followed by an analysis of the national legal framework, as well as state and non-state actors relevant for the identification process. Their capability and capacity, as well as willingness to identify victims of trafficking among children

being deemed as accompanied without investigating family links with presumed family members is then critically examined. Lastly, the activities of responsible state services and relevant international organisations in relation to registration in the temporary reception centre (TRC) 'Ušivak' are analysed through a series of interviews and participant observation, as elaborated below. The existence of *faux* families can hardly be proven, and proving it is certainly not the aim of this article. Instead, it argues that the lack of documentation of persons (with children) who have an Attestation of the expressed intent for asylum in Bosnia and Herzegovina, together with the inaction of authorities and responsible institutions towards their identification, makes difficult, if not impossible, the identification and protection of possible victims of human trafficking among children in migration. This has serious implications for the prevention of trafficking in children, as the existing process of registration of accompanied children is in clear collision with the international obligations of Bosnia and Herzegovina's authorities to protect children from human traffickers.

RESEARCH METHODOLOGY AND POSITIONALITY

This socio-legal research focuses on accompanied children in migration, and the feasibility of *faux* families' registration that emerged as a grave impediment for proper identification and protection of victims of trafficking in mixed migration flows. A qualitative content analysis of the international legal framework on the protection of children's rights was carried out. The legal analysis went over the attestation on the intention to seek asylum, as the first identification document, issued upon registration of migrants with such intention. Exploring the identification of migrants sheltered in the TRC 'Ušivak' in the Sarajevo suburbs, the author carried out a seven-month case study, from November 2020 to the end of May 2021. Based on the information received during the fieldwork period, TRC 'Ušivak' accommodated 1,295 newly arrived migrants, out of whom 824 were registered as family members including 374 children. The identification and process of family links establishment during the registration were investigated.

This six month long research involved 15 semi-structured interviews with the state and non-state actors, including international ones, present in TRC 'Ušivak'. The representatives of the Bosnia and Herzegovina's Ministry of Security - Service for Foreigners' Affairs (SFA), the State Investigation and Protection Agency (SIPA) and the Cantonal Centre for Social Work (CSWs) were questioned about the process of identification and registration of migrants. The representatives of the International Organization for Migration (IOM), UNICEF, the International Forum of Solidarity (IFS-Emmaus), and three other civil society organisations shared their experience regarding this. The interviews were conducted via e-mail correspondence due to COVID-19 restrictions which made field visits not advisable. The author made a purposive selection of interviewees, choosing only practitioners most relevant to the process of identification of children, family links establishment, and

identification and protection of potential victims of trafficking. All interviewees were assured of anonymity upon their request. A participant observation method resulting from the author's three-year experience, gained during her fieldwork as an investigator of trafficking and smuggling of migrants in SIPA, was also utilised. In terms of the authors' positionality, as both the investigators work for state institutions (SIPA), but also migration and human rights researcher, it must be said that the author felt both a professional and moral obligation in regard to the issue examined in this article – protecting children in migration from trafficking. Jacqueline Bhabha stated that 'rights believers have an obligation to raise and stimulate discussion of the difficult and contentious issues that arise in actualizing migrant children's right to have rights' (Bhabha, 2009: 451). This is the main purpose of this article.

1 BOSNIA AND HERZEGOVINA: MIGRATION FLOWS AND IDENTIFICATION OF ACCOMPANIED CHILDREN

An increasing number of migrants who seek to reach the European Union (EU) started transiting through Bosnia and Herzegovina over the last four years (EU, 2020: 41), following the closure of the route through Serbia and Hungary (Pollet, Mouzourakis, 2015). The number of registered migrants entering Bosnia and Herzegovina at the time was 755 (UNHCR, 2019b: 3), while in the upcoming period, from 2018 to 2020, the number of new arrivals reached 69,413 (UNHCR, 2020a: 1). Smuggling was reportedly boosted with the EU border closures (IOM, 2016). Bosnia and Herzegovina found itself largely unprepared at the forefront of mixed-migration flows in 2018 (EU, 2020: 41). From the beginning of 2018, nearly 70,000 migrants came to Bosnia and Herzegovina, mostly from Serbia, but also through Albania and Montenegro (A/HRC/44/42/Add.2:6). A vast majority of them are located in two of the country's ten cantons, the Una-Sana Canton, the Federation of Bosnia and Herzegovina entity at the border with Croatia and Sarajevo Canton. The other constitutional entity – Republic of Srpska – as well as the remaining cantons, disown any responsibility to assist Una-Sana and Sarajevo Cantonal authorities in managing heavy consequences of its geographical position, which placed them at the centre of migration through the Bosnia and Herzegovina.

The country's complex political system and deeply divided and decentralised power stand in the way of coordinated migration management and intersectoral cooperation providing adequate reception conditions and protection to migrants on its territory. Federal political structure demands a consensus at various political levels (entity, cantonal, local). It is not rare that local or cantonal, or entity-level officials block, and thereby diminish national decisions (Ruvić, 2020; Euronews, 2020; ECRE, 2021). With a complicated political structure standing in the way of implementing its legal framework, switching responsibilities from one level of governance to another, seems to be preventing the finding of appropriate solutions to different issues faced by migrants (ECRE, 2021).

In Bosnia and Herzegovina, children are being registered as accompanied by an adult member (self-identified as child's family members) of the group crossing the borders together to prevent being separated by authorities and be able to continue their journeys as soon as possible. The certificate, or attestation, issued after a person expresses an intention to seek asylum, usually referred to by migrants as 'the white paper', allows them to stay at the reception facilities and access some other basic rights. To legalise their temporary stay in Bosnia and Herzegovina, it is not rare that they express an intention to seek asylum despite not having a genuine wish to stay therein and submit an asylum application.

During 2020, 15,139 persons were issued with an attestation of the intention to seek asylum (UNHCR, 2020: 1), which is the first step towards the initiation of the asylum procedure (*Official Gazette of the Bosnia and Herzegovina*, no. 11/2016, Art. 32). However, only 244 official asylum applications were submitted to the Ministry of Security of Bosnia and Herzegovina in line with the asylum legislation; one person was recognised as a refugee and 31 were granted subsidiary protection (*ibid.*). Different actors present in the field reported that in February 2021, Bosnia and Herzegovina was a transit stop with 'some 500 unaccompanied children and 400 children with families, facing increased risks from smugglers and traffickers' (Grzegorczyk, 2021; Save the Children, 2021). According to the reports of the UNHCR, 'an increasing trend of single men who claim to be UASC or part of bogus family compositions comprised of a single man and UASC' was registered in Bosnia and Herzegovina, during December 2019 (UNHCR, 2019a). 'The single adult of the 'pretending family' compositions leave the child behind, as unaccompanied. Children who are left behind are exposed to many risks of trafficking, manipulation and exploitation' (UNHCR, 2019a).

Before registration and the issuance of the attestation, no further investigation into family links is being made other than personal statements given by migrants themselves, with children being registered on the same document issued to the adult claiming to be a child's relative. These adults are, then, placed in the same facility, and even rooms, as the children. In terms of procedure, this lack of evidence of family linkage opens a wide range of questions, such as the occurrence of *faux* families that could facilitate child trafficking, and various forms of child abuse and ill-treatment. The context and reasons for such practices, as well as potential consequences related to this issue, are analysed throughout this article.

2 INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK

Bosnia and Herzegovina has a positive obligation to identify and protect potential victims of trafficking, which also arises in the context of mixed migration flows, primarily under the Article 4 of the European Convention on Human Rights and Article 10 of the Convention against Trafficking in Human Beings. Among other treaties, Bosnia and Herzegovina is a state party to the Convention against Transnational Organized Crime and its protocols

related to prevention, suppression and punishment of trafficking (Palermo Protocol) and smuggling of migrants, as well as the Convention on the Rights of the Child (CRC) and the protocols thereto.

It is also a party to relevant conventions of the Council of Europe, including the Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Convention on Action against Trafficking in Human Beings. All of these international instruments underline a positive obligation of states' parties to take all appropriate measures to combat trafficking in human beings while protecting the potential victims and survivors of trafficking.

The CRC enshrines the obligation of the signatory states to take all appropriate measures to protect every child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation (Art. 19). It, furthermore, proclaims the obligation to 'combat the illicit transfer and non-return of children abroad' (Art. 11). According to Article 35, the state parties should 'prevent the abduction, sale, or trafficking of children for any purpose, or in any form'. The second optional protocol to the CRC defines the sale of children 'as any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration' (Art. 2.1). Criminal or penal laws of the state parties will fully cover these activities, 'committed domestically or transnationally or on an individual or organized basis' (Art. 3.1). During the investigation of these cases, the state 'shall afford one another the greatest measure of assistance [...] including assistance in obtaining evidence' (Art. 6.1).

In all this, the best interests of the child principle (BIC), and subsequently its determination procedures (BID), as a formal process with strict procedural safeguards designed to determine the child's best interests for particularly important decisions affecting the child, are of paramount importance. The umbrella principle of the best interests of the child, defined in Article 3 of the CRC, sets out an obligation for the State to consider all the relevant circumstances and possible implications, and provide safe space for a child to voice his/her will before assessing his/her best interests. The CRC Committee, in its General Comment No. 14, paragraph 6, specifies that it is of primary importance, in all decision-making procedures concerning children, they be followed by the examination of the possible positive and negative impact of every possible decision.

The prevention of trafficking in persons includes cooperation with non-governmental organisations, other relevant organisations and elements of civil society to diminish the factors that make persons, especially women and children, vulnerable to trafficking (Convention against Transnational Organized Crime, Art. 10). To that end, relevant authorities shall cooperate to determine whether individuals crossing, or attempting to cross an international border without travel documents, are perpetrators or potential victims of trafficking in persons (Protocol to Prevent, Suppress and Punish Trafficking

in Persons Especially Women and Children, supplementing the Convention against Transnational Organized Crime, entered into force on 25 December 2003, Arts. 9.3 and 10.1). State parties shall strengthen their border controls without prejudice to international commitments to the free movement of people.

In addition to the UN framework, there are treaties adopted under the auspices of the Council of Europe that forbid all forms of exploitation. The Convention on Action against Trafficking in Human Beings enshrines a plethora of rights for survivors of trafficking, including the right to be identified (Art. 10), and to be provided with adequate protection and assistance (Art. 12). It defines trafficking in human beings as 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation' (Article 4.a). Moreover, this Convention states that 'the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means [enlisted above]' (Article 4(c)). In the face of the 2018 mass migration through the Western Balkan, the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of the Council of Europe (Lanzarote Committee) also called for the concerted international action for enhanced protection of children affected by the refugee crisis who might be or become the victims of human trafficking, sexual exploitation and/or sexual abuse (2017). The Committee recommended putting in place systematic procedures verifying the family links between the children and the adults who accompany them, including their separation, should no such links, i.e., parents, family members or relatives as legal or customary primary caregivers, be established between the children and the accompanying adults (Council of Europe, 2017: 13; 2018: 36). It was previously emphasised that all state parties should undertake measures, to the extent possible, to 'enable migration to take place legally (...), and (...) to ensure a protective environment for children reducing their vulnerability to trafficking' (Council of Europe, 2005: 3).

As an aspiring EU Member State, Bosnia and Herzegovina has pledged to harmonise its laws and practices with the *acquis*. Trafficking in human beings is specifically prohibited by the Charter of Fundamental Rights of the EU (C 326/291 of 26 October 2012, Art. 5), whereas its prevention and combating have been set as a priority for the EU and its member states (Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims – Anti-trafficking Directive, L 101/1 of 15 April 2011, recital 1). The Anti-trafficking Directive emphasises the need to take the 'necessary measures to establish appropriate mechanisms aimed at early identification of, assistance to and support for victims, in cooperation with relevant support organisations' (Art. 11(4)).

3 NATIONAL LAWS, POLICIES AND RELEVANT ACTORS

As mentioned previously, Bosnia and Herzegovina consists of two entities: Republika Srpska and the Federation of Bosnia and Herzegovina (Constitution of Bosnia and Herzegovina, Art. 1(3)). Each entity has its own Constitution. Article 2 of the Constitution of the Federation of Bosnia and Herzegovina guarantees that all persons within the territory of the Federation shall enjoy the rights to asylum, freedom of movement, education, health and shelter. Overall, the legal framework of Bosnia and Herzegovina largely complies with the above presented international documents and with the Anti-Trafficking Directive.[1] The legislation on trafficking in human beings is seen to be not in line with the *acquis* regarding sanctions for perpetrators (European Commission, 2020: 36). The Criminal Code of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, nos. 3/03, 32/03 - corr., 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 8/10, 47/14, 22/15, 40/15, 35/18 and 46/21) prohibits trafficking in human beings, enshrining a penalty of imprisonment of at least 10 years for perpetrators in case victims are children (Art. 186(2)). The Rulebook on Protection of Foreign Victims of Trafficking in Persons (Official Gazette of Bosnia and Herzegovina, no. 79/16) regulates the identification procedure.

It envisages that in case any institution, civil society organisation or individual suspects that a person might be a victim, it should inform the SIPA and the State Prosecutor's Office; or the Prosecutor's Officers or police departments in both entities; or the Brčko District (GRETA(2017)15: para. 88). The Rulebook provides special protection for children among victims, reiterating the best interests of the child principle, as well as principles of urgency and efficiency when dealing with such cases (Art. 20). Aside from these legal documents, Bosnia and Herzegovina recently adopted a strategy to counter trafficking in human beings, covering the 2020-2023 period. The Strategy aims to ensure better identification of child victims of trafficking through, inter alia, training of all relevant actors on the field who are in direct contact with potential victims (goals 4.4. and 4.5.).

The Service for Foreigners' Affairs (SFA) is a competent unit for initiating and conducting procedures for establishing the identity of aliens in accordance with the SFA's competencies, prescribed by the Aliens Act, as well as those of national police officers (*Official Gazette of Bosnia and Herzegovina*, no. 88/15, Art 14.3). An alien having no evidence of his/her identity shall provide the SFA with biometric data and a statement on his/her identity. The SFA shall treat the alien who had stated his/her identity in accordance with the provided data until further information is available and/or the person's identity established (Arts. 14(5), 14(6)). The SFA shall issue an attestation of the expressed intent of the alien, the so-called white

1 This Directive provides the broadest definition of trafficking in human beings. According to Art 2(1) it is any intentional 'recruitment, transportation, transfer, harbouring or reception of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception of the abuse of power or of the position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.'

paper, which sets out the movement route and the deadline[2] for approaching the MS of Bosnia and Herzegovina in order to apply for asylum in person (Asylum Act, Art 32(1); Rulebook on Asylum, Art 7.1). It further allows freedom of movement within the country to the aliens holding the white papers (Asylum Act, Art. 10). During the second step of application, aliens are to provide additional information and evidence on family relations (Rulebook on Asylum, *Official Gazette of Bosnia and Herzegovina*, no. 69/16, Arts. 8, 9 and 13). Thus, the Bosnia and Herzegovina national legislation, regulating the process of registration and identification of aliens in the country, is in accordance with the international documents. Under present circumstances, in the absence of identification documents to substantiate aliens' statements on their identity, additional procedures for the establishment of identification and the family links verification are required.

International humanitarian actors also play a significant role in this process. The International Organisation for Migrations (IOM) coordinates the activities of the NGOs, providing humanitarian assistance to those accommodated in the TRC. Their role is of particular importance for the possible identification of VOTs since they communicate with sheltered persons during the pre-registration examinations.[3] In addition, they provide specific services for the protection of children and other visibly vulnerable categories.[4]

For a better understanding of the identification procedures and related issues, the following section presents and analyses a 'white paper' and sheds light on how migrant children are directly put in danger of being trafficked. The interview respondents, among the representatives of the Bosnia and Herzegovina's Ministry of Security, the SFA, IOM, UNICEF, SIPA, three NGOs and Social Welfares, have all identified the emerging protection gaps in the processes of children's identity verification.

4 IDENTIFICATION OF CHILDREN DURING THE REGISTRATION PROCESS IN TRC 'UŠIVAK'

Bosnia and Herzegovina is very often depicted as the migrants' transit-stop, where they stay only until the arrangement is made for their further passage toward EU destinations. Therefore, the migrants who stop over in any of the seven reception centres (RCs) are not subjected to any additional assessments of their intra-family links. A representative of Bosnia and Herzegovina's Ministry of Security pointed out the limited human and technical resources to identify potential victims of human trafficking among the migrants in the mass movement throughout Bosnia and Herzegovina: 'it is even more difficult with

2 According to the Asylum Act, attestation is valid for eight days, while in the cases of max influx it may be valid for 14 days. Since 2018, a 'white paper' is valid for 14 days from the date of issuance.

3 DRC – Danish Refugee Council

4 UNICEF, World Vision, Médecins du Monde, Pomozi.ba, Vaša prava, BOSNIA AND HERZEGOVINA Women's Initiative Framework. See also: https://Bosnia and Herzegovina.iom.int/iom-migration-response

children without documents' (respondent 15). At the same time, as noted through the author's fieldwork, all criminally charged members of the organised smugglers' criminal groups during 2020 typically resided within these RCs in various locations in Bosnia and Herzegovina, Serbia and Croatia, whereupon they would commonly find their 'customers'. Opened on 24 October 2018, TRC "Ušivak" can accommodate up to 800 persons. IOM supported the SFA with the opening of the TRC in Hadžići Municipality, in the Sarajevo Canton. The registration of migrants in Bosnia and Herzegovina, in the TRC 'Ušivak', is the first step towards their access to humanitarian services. The IOM is responsible for Camp Coordination and Camp Management and has staff, including a Camp Manager, security personnel and migrant assistants. Since the opening date, it has functioned as a shelter for more than 17,000 individuals registered in this centre (United Nations BOSNIA AND HERZEGOVINA, 2020).

4.1 THE WHITE PAPER

In terms of registration of accompanied children, the white paper issued to the adults they travel with presents the sole document providing them with proof of identification. The SFA staff issue the white papers based on the statements given by migrants not presenting their passports. 'The oldest male family member, or rarely female, provides requested data for children he/she travels with, such as names and family names, relationship(s) with children, places and dates of birth and citizenship(s). We have never talked with the accompanied children since they prefer to avoid all contact with us' (respondent 2). In a legal loophole of fourteen days,[5] and a vast majority of cases, no state authority checks family links of a registered family member, while additional examination of familiarity is conducted upon application for asylum. It goes without saying that additional assessment of family links has been conducted only in two percent of overall registered persons who proceeded with the second step towards the asylum application in 2020 (UNHCR, 2021).

Considering there is no biometric registration of children below the age of 14, those accompanied, as well as unaccompanied, could be registered under different identities in each RC. These circumstances create favourable conditions for traffickers to be 'legally' present in various centres, relocating potential victims from one place to another. As explained by the TRC 'Ušivak' officials, 'assessment of biological or other connections of children and adults they travel with through our country does not occur; there are no developed procedures for the best interests of the child determination'. They also explained that Bosnia and Herzegovina authorities pay more attention to the unaccompanied children, as the most vulnerable, with limited capacities when it comes to on-spot detection of THB indicators (respondents 1, 4 and 6).

5 During the Covid-19 restrictions, numerous migrants accommodated in the TRC Ušivak were 'stuck' for months in Bosnia and Herzegovina without being obliged to apply for asylum, with the white papers or the IOM ID proving their identities and a specific family affiliation.

4.2 IDENTIFICATION AND VERIFICATION OF FAMILY LINKS

The identification of migrants, inter alia, accompanied children, is the first step to be conducted by the SFA staff in the TRC. However, the verification of family links, more often than not, stays put aside, as practitioners primarily give attention to noticeably vulnerable migrants, namely, the unaccompanied children, the elderly, and the ill and pregnant women. The IOM CCCM staff oversee the 24/7 running of the centre. They also register migrants, while their partner organisations carry out medical screening during the registration process. It is important to note that this is the only organisation that issues the individual identity cards with specific names and family affiliation to accompanied children[6].

The UNICEF official depicts 'the identification and registration of all children in the Centre as the SFA responsibility. The "white paper" is a basis for the next step registration conducted by the IOM, with no additional checking so far conducted' (respondent 5). The UNICEF representatives tackle 'assessing family connection' and a need for reassessment in the weekly discourses. They discuss the *faux* families at various meetings with relevant stakeholders, since 'alongside the need for reassessment of the age of UASC at times, there is a need for reassessment of family compositions' (*ibid.*). Children take part in the bogus male-headed families, 'either for the reason of being granted access to the TRC 'Ušivak' or for the reasons of smuggling or human trafficking' (*ibid.*). Situated in the country's capital, both state and international practitioners for identification and registration of aliens in the TRC 'Ušivak' revealed a high awareness of the issue, as shown through the primary research, and elaborated below.

4.3 LACK OF BEST INTEREST DETERMINATION PROCEDURE

At the same time, the reality of the field is such that there is a presumption that those who accompany migrant children through the Western Balkans route are either their parents or family relatives, as 'the white paper' is the only evidence of family/caregiving relations (respondent 5). Another misconception in the registration procedures is that it is in the best interest of the child to travel with a, presumably, known member of the group. While accommodating migrant children with their familiar co-travelling persons could be beneficial, in the absence of firmly established family/caregiving links, this practice could also run a huge risk of 'sheltering' the children with human traffickers.

This is especially relevant because the agreed mainstream mechanisms are not being implemented on the local and regional levels to ensure the international principles are

6 The 'IOM identity card' is the only document children possess on their names that provides them with a direct access to the humanitarian assistance within the TRCs. When it comes to the protection of VOTs, the police practitioners find 'IOM identity cards' as a relevant proof of identity and will never put in question 'family links' proven by this ID.

upheld. As emphasised by one of the respondents from the state agency: 'We cannot confirm whether the child travels with a known member or with a person who picked the child up in front of the TRC; international police cooperation has not yet covered this field' (respondent 7). These are the common mechanism deficiencies in the functioning of the TRC 'Ušivak', observed by not only the state actors, but also international organisations and local NGOs, whose mandates extend beyond the provision of humanitarian assistance to include the protection of the migrant children's rights.

On one side, The SFA practitioners consider the accommodation of the child with a travelling family as being in the best interest of the child, while from the other, as less work for already preoccupied social workers. 'If we separate the child from the group in our country to conduct the legal procedure of identity establishment, it will cost money. However, they just travel through our country and will not stay here' (respondent 6). The frontline actors meet different, non-prescribed by the positive legislation, situations in the field. They claim that they put a segment of human rights at the core of their activities and undertake measures and actions in accordance with the best interests of the child, even though there are neither a workflow, nor procedures developed.

The interview findings clearly confirm that the presumption under which relevant practitioners operate effectually cuts down the workload of all the stakeholders involved in the process of protection of children's rights. On one side, the state actors argue that their lack of reaction and intervention to possible *faux* families is due to the best interests of the child principle, while the child protection organisations, on the other side, respond to this issue by discussing 'these deficiencies at the weekly meetings with other stakeholders' (respondent 5). What is clearly missing are procedures for determining the best interest of these children.

4.4 RISKS OF VIOLENCE AND TRAFFICKING

In January 2021, the SFA officers relocated 32 boys from the Una-Sana Canton reception centres to the Emmaus due to the violence they were exposed to by their presumed family members. The Emmaus representative stated that: 'In our shelter, they are registered as the potential victims of human trafficking; during the interviews conducted with these children, they all stated that they met the registered family members at the route while travelling as unaccompanied children' (respondent 11). After being accommodated in the Una-Sana Canton, they were forced to obey their *faux* relatives' orders to 'earn their further trip towards the EU' (respondent 10). It is worth mentioning that many cases of human trafficking 'start with people eager to migrate but with no other option than to rely on someone whom they believe will facilitate their irregular migration into a better life' (UNODC, 2016: 60).

This modus of registration and identity-verification of migrant children in the transit countries' RCs gives way to one of the many rules of the smuggling game. It should be also taken into account that 'for the majority of migrants in transit countries, the priority remains onward movement'; therefore, migrants may see that the possible identification as a VOT reduces their chances of travelling onwards' (ICMPD, 2018:54). According to the SFA registration officers, the registration procedures focus primarily on recording the number of transiting migrants rather than on their individual stories, which are often found irrelevant, as migrants change them on a day-to-day basis. This additionally complicates the systematic responses to the problem of trafficking (respondents 1, 4 & 6). Notwithstanding that, the WBR's existing regulations and mode of action translate this route into the 'legal route of child trafficking.'[7] As highlighted by an investigator, 'the white paper is the evidence of children's kinship with the paper holder' (respondent 9). These occasions lead to VOTs being challenging to identify and protect, as 'it is tough for frontline responders to gain an immediate and thorough knowledge of each individual's circumstances and vulnerabilities, including when these rise to the level of trafficking' (Brunovskis & Surtees, 2017: 5).

4.5 FAUX FAMILIES

As an interviewed high-level police practitioner from SIPA explained, there are some situations when police officers assume that a registered child belongs to a *faux* family. However, due to the lack of identification documents or proof of a previously registered country, no further estimation of identification procedures take place. 'Firstly, it costs too much and requires an order of our judiciaries. Secondly, we talk about people in movement through our country. Most of them would be unavailable for further steps of identification since it is a part of the smuggling game to hide their identities. In 98% of cases, they leave our country during the validity of the white paper that provides them with a legal residence in the country' (respondent 7). Several respondents claimed that their practice shows cases that do not fit in a well-known definition of family, being accommodated *ensemble* in 'Ušivak' for the sake of the child's best interests (respondents 2, 4, 6, 7 & 9). Omitting to specify which ones exactly, the same respondents said that when some frontline officer tries to separate a child from that person to accommodate a child in a separated centre, it causes serious issues to the child.

Due to the decreased capacities of the legal guardians, it is sometimes considered favourable if one family registers UASC as a member of that family. 'The truth is that we all close our eyes in front of these cases, since there are no steps that we follow in order to establish the BID procedure' (respondents 12, 13 & 14). The NGO representatives consider children registered as faux families' members as less vulnerable and more protected from

7 The author for the purpose of this research invents this term.

human traffickers than unaccompanied children. 'The unaccompanied children hardly meet their designated legal guardians, since these social workers have a lot of job to do in nowadays setting' (*ibid.*). On the other side, 32 boys were victims of sexual and physical violence and human trafficking, whose perpetrators have been their faux families' members, which provides a basis for case-by-case examination (respondent 11). Of note is the children and migrants' hesitation to talk about their experiences while refusing relocation to shelters outside the already set migration route (respondents 12, 13 & 14). The *faux* family registration is still a taboo in the TRC 'Ušivak' with no such family registered.

The identification of children in migration involves a disturbing silence. A child could leave no trace in one and smoothly appear in another country of the Western Balkan or the EU country, registered in one country under one identity as a member of one family, and in other countries under miscellaneous identities. The case of 32 boys who were separated from the registered male faux families in January 2021 calls for an in-depth revision of this practice. Each case has its specific characteristics, and the frontline staff should consider them to determine what is in the child's best interest during the registration process. The case-by-case study is even more relevant in this 'chaos of unidentified people movement' (respondents 12, 13 & 14).

CONCLUSIONS AND RECOMMENDATIONS

As can be concluded from the analysis, national legislation aligns with the international standards on the identification of children in migration. Despite a sound legislative framework, existing identification and registration practices of migrant children in Bosnia and Herzegovina fail to examine family links between persons claiming to be related to children; those who claim to be family members may easily be traffickers. To determine whether a child is unaccompanied[8], separated[9], or accompanied, authorities must conduct prompt identification of every child. The fact that a child travels with someone from one point to another cannot be considered in all cases in the child's best interests to continue his or her journey with that person. Therefore, it is of paramount importance for the sake of the child's best interest to establish true connections with a *voyage* family, as a precondition for proper protection of every child in migration.

As this article demonstrates, the protection of children from human traffickers is the main reason why the proper registration and identification of children and adults they travel

8 In line with the Committee on the Rights of the Child's definition, unaccompanied are 'children 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' (CRC/GC/2005/6, § 7).

9 Separated children are 'children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members' ((CRC/GC/2005/6, § 8).

with must be more highly prioritized by all stakeholders in Bosnia and Herzegovina. Both state and international practitioners for identification and registration of aliens in the TRC 'Ušivak', (situated in the country's capital) revealed a high awareness of the issue. Its first part gives onto the international and national legislation on protection of children in movement rights, going through the national documents regulating the registration and identification of aliens as well.

The first section shows that the best interest of the child is one of the international and the national Law on Asylum principles that should be a threshold in all proceedings affecting the child, including his/her registration and identification. However, as the filed research reveals, the BIC remains, on paper, as a principle to be respected, while further BID procedures have never been established. The lack of bylaws and special protocols for identifying children with families and their family links establishment enables trafficking and smuggling of children through Bosnia and Herzegovina, without their proper registration. This practice puts migrant children in danger of being guided by the 'mercifulness' of human traffickers and smugglers.

The case study of registration and identification at *Ušivak* shows that neither LEAs nor international and humanitarian organisations question the veracity of the attestation of the intention to seek asylum declared identity (the 'white paper' identity) of the registered accompanied children, since there are no BID procedures applied during the registration process. A lack of frontline staff to investigate every registered family member leads to an identification vacuum, contributing to the hardness of the critical facts for identifying VOTs among accompanied children in migration. Overall, the research findings, based on the interviews conducted with human rights defenders, as well as investigators and experts in the prevention of human trafficking, depict the identification of accompanied children as a 'Pandora's box' that no one seems to be willing to open. The existing procedures neglect the best interest of accompanied children, thus hindering their identification and at the same time enabling their trafficking towards the European Union. It is important to note that an appropriate estimation of a child's identity with streamlined data collection is an inevitable step for preventing further trafficking of children in migration.

To this end, BOSNIA AND HERZEGOVINA state stakeholders should:

- Create a database of families with children, by collecting as much as possible data on children, such as description of physical characteristics, the language he/she speaks, estimated age, countries of origin and countries of transit, etc.
- Develop the BID steps that are to be followed during the registration of every child in migration when the attestation of the intention to seek asylum is not supported by passports or other IDs.
- Carry out interviews with children during their registration, particularly in the lack of supportive identification documents about links among registered family members.

- Enhance cooperation with the NGOs, inter alia, cultural mediators during the interviews with accompanied children.
- Provide training for NGO and humanitarian front line staff to recognise the THB indicators.
- Initiate the workflow on how to report the cases with the recognised THB indicators (designated staff, hotlines, contact points 24/7 within the relevant state agencies, etc.).
- Promote international law enforcement cooperation to exchange collected information on children in migration based on the existing international legal setting and the legislation of the WBR countries.

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GATEWAY TO RIGHTS: AGE ASSESSMENT OF UNACCOMPANIED AND SEPARATED CHILDREN IN BOSNIA AND HERZEGOVINA AND SERBIA

Milena Šošić, Mersiha Behlulović

ABSTRACT

The objective of this research was to analyze the norms and practices of age assessment in unaccompanied and separated children (UASC) in Bosnia and Herzegovina, and Serbia and their compliance with the international human rights standards through a comparative perspective. The focus was on analyzing the normative framework and established practices of age assessment to examine how they influence the ability of relevant authorities to abide by the states' obligations to respect, protect and fulfil children's rights of UASC in the age assessment process. In this process, the questions of how age assessment interplays with the multi-layered vulnerability of UASC and its impact on the fulfilment of rights of UASC were also addressed. The research showed that the lack of age assessment represents one of the significant issues in protecting children in migration in both countries. According to their statement, competent authorities systematically register a person's age, whereby adults can claim to be underage when expressing their intention to seek asylum, aiming at better treatment, whereas children wishing to quickly resume their journey register as adults. Furthermore, authorities apply a zealous interpretation of minority presumption as a pragmatic way out of investing further efforts into ascertaining the age, justifying their practice with the best interests of the child principle and presumption of a minority. Furthermore, the research indicates that unaccompanied and separated children transiting through Serbia and Bosnia and Herzegovina are in protracted vulnerability due to the lack of age assessment.

Key words: *age assessment, unaccompanied and separated children, Serbia, Bosnia and Herzegovina, mixed-migration*

INTRODUCTION

Being recognized as a child is the gateway to a series of rights a child is entitled to under the Convention of the Rights of the Child (CRC) and domestic legislation. An early identification and age assessment of unaccompanied and separated children in migration (UASC) is crucial for detecting their vulnerability and the provision of adequate protection. Due to somewhat restrictive legal avenues to access asylum, many children in migration use irregular routes to reach the European Union (EU). Their exact number is difficult to establish due to the lack of effective mechanisms for early identification and age assessment in Bosnia and Herzegovina (BiH) and Serbia, as countries this research focuses on, as well as other countries alongside the Western Balkans route (WBR). However, the available data suggests that most UASC transiting this route are located in Serbia and BiH, and their number remains relatively high (UNHCR, 2021).

The objective of this research article was to analyze the existing age assessment norms and practices in BiH and Serbia and their compliance with the international human rights standards through a comparative perspective. The focus was on analyzing the normative framework and established procedures of age assessment in BiH and Serbia with an aim to establish how they influence the ability of relevant authorities to abide by the states' obligations to respect, protect and fulfil children's rights of UASC in the age assessment process. In this process the questions of how age assessment interplays with the multi-layered vulnerability of UASC and what impact it has on the fulfilment of rights of UASC were also addressed.

Data and information were collected from November 2020 to April 2021. The wide range of information obtained from a variety of secondary sources combined with triangulation strategies of qualitative research helped increase the validity and reliability of the findings. First, a desk review was conducted of the existing international and domestic legal instruments and policy documents. Then, academic sources and reports and other sources on age assessment of UASC in the broader context of the Western Balkan route (Serbia and BiH in particular) were consulted. The desk review helped identify the main issues and prepare for conducting primary research. The data was subsequently collected through 33 semi-structured interviews with key stakeholders in BiH and Serbia, including representatives of local authorities and international and national civil society organizations (CSOs), mostly via telephone or email correspondence.

The two countries have been selected for the comparison because both ratified most international and regional documents dealing with children's rights and refugee protection. Both are on the so-called Western Balkan Route because of their geopolitical position at the external EU border. Furthermore, Serbia and BiH are perceived by the majority of UASC as transit countries, and both face similar migration pressure in terms of the number of migrants and duration of stay. Then, almost all UASC headed to the EU

enter BiH through Serbia, meaning that most UASC present in BiH have already spent some time in Serbia, which adds up to the time they spent in BiH. This is important given the time-sensitive nature of children's rights and their sensitive development period in which interruptions in access to services might have critical long-term consequences. Finally, the main difference between the two countries lies in the fact that, unlike Serbia, BiH has a legal provision for age assessment of UASC within the Asylum Act. The primary assumption of the authors was that this would determine a major difference in age assessment practice in these two countries.

A conceptual framework on age assessment standards arising from international human rights instruments is presented in the first section of the article, together with the contested meaning of age and its relationship to legal, social, and cultural constructions of a 'child'. In part two, an overview of the context, numbers, trends, and major issues regarding age assessment and the overall position of UASC in Serbia and BiH is presented comparatively. Domestic legislation on age assessment and the practice of resolving age disputes in BiH and Serbia is presented based on primary research findings. These are compared in the final section, and finally, the conclusions are presented.

1 INTERNATIONAL STANDARDS AND CONCEPTUAL FRAMEWORK ON AGE ASSESSMENT AND UASC

According to the Committee on the Rights of the Child (CRC Committee), unaccompanied children are children who are 'separated from both parents and are not being cared for by an adult who by law or custom has a responsibility to do so' (CRC Committee, 2006: § 7). Separated children are those 'who have been separated from both parents or their previous legal or customary primary caregiver, but not necessarily from other relatives (...) these may, therefore, include children being accompanied by adult family members' (*ibid.*, § 8) As deprived of family environment, UASC are entitled to special legal protection and assistance arising from Article 20 of the Convention on the Rights of the Child (CRC). International treaties oblige States parties to provide specific safeguards and guarantees for the protection of children. The CRC, the International Covenant on Civil and Political Rights (ICCPR) in Article 24, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 10 all acknowledge the specific vulnerability and status of a child and the extreme vulnerability of unaccompanied children. In addition, the CRC Committee's General Comment no. 6 underlines the particular vulnerability of UASC in the application of CRC art. 20.

The European Court of Human Rights (ECtHR) has held that the European Convention on Human Rights (ECHR) does not exist in a vacuum, and States remain bound by the obligations under international law when implementing the ECHR (*Pini and Others v. Romania*, no. 78028/01, § 138, 22 June 2004). Moreover, ECtHR underlines that a child seeking asylum

due to age and personal situation is exposed to extreme vulnerability. Therefore, respect for enhanced vulnerability must be considered and should prioritize the assignment of available resources to such children. (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 55, 12 October 2006; Tarakhel v. Switzerland [GC], no. 29217/12, § 99, 4 November 2014).

Age is a central feature in the CRC definition of a child, where a child is defined as any human being under the age of eighteen unless a majority is attained earlier under the law applicable to the child (Art. 1). In the context of child migration, early and accurate identification of UASC is crucial for providing adequate protection (EASO, 2008: 41). Still, early, adequate, and functioning age assessment procedures are recognized as major yet often disregarded procedural safeguards for these children (UNICEF, 2017: 16).

In the context of children's rights and international protection, 'age assessment is a process by which a designated public body seeks to establish the chronological age of unaccompanied or separated children in the countries where they are seeking protection, [...] when there are serious doubts regarding their claimed age' and only after the principle of the doubt has been applied (Council of Europe, 2017: § 2; *Darboe and Camara v. Italy*, § 3). The CRC does not explicitly touch upon the issue of age dispute/assessment, but the CRC Committee and Committee on the Rights of the Migrant Workers (CMW) provide more guidance on the matter. General comments provide authoritative guidance on legislative, policy, and other measures that should be applied by States under the Conventions to fully protect children's rights (CMW/C/GC/4-CRC/C/GC/23: § 7)

Age assessment should never be undertaken as a routine practice. The child's best interests shall be a primary consideration in all actions considering children (Article 3 in conjunction with Article 22 CRC; *Rahimi v. Greece*, no. 8687/08, § 208, 5 July 2011). Where the individual circumstances of a particular case require an age assessment while reiterating the importance of affording the benefit of the doubt, the CRC and CMW Committees emphasize the following:

> States should undertake a comprehensive assessment of the child's physical and psychological development, conducted by specialist paediatricians or other professionals who are skilled in combining different aspects of development. Such assessments should be carried out in a prompt, child-friendly, gender-sensitive, and culturally appropriate manner, including interviews of children and, as appropriate, accompanying adults, in a language the child understands. Available documents should be considered genuine unless there is proof to the contrary, and statements by children must be considered. The benefit of the doubt should be given to the individual being assessed. States should refrain from using medical methods based on, inter alia, bone and dental exam analysis, which may be inaccurate, with wide margins of error, and can also be traumatic and lead to unnecessary legal processes. (CMW/C/GC/4-CRC/C/GC/23: § 4, EASO, 2018: 34, 55-58).

Furthermore, age assessment policies, procedures, and practices need to respect the general principle of non-discrimination, in line with Article 2 CRC and respect the right of a child to have his/her views heard and considered in all matters concerning them (CRC, Article 12). As a procedural safeguard, the UASC should have a legal guardian appointed, whose role is to ensure that the procedure is undertaken appropriately, fairly, and without risks or abuse, including safeguards of the UASC's rights. (CRC/GC/2005/6: § 21, 24, 25, 33-38, 55, 63, 69, 72, 89, 95, 99, N.B.F. v Spain, § 12.8, 18 February 2019,).

No method, be it medical or non-medical, can assess an individual's exact age. Medical methods should be avoided due to their low evidential value, invasiveness, and detrimental consequences of their outcome (CRC/GC/2005/6; CMW/C/GC/4-CRC/C/GC/23; *N.B.F. v Spain*, § 12.4, *A.L. v. Spain*, no.16/2017, § 12.5, 31 May 2019, *J.A.B. v. Spain*, no.22/2017, § 13.9, 9 July 2019, *M.A.B. v. Spain*, no. 24/2017, § 10.6, 24 March 2020, and *R.K. v. Spain*, no. 27/2017, § 9.4, November 2019, *M.T. v. Spain*, no.17/2017, 5 November 2019). Several studies show that bone development differs depending on a person's ethnicity and socioeconomic situation. Greulich and Pyle's method is inadequate and non-applicable to the migrant population of children coming from Sub-Saharan Africa, Asia, and Eastern Europe (Mansourvar et al., 2014)

The CRC Committee determined that age assessment should be based on a global evaluation of the physical and psychological development of the child, carried out by specialists (*A.L. v. Spain*, § 12.4, *Mugenzi v France*, no. 52701/09, § 33,34, 10 July 2014). The child and his/her representative should be informed of the procedure to be applied, its risks, and the consequences of the outcome (Council of Europe, 2019: 20-21). If a child refuses to undergo a medical examination, it should not prevent the determining authority from deciding on the application for international protection (EASO, 2018: 29). The right to effective legal remedy should be guaranteed, meaning that the decision on the age assessment should be available for administrative/judicial review, regardless of whether it is issued as a separate decision or as part of a decision on international protection. (EASO, 2018: 37)

In addition, the confidentiality principle and data protection should, due to safety considerations, be guaranteed as an important safeguard in the age assessment procedure (EASO, 2018: 30). In its General Comment No. 6, the CRC Committee underlines that no reference should be made to the child's status as an asylum seeker or refugee (§ 80). The disclosure of this information to the authorities of the country of origin might imply that the applicant can be persecuted or could suffer serious harm upon return (EASO, 2018: 31). Acknowledging the deficiencies of age assessment procedures, the UNHCR suggested downscaling the legal significance of age criteria, while the guiding principle should be whether an individual demonstrates 'an 'immaturity' and vulnerability that may require more sensitive treatment' (UNHCR, 1997: § 5.11). This principle has been expanded further, stating that in 'exceptional cases [...] these guidelines are relevant even if the applicant is 18 years of age or slightly older' (UNHCR, 2009: § 7). Additionally, chronological age is not a culturally neutral concept since age does not play a prominent role in the dichotomy

of child/adult in all cultures (Cipriani, 2009: 3). Therefore, besides not knowing their age due to low birth registration in some countries (UNICEF, 2013; Bhatia, Ferreira, et al. 2017: 148), some children may not understand the importance given to it in the context of international law and international protection (Crock & Benson, 2020: 323).

Incorrect age assessment may cause permanent damage if it impedes access to one's rights and the possibility to exercise them. It can result in heightened risks for the child, such as being accommodated or detained with adults or subject to violence, notably sexual exploitation and abuse, becoming a victim of trafficking or forced labour, etc. (Council of Europe, 2020: 9). The CRC Committee and the ECtHR have already addressed infringements of children's rights in the age assessment process and the consequences of inappropriate age estimation by State parties. Nonetheless, it is worth underlining that the two cases on age assessment, *Bacary v Italy* (no. 36986/17) and *Darboe and Camara v Italy* (no. 5797/17), are pending before ECtHR. Toward setting up the standards for the protection of UASC into practice, UNHCR's Recommendations for the European Commission's Proposed Pact on Migration and Asylum underlies the importance of early identification and biometric identification of UASC, including a common method of age assessment (UNHCR, 2020: 9) Moreover, implementing a holistic and multidisciplinary approach to the age assessment process invokes all principles and standards in line with the child's best interest (EASO, 2018: 38).

2 THE WESTERN BALKAN ROUTE: END GAME?

Serbia and BiH are transit countries bordering the EU on the most travelled mixed-migration route towards the EU-the Western Balkan Route. If we look at the data available, there are no indicators that this significant migratory pressure could significantly decrease in the foreseeable future. According to the UNHCR, between January and December 2020, there were 24,259 newly arrived refugees and migrants in Serbia, including 1,749 UASC (respondents 21, 22 & 23). The total number of arrivals recorded in BiH in 2020 is 16,150, including at least 1,878 UASC (UNHCR, 2020).

About 80% of all migrants, UASC included, enter BiH from Serbia which is relevant to mention because the time UASC spend being invisible or wrongly identified as adults in Serbia adds up to the time they spent in BiH. This leads to a protracted deprivation of access to specific child protection services and rights and can have detrimental consequences given the time-sensitive nature of children's rights and their developmental age. An additional challenge is the fact that only 1-2% of UASC travel with personal documents, which further complicates the registration (respondents 20, 29 & 31). Furthermore, many UASC travel together with adults, which also complicates the identification process. They often deliberately avoid being identified, choosing to sleep without adequate shelter and in unsanitary conditions not to lose contact with a member of their group

or smugglers or to enjoy greater freedom to continue their journey, thus remaining invisible (respondents 1, 15 & 16). The identification of unaccompanied and separated girls represents an additional challenge. In Serbia, only six female UASCs were identified during 2019, all in the Belgrade area (respondent 12). Save the Children's data implies that no unaccompanied girls were registered in BiH during 2020 (Save the Children, 2020). Reportedly, they almost exclusively travel in groups with other families, 'relatives', village members, etc., being also more reluctant than boys to seek assistance (respondents 12, 13, 14, 21, 22 & 23). Travelling with smugglers increases the risks of multiple forms of exploitation, especially for girls (Reilly E. et al., 2020).

Effective child protection of UASC should be supported by specific child-friendly asylum procedures, age assessment included. In both BiH and Serbia, however, child-friendly asylum procedures are underdeveloped and do not recognize the different needs of UASC and the peculiarity of child-specific persecution reasons (respondent 10). Thus, even when the UASC perceived BiH and Serbia as destination countries, the overall process was lengthy and uncertain (respondents 8, 9, 21, 22 & 23). This becomes evident if we look at the available statistical data.

According to the Serbian Asylum Office (AO), the first instance body in the asylum procedure, 69 UASC submitted asylum applications in Serbia in 2020, among which 64 were boys and five were girls. However, only three UASCs were granted subsidiary protection in 2020 (respondents 17 & 18). Two UASC were granted temporary residence on humanitarian grounds based on the Serbian Aliens Act (*Official Gazette of the RS*, no. 24/2018 & 31/2019) in February 2021 (respondents 21, 22 & 23). The overall number of UASC granted international protection in Serbia since 2007 is nine (respondents 8 & 9), whereas in BiH is zero (respondent 32). Such low numbers can be explained by the fact that most UASC consider the two countries as merely *en route* to the EU. However, the unduly long asylum procedure plays a part and should not be disregarded (respondents 15, 16, 21, 22 & 23).

Based on their international human rights obligations, both countries hold the primary responsibility to establish comprehensive child protection systems, including children in the context of mixed migration and children seeking international protection. With age systematically taken as claimed by the authorities, the lack of age assessment has been the most pressing human rights issue both in Serbia and in BiH (A/HRC/44/42/Add.2). Furthermore, both countries lack an effective mechanism for early identification (respondents 10, 15, 16 & 26, CRC/C/SRB/CO/2-3: §§ 56-57; CCPR/C/SRB/CO/3: §§ 32-33).

According to the report of the UN Special Rapporteur on the human rights of migrants, adults claim to be underage when expressing their intention to seek asylum, aiming at better treatment, whereas children, wishing to quickly resume their journey, register as adults. In both cases, the lack of age assessment may result in children being exposed to

high protection risks, manipulation, exploitation, and other abuses (A/HRC/44/42/Add.2). Within the context of migration, being misidentified as an adult when seeking international protection can have considerable implications on the level of protection receiving States are obliged to ensure. Based on their experience with UASC considering Serbia and BiH as merely transit countries and assuming that UASC prefer heading towards the EU as soon as possible, national authorities did not fully engage in addressing this issue (respondents 20, 29 & 31), as will be further explored later. This reasoning, however, cannot absolve the countries of their obligations to respect, protect and fulfil child's rights but causes difficulties in accessing welfare services and support.

Having provided the overview of the context, numbers, trends, and major issues related to the age assessment regulations and practices in the two countries thus far, the following part presents the main issues on age assessment practices in the concrete context of BiH and Serbia and analyze its impact on the rights of UASC.

3 AGE ASSESSMENTS OF UASC IN BIH

Age assessment is an institutional matter and the prerogative of national authorities. However, many other actors, governmental and non-governmental, domestic and international, play a crucial role in this process, as will be detailed in the following section.

3.1 AGE ASSESSMENT LAWS AND PROCEDURES IN BIH

BiH is a party to all major international conventions for the protection of children, migrants, and refugees and, as such, must protect and promote human rights spelt out therein. The CRC is an integral part of the BiH Constitution (Annex IV to the General Framework for Peace in Bosnia and Herzegovina and the *Official Gazette of BiH*, no. 25/2009 – Amendment I) and is incorporated into BiH legislation. At the national level, there are two main laws relevant to the topic of our discussion, the Aliens Act (*Official Gazette of BiH*, no. 88/2015) and the Asylum Act (Official Gazette of BiH, no. 11/2016). The best interest of the child and the benefit of the doubt, legal principles governing age assessments, are spelt out clearly in the Asylum Act (Art. 11). Article 12, paragraph 5 of the BIH's Asylum Act reads as follows: 'In case of doubt about the age of an unaccompanied child, *appropriate medical methods and examinations* may be applied, with his consent, to determine his/her age' (emphasis added).

Further, in paragraph 6, the same law states that if, after the application of these methods, the doubt about the age of the child persists, the Ministry shall treat him/her as a child *until it is determined* that he/she is an adult (emphasis added). The law presents undefined issues, for example, what 'appropriate medical methods and examinations' entail or who

and how should carry out medical examinations. The ambiguities of the law have not been addressed through by-laws, nor have protocols been devised to ensure consistent and systematic age assessment.

3.2 AGE ASSESSMENT ACTORS AND THEIR ROLES

As envisaged by the Asylum Act, the competent authority on age assessment in BiH is the Service for Foreigners' Affairs (SFA), an independent administrative unit within the BiH Ministry of Security. Age assessment is part of the registration procedure for UASC who express their intention to seek asylum in BiH.

Despite the unprecedented migratory pressure in BiH, SFA is still operating on "pre-crisis" funds, human resources, and laws, which proved to be insufficient to adequately respond to the migration influx and its complex requirements, especially in relation to adequate identification and protection of the most vulnerable (respondent 20). Even though officers participated in age assessment training, focused on the best interests and presumption of minority principles, they still lack specific expertise on the issue (respondent 26). Furthermore, the SFA officials are often relocated from one department to another, thus struggling to apply the knowledge acquired in training (respondent 20).

Age assessment should be carried out to identify children and provide them with protection and ensure their specific rights are respected in subsequent procedures. Consequently, as per national and international legislation, Centres for Social Work (CSW) are the key actors in their role as primary institutions tasked to ensure protection and legal guardianship to all unaccompanied and separated children.

Further crucial stakeholders in the complex structure of UASC protection are the international organizations and CSOs, such as UNICEF, UNHCR, BHWI, Save the Children International – North-West Balkans, the Danish Refugee Council, World Vision, *Vaša prava*, the Bosnia and Herzegovina Women's Initiative (BHWI). All of the latter have a major role in the realization of the rights of UASC through the provision of technical and financial support to domestic authorities and by providing information, health and accommodation support, free legal aid, etc., to UASC.

The specificity of the BiH migration context is that domestic authorities play a limited role in migration management. Support for migrants and asylum seekers relies almost entirely on donor-funded international organizations and international and national CSOs. The accommodation facilities operational in BiH for aliens/asylum-seekers in BiH proved both insufficient and inadequate to accommodate the unprecedented influx of people entering the country since 2017. To alleviate the situation, several additional temporary reception centres (TRC) have been established, managed by IOM through EU funds with

the support of the above-mentioned international and domestic organizations. The number and purpose of TRCs have varied in the past four years. Currently, four facilities offer designated zones for some 400 UASC in collective centres, while at least 100 reside in informal facilities (respondent 30).

However, due to the scarcity of reception facilities and the attempts to prioritize access for children, an increasing number of adult men claimed to be children and were registered as such by the SFA (respondent 27). As a result, adults were accommodated with children in TRCs, thereby exposing children to high protection risks, such as exploitation, manipulation, and other abuse (respondents 27 & 28). These protection risks triggered, in fact, the organizations working in TRCs (respondents 26, 27 & 30) to initiate a more thorough age assessment in cooperation with SFA. These organizations have a strong vocation in protecting human rights and had a pivotal role in improving age assessment practices, like establishing age profiling, as presented in the next section.

3.3 AGE ASSESSMENT PRACTICE(S) IN BIH

As mentioned above, accommodation in any of the TRCs is possible only if a person is registered by the SFA and issued the attestation of expressed intention to seek asylum. UASC mostly register to obtain a decent place to stay, for as short as possible, to regain strength and procure additional funds to continue the journey towards the country in which they genuinely wish to seek asylum/settle (Jovanović & Besedić, 2020).

Until the end of 2020, in the absence of identity documents, SFA officials accepted the statement by asylum seekers as valid when it comes to all personal details, age included (respondents 20 & 30). Prior to 2020, the statement was rarely examined further. As previously mentioned, SFA lacks human resources, financial means, and specific expertise to respond adequately to the issues arising from the increased arrivals, and UASC in particular (respondent 20). Additionally, SFA officials argue that it is unjustified to invest resources in a lengthy process, considering that asylum seekers usually leave BiH as soon as possible (*ibid.*). This has practical implications and challenges with accommodation in the TRCs.

In the early period of the increased arrival of migrants and asylum seekers in BiH, when a person who seemingly is not a child would be referred to a TRC by the SFA, the TRC staff would place that person in a separate housing facility alone if possible and would monitor him more closely (respondent 27). It was a far-from-perfect solution but an attempt to provide safety to all persons, children, and other vulnerable categories *in primis*. Both the SFA officials and staff of the international or local organizations working directly with UASC explained to us that in many cases, when the age was disputed, those persons would eventually manage to provide some empirical evidence of their age (copies of birth certificates or similar documents) that were then accepted by the SFA as proof of age (respondents 20 & 30).

As said earlier, the Asylum act envisages the use of medical methods for age estimation. However, applicable by-laws to regulate the use of medical methods by competent authorities have not been defined. To the knowledge of interviewed stakeholders, SFA recurred only once during a medical examination to estimate a person's age in 2020 in Una-Sana Canton. In this case, medical methods were used to assess the age of a person after a guardian expressed doubt about a child/person's minority (respondent 29). A doctor resorted to wrist measurements and examining whether a person has third molar teeth (also known as 'wisdom teeth'), which usually appear between late teens and early twenties (*ibid.*), even though bone testing is highly contested for being unreliable and having a high margin of error, as was detailed in the previous part. The main issue with this case lies in the fact the inexistence of specific instructions jeopardizes the legality of the overall process.

To tackle the previously explained issue with adults accommodated together with children under false pretences, the international and local CSOs advocated for a temporary solution that aimed to reduce risks for children. Namely, in TRCs in Una Sana Canton, where UASC are being accommodated, the SFA is now conducting age profiling in the presence of a legal guardian and a cultural mediator. This is not a formalized procedure but rather an attempt by the human rights organization to cooperate with the SFA to fill the gap in the system. Building on the international human rights standards of child protection BiH has committed to (respondents 20, 29, 30, 31), the organizations working in the TRCs and the SFA are introducing good international practices despite the lack of a clear legislative framework. This age profiling is conducted by the SFA in the presence of a legal guardian of a presumed child and a cultural mediator. The SFA officers have the final say on the outcome, which can be challenged if the applicant provides evidence of their age (respondents 25 & 30). This process is envisaged as a temporary remedy and does not represent a systemic solution, especially as the interviews are performed by personnel lacking a sufficient degree of specific expertise on the matter (respondent 30). However, ambiguous legislation and lack of age assessment protocols compliant with human rights standards trigger a series of possible inconsistencies and can compromise the objectivity and fairness of the procedure and risk producing arbitrary results and potential rights violations.

4 AGE ASSESSMENT OF UASC IN SERBIA

> 'Age assessment is like a boomerang hitting us in the face constantly for more than a decade!'
>
> Human rights lawyer, during an informal conversation with the author, Belgrade, March 2021

4.1 AGE ASSESSMENT LAWS AND PRACTICES

Serbia ratified all relevant human rights instruments that became an integral part of the domestic legislation in line with Article 16, paragraph 2 of its Constitution (*Official Gazette of the RS*, no. 98/2006). Article 2, section 1, § 15 of Asylum and Temporary Protection Act (*Official Gazette of the RS*, no. 24/2018) and article 3, section 1 § 16 of Aliens Act *(Official Gazette of the RS*, no. 24/2018) define UASC. However, none of those documents gives any clear guidelines regarding age assessment procedures. The Asylum and Temporary Protection Act acknowledges the specific vulnerability of UASC and primary consideration for the child's best interests (articles 10, 73). The Family Act (*Official Gazette of the RS*, nos.18/05, 72/11, and 6/15) enshrines that a child without parental care should be placed under guardianship (Articles 124, 132). The lack of a legal procedure for early identification of UASC and age assessment in cases when UASC do not possess identification documents is acknowledged by the Ministry of Justice itself in a Legal Opinion No. 011-00-125/2020-05 of 16 September 2020 (respondents 8 & 9) but ignored in terms of tackling the issue.

Moreover, the applicable Rulebook on the manner and procedure of registration and the appearance and content of the certificate of registration of an alien who expressed his/her intention to apply for asylum issued by the Ministry of Interior (*Official Gazette Republic of the RS*, no. 42/2018) does not provide guidelines on an estimation of the person's age. The Instruction on the Procedure of the CSW - Guardianship Bodies in the Realization of Accommodation of Unaccompanied Child Migrants/Refugees (019-00-19/2018-05) implies that a personal statement of UASC about age should be underpinned by personal observation of a social worker, without prescribing the avenues on how social workers should estimate child's age. As a result, the lack of clear legal provision and instruction on age assessment provides a wide scope of discretionary power to competent authorities in the process of estimating a person's age. As a result, on a few occasions, some minors were even prosecuted as adults before the Misdemeanour court for illegal border crossing (respondents 15 & 16).

The 'Rulebook on the manner of conducting the procedure and compiling the minutes about finding the child on the territory of Serbia' (*Official Gazette of RS*, no. 12/2011) stipulates that an unaccompanied child who is found alone on Serbian territory should be immediately examined by a paediatrician who determines the general health condition, gender, and age of a child based on interviews and examinations. It furthermore provides a certain level of independence because it is not conducted by the authorities that are part of the asylum procedure or authorities competent for guardianship and child safeguards (respondents 2, 3 & 4). Nonetheless, the competent authorities do not apply this Rulebook to estimating the age of UASC in practice (respondents 1, 2, 3, 4 & 33). Standard Operating Procedures for the protection of refugee/migrant children (SOPs, 2016) were developed within the Child Protection Working Group coordinated by the MoLEVSA and UNICEF. The SOPs provide clear guidelines for all relevant actors to detect and identify UASC

as quickly as possible and refer them adequately to relevant institutions. However, it is not clear whether a mechanism for monitoring the implementation of SOPs exists nor whether the competent institutions apply it (respondents 2, 3, 4 & 10).

As an EU pre-accession country (Government of Serbia, 2020), Serbia pledged to align its legal framework with EU standards regarding the age assessment of UASC. Consequently, certain efforts have been undertaken. Firstly, the EASO guidelines on the conditions of admission of UASC are translated into Serbian language (respondent 19). Secondly, the Ministry of Interior (MoI), together with the MoLEVSA and Serbian Commissariat for Refugees and Migration (SCRM), is running a project to develop procedures for assessing a person's age in asylum procedure (respondent 33). Nonetheless, the effect of these processes remains to be seen in future.

4.2 AGE ASSESSMENT ACTORS

Age confirmation is initially done by the local Police Department (PD) competent for the registration process of UASC. Additionally, age confirmation is done before the Asylum Office. While the registration process is crucial for estimating the age of a person, law enforcement officials engaged in registration often do not have expertise in conducting child-friendly interviews. Some law enforcement officials and AO officials went through the EASO training on child interview techniques (respondents 17 & 18). The central authority in the child protection system lies in the Centre for Social Welfare (CSWs) within MoLEVSA, which conducts a preliminary assessment of the child's needs and appoints legal guardians. Moreover, institutions within the social welfare system are competent for the accommodation of UASC. The third important stakeholder is SCRM - the authority tasked with accommodation of asylum seekers and integration of persons granted international protection, as well as coordinating migration policies in line with the Migration Management Act (*Official Gazette of the RS*, no. 107/2012). UNICEF, UNHCR, and IOM assist the competent authorities in realizing the rights of UASC by providing financial and technical support. CSOs are the main actors in identifying UASC, providing direct support to them by sharing relevant information, free legal aid, psychosocial counselling, etc.

4.3 AGE ASSESSMENT PRACTICE(S) IN SERBIA

In Serbia, age is determined based on personal documents, in lack of which person's statement before competent authorities is accepted as accurate, meaning that competent authorities respect a principle of minority (respondents 17 & 18). As mentioned, adults often claim to be underage in the registration process, whereas children register as adults (respondents 2, 3, 4, 15 & 16). There was a case when a child did not want to be separated

from the group and claimed to be an adult, which resulted in him being punished for illegal border crossing in misdemeanour proceedings and placed in a detention facility with other adult group members.

Authorities rarely doubt a person's age, which results in a lack of care and protection for children who do not want to be recognized as such. UASC remain in a precarious position without the possibility to exercise the rights they are entitled to. When doubts about age are raised, there is no legal mechanism or procedure to be applied. Moreover, in some cases, estimation of age is based on the law enforcement officer's discretionary assessment (respondents 10, 12, 15 & 16) without taking into consideration all aspects that are crucial in this process. Such practice produces irregularities in the estimation of a person's age (respondents 2, 3, 4, 8, 9, 10, 11, 15 & 16). Registration and issuance of the certificate of registration to a person who has expressed an intention to apply for asylum are carried out in the PDs throughout the country (respondents 17 & 18). Within this process, UASC provide a statement on their age, and the competent authority accepts it as valid. However, the official asylum procedure starts when UASC or legal guardian officially submits an asylum request to AO (Art. 36 Asylum and Temporary Protection Act). During asylum procedure, the AO determines, among other facts age of a person, based on the statement provided by the applicant. However, AO has noticed that often two statements about age contradict, meaning that the personal statement given to the AO is not in line with the statement given during the registration process before PDs. In these cases, the statement to the AO will be considered valid, and AO will not challenge the age statement (respondents 17 & 18). When a person knows only the year of birth but not the exact date due to a specific national calendar, the law enforcement officers register them as born on 1 January, which may accelerate the process of reaching the age of majority.

In 2020, two cases of non-respect of the benefit of the doubt in age assessment were identified (Kovačević, 2021: 60). One case refers to a national of Afghanistan who was shortly deprived of legal guardianship based on his inconsistent age assessment. The second case refers to a boy from Guinea who has been deprived of temporary guardianship for several months (*ibid.*, respondents 8 & 9). Deprivation from guardianship has multilayer implications on child's protection and are such as discontinuity from representation and interaction with public institutions, education support, and all decisions concerning their life and exercise of their rights. In the absence of legal provisions and procedures, age assessment practices remain quite controversial. Moreover, the lack of procedural instruments, different interpretations, and insufficiently clear instructions for officials of competent authorities on age assessment opens the possibilities for inaccuracies and potential violation of UASC's rights. An interdisciplinary and multi-sectorial approach to tackle above mentioned shortcomings has never been applied by the authorities in charge, while practices, as applied, are not in line with human rights standards.

CONCLUSIONS

Both Serbia and BiH define UASC in line with international standards and acknowledge the particular vulnerability and priority of early identification for this specific group of children. The lack of a comprehensive legal framework in line with international human rights standards for age assessment represents a major human rights concern that affects the exercise of all rights of UASC both in BiH and in Serbia. In addition, the lack of secondary legislation on age assessment produces ambiguities and unequal practices that may lead to the arbitrariness of the overall process.

The respect of the presumption of a minority by the authorities appears to be done primarily not to invest further efforts into ascertaining the age, which raises the protection risks mentioned above. Conversely, in a situation when doubt about age might arise, there is no official procedure to be followed. Problematically, relying on officials' observations may endanger the respect for the rights of the child as they may be biased and may not take the cultural background and other individual characteristics into account when estimating the age of a person. Due to the legal lacuna, challenging the decision on age estimation is possible before the Constitutional Court of Serbia on the ground of a lack of legal remedy. It is possible to challenge age confirmation as a part of asylum decisions before administrative and judicial authorities based on an erroneous or incomplete determination of the factual situation. In these cases, a forensic expert's opinion would be relevant, but no such cases have been reported in Serbia and BiH until now.

Both countries lack an effective early identification procedure and accurate disaggregated official data. Consequently, most children are not identified as such. Unregistered UASC remain invisible to the system and risk exploitation, abuse, penalization, and expulsion. Particularly, the lack of proper identification of female UASC in both countries additionally exposes them to gender-specific protection risks. Unlike Serbian authorities that were actively involved in managing the migration flow in the country, with the support of the international organizations, the involvement of BiH authorities, especially of the executive branch, in-migration management has been very limited and often hostile, while the reception system and support to persons in migration rely almost entirely on the donor-driven response run by international or local CSOs. This has been identified as the reason why 'age profiling' conducted by a multidisciplinary commission based on interviews has become the 'age assessment practice' in BiH. This procedure is not formalized, but rather an attempt by these organizations to fill in the gap in the system, building on the international human rights standards BiH has committed to.

This research shown that the lack of a comprehensive legal framework in line with international human rights standards for age assessment and inconsistent practices in both countries represent a recurring concern and have an adverse impact on the exercise of rights of UASC in BiH and Serbia. The authors' assumption that the existence of a legal

provision on age assessment of UASC within the BiH's Asylum Act would determine a difference in age assessment practice was not confirmed. However, an important finding is that an 'age profiling' procedure conducted by a multidisciplinary commission based on interviews is established in BiH.

Furthermore, an additional layer of the vulnerability of UASC was identified. Due to protracted invisibility, insecurity and risk because of the lack of early and adequate identification and age assessment in the analyzed countries, the time in which UASC are not guaranteed the enjoyment of their rights adds up, and this is worsened by the fact that the rights of children are time-sensitive. All these factors combined result in a disproportionate impact of age assessment on UASC in Serbia and BiH.

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SECTION II

CHILD PROTECTION, ALTERNATIVE CARE AND EDUCATION

RESPONSE SYSTEM FOR THE MIGRANT CHILDREN IN SERBIA: CHALLENGES FOR THE RIGHTSBASED APPROACH[1]

Nevenka Žegarac, Anita Burgund Isakov, Natalija Perišić, Violeta Marković

ABSTRACT

This paper examines the way in which the response system was organised during the migrant crisis in Serbia from 2015 to 2020, including new services developed for children affected by migration and forced displacement, in order to contribute to a better understanding of the potential of these - from a child rights perspective. It provides an insight into the number and characteristics of migrant children in Serbia over the last decade, as well as key features of the response system. Furthermore, it discusses the types and nature of services for children that were developed from the beginning of the increased influx of migrants and refugees in Serbia up until 2020, as well as their adaptations in the context of social policy and the capacities of local social services and international standards for child protection. The process and outcomes of knowledge co-creation in the development of a curriculum as a specific response of social work are presented within a concluding discussion about the extent to which all of the services were adjusted to meet migrant children's needs in Serbia and their present implications for practice, policy and further research.

Key words: *migrant children, response system, adaptation and innovation of services, rightsbased social work, child rights approach*

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INTRODUCTION

Mixed migration from the regions of the Middle East and North Africa, Afghanistan and Pakistan to Southeast Europe has largely included children, both those with parents and those who are unaccompanied or have been separated from their primary caregivers or guardians. After the signing of the EU-Turkey Statement in March 2016, the number of migrants, including children, in Serbia has been decreasing. At the same time, the average length of their stay has been prolonged (Krasić, Milić & Šahović, 2017), calling for a shift from a humanitarian, i.e., crisis-based, response to longterm interventions. The main objective of this paper is to track, describe and analyse the way in which the response system in Serbia has been organised during the so-called migrant crisis. The analysis covers new services developed for migrant children while trying better to understand their potential from a child rights perspective.

The rights-based service delivery systems comprise the comprehensive, integrated systems approach, preventive approach, universal approach, community-based approach and family-based approach (Desai, 2018). Key research questions that this paper seeks to address are:

1. How was the response system in Serbia organised during the migrant crisis in relation to the needs of children affected by mixed migration?
2. What are the types and characteristics of services for children that were developed from the beginning of the increased influx of migrants and refugees in Serbia in 2015 until 2020?
3. How were these services adapted in the context of social policy and the capacities of local social services and according to international standards for child protection?
4. To which extent were these services adjusted to meet children's needs during the changes in the migrant flow, especially after the EU-Turkey Statement and the closure of the Balkan Route?
5. Which factors contribute to the sustainability and transferability of these services?

As a foremost global perspective, a reflective and coherent rights-based approach to children contains both theoretical and practical components. The theoretical component is rooted in Childhood Studies, while the practical one is rooted in the Convention on the Rights of the Child (CRC) (Smith, 2016). Childhood Studies emphasise that children should be studied 'based on their own right and from their own perspective' (Alanen, 2004: 346) and 'are not just objects of concern and in need of protecting and moulding, but competent social actors with voice and agency' (Smith, 2016: 17). To that end, 'adults should be interested in and sensitive to children's opinions and feelings, make an effort to listen to them, ask for their views, and act in ways that provide a supportive context for their learning and development' (*ibid.*). Acknowledging the agency of children does not mean, however, that they are entirely autonomous nor that they do not need the

care and protection of adults. Children have to be granted space, time, recognition and support for their development to understand and enjoy their rights.

Interpretations of a rights-based approach to migrant children differ largely, depending on national and professional contexts. The basic premise of the analytical framework adopted by the Council of Europe in October 2017, striving to assess whether a policy, strategy or activity is oriented toward child rights, is that one should assess whether and how they translate into practice the four key principles of the CRC – non-discrimination, best interests of the child, life, survival and development, and child participation (Council of Europe, 2017). The translation of these principles is assessed from the point of view of the level to which a policy, strategy or activity is child-centred, equitable, inclusive and participative (Byrne, 2018).

A child-centred response is based on the principle of the best interests of the child as a primary factor impacting laws, policies, and activities of the relevant institutions towards the fulfilment of the needs of a child. This is the key difference compared to approaches in the migration field in the needs and rights assessment, which is based on the legal status, i. e., citizenship (*ibid.*). Therefore, some authors argue that the division of responsibilities relating to caring for migrant children should prioritise the development of child protection services' partnership relations with sectors of migration and asylum 'that puts child rights at the core of migration and asylum policy and practice' (*ibid.*). The equitable element relates to equal access of every child to rights in one country, regardless of their origin, legal status, race, religion, etc. Consequently, countries should enable migrant children to access identical benefits and services to those of domestic children. The inclusive element presents the implementation of equity since it requires the effectuation of the rights of migrant children within the same systems in which domicile children effectuate their rights (*ibid.*). The participative element consists of including migrant children in decision-making processes to the greatest extent and means possible at the individual, family, organisational and policymaking levels. It requires the establishment of child support mechanisms and the encouragement of a child to express his or her opinions, views and voices, which should subsequently inform all decisions affecting the child (Lister, 2008: 11; Morrow, 2008: 122–123; Rafique, 2019: 3).

In this paper, we analyse key characteristics and main challenges of the response system for migrant children in Serbia. One part of the paper is further devoted to the process of creating a curriculum based on child rights principles at the University of Belgrade's Faculty of Political Science, in which the authors of this paper directly participated. The new university course on the protection of children affected by mixed migration was developed through focus groups and key informant interviews with front-line practitioners and champions from the field, as well as a purposely designed consultation process directly involving children and youth affected by migration. Finally, conclusions and implications for the child rights response system for children in migration are presented.

2 BACKGROUND – CHILDREN AFFECTED BY MIXED MIGRATION IN THEIR TRANSIT THROUGH SERBIA

Serbia has witnessed a massive transit of irregular migrants, which was extremely dynamic in the period from mid-2015 to March 2016. Beforehand, there were significantly lower numbers of persons who expressed an intention to seek asylum, ranging from 3,134 to 5,065 adults and 722 to 2,780 children in the period from 2011 to 2014 (SCRM, 2012: 41-45; SCRM 2013: 47-50; SCRM 2014: 46-49; SCRM 2015: 41-43), with the national services (related to border police, refugee protection and social welfare) tending to implement special system laws without special coordination thereof. During the period prior to the migrant 'crisis', certain elements of coordination in the field of migration governance were established as regards human trafficking, where difficulties in response to the needs of children victims of trafficking were recorded (UNODC, 2010).

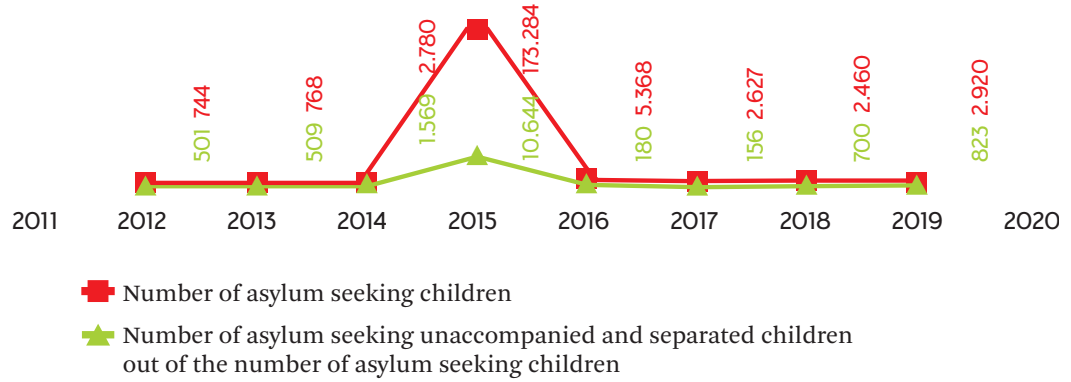
Precise data on the number of irregular migrants cannot be obtained, while approximations and estimations vary depending on the source. By taking into account and recording only those who expressed an intention to seek asylum, the official statistics of the Ministry of Interior of Serbia underestimate the number of migrants (Krasić, Milić & Šahović, 2017). Even so, as presented in Graph 1, the official statistics reveal high percentages of asylum-seeking children in the last decade,[2] ranging from 16% to 42% of the total number of aliens who expressed an intention to seek asylum in Serbia. The number of children who formally expressed an intention to seek asylum in absolute terms was rather modest in 2012 and 2013, with the first substantial increase being seen in 2014, when their number tripled to a total of 2,780 (SCRM, 2013: 41-45; SCRM 2014: 47-50; SCRM 2015: 46-49). However, in the following year, i. e. 2015, it was as high as 173,284, which was a peak (SCRM 2016: 41-43). Immediately following 2015, there was a substantial decrease to 5,368 underage asylum seekers in 2016 (SCRM 2017: 43), followed by further significant reductions, marking an end of the above-mentioned so-called 'crisis' levels. Recently, the number of children who expressed an intention to seek asylum has once again shown a slight increase in 2019, numbering 2,920 (SCRM 2020: 29), followed by a 78% decrease in 2020, which was most probably caused by the outbreak of COVID-19 (SCRM 2021: 39).

The number of unaccompanied and separated children among the total number of children who expressed an intention to seek asylum has also been on the rise, starting from 501 in 2012. Unsurprisingly, it was at its highest in 2015, when it accounted for 10,644 (SCRM, 2016: 41), although proportionally speaking, these accounted for as little as 6.1% of asylum-seeking children in Serbia (*ibid.*). The following two years saw a substantial decrease in these numbers, with just 180 (SCRM, 2017: 43) and 156 (SCRM, 2018: 43) unaccompanied and separated children in 2016 and 2017, respectively. However,

2 Officially reported data on the numbers of asylum-seeking migrant children, including unaccompanied and separated ones, dates back to 2012.

2018 and 2019 experienced a strong reversal of this trend, when 700 (SCRM, 2019: 50) and 823 (SCRM, 2020: 29) unaccompanied and separated children were registered as asylum seekers, respectively.

The majority of registered underage children who expressed an intention to seek asylum were boys. This is even more so the case among the cohort who were unaccompanied and separated – only a negligible number of unaccompanied and separated girls was recorded. The majority originated from Afghanistan and Syria, although there are differences evident across the period reported (SCRM, 2013: 49-50; SCRM, 2014: 49; SCRM, 2015: 41; SCRM, 2016: 43; SCRM, 2017: 42-43; SCRM, 2018: 50; SCRM, 2019: 29; SCRM, 2020: 44). Data from the field has consistently supported intuitive assumptions on higher numbers of migrant children present in the country, especially unaccompanied and separated children, than those presented in official statistical data (Petrović, 2020: 98-100; Trifunović, 2021: 104-106). Challenges in identifying them stem not only from the absence of appropriate procedures for age assessment (*ibid.*) but also from their frequent movement within structured and organised groups intended to keep them under the radar, increasing such children's vulnerability to trafficking and other harmful practices (Krasić, Milić & Šahović, 2017: 31). Furthermore, there is no systematic monitoring of the movement of underage migrants who are unaccompanied and separated in the country (SOS Children's Villages Serbia, 2016: 5), as will be discussed in further detail below.



Graph 1. *Number of children who expressed an intention to seek asylum in Serbia, 2012-2019*

3 THE RESPONSE SYSTEM FOR MIGRANT CHILDREN IN SERBIA – CHARACTERISTICS AND MAIN CHALLENGES

Serbia ratified the CRC in 1990, thus becoming obliged to respect and ensure the rights enshrined therein of each child within its jurisdiction without discrimination of any kind, irrespective of the child's or their parent's or legal guardian's race, colour, sex, language, religion, political or another opinion, national, ethnic or social origin, property, disability, birth or legal status (Article 2, Paragraph 1). Furthermore, with the help of international

organisations, such as UNICEF, the United Nations Development Programme (UNDP), the International Organization for Migration (IOM) and others, from 2015 to 2020, Serbia adopted several procedures, rules, protocols and services, to enable effective protection of migrant children, primarily those who are unaccompanied and separated. One of these is the procedure of appointing a guardian or representative for unaccompanied and separated migrant children to advocate for the best interests of the child in compliance with the *General Comment 6 on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin* (paras. 3 & 18-21). Despite the regulations and a broad network of stakeholders, there are many challenges involved in the protection of migrant children, especially unaccompanied and separated ones (Krasić, Milić & Šahović, 2017; HCIT, 2014; Drašković et al., 2019; Milutinović, 2016; Trifunović, 2021).

Most importantly, according to the national regulation and international standards, the child protection services in Serbia have primary responsibility for migrant children in the country (Social Protection Act, *Official Gazette of the RS*, no. 24/11; The Alliance, 2019). The lead agency in relation to migrant child protection is the Centre for Social Work (CSW), under the jurisdiction of the Ministry of Labour, Employment, Veteran and Social Affairs (MoLEVSA). Several specific civil society organisations (CSOs) have been highly active in migrant child protection. To be able to perform their activities concerning migrants accommodated in asylum and reception centres, including migrant children, CSOs are obliged to obtain permission from the Serbian Commissariat for Refugees and Migration (henceforth SCRM), which organises and manages the work of asylum and reception centres and undertakes a number of roles and responsibilities for migrant child protection in the process of referral, service planning and delivery, as explained below. The protection of migrant children travelling with their parents or primary caregivers is rather straightforward, whereby SCRM, together with CSWs and CSOs, strives to support the principle of family preservation: children and their families are accommodated together in asylum or reception centres and provided with a set of services by the public and civil sectors (including the provision of food and non-food items, psychological support, healthcare, educational support etc.) (Čekerevac, Perišić, Tanasijević, 2018). Children's right to education has been exercised through the inclusion of migrant children in schools in the local communities in which asylum or reception centres are located. However, this inclusion seems to be merely formal, with a lack of effort to engage them in education and school life having been noted (Krasić, Milić & Šahović, 2017; Trifunović, 2021). The most striking challenges are overcrowded accommodation centres with rather modest living conditions, lack of privacy, domestic violence, thefts, etc. (Trifunović, 2021). Indications exist to suggest that civil sector organisations have been offering a higher standard of 'soft' services (i. e. psycho-social, recreational, vocational services). However, their engagement is project-based and of limited duration, with a high probability of sudden discontinuation. The mostly transitory nature of the stay of migrant children in the country is a challenge for designed, tailored and continuous, direct interventions.

4 DIFFICULTIES FACED BY MIGRANT CHILDREN IN SERBIA AND IDENTIFICATION OF GAPS IN THE SUPPORT PROVIDED

One of the greatest difficulties in the protection of migrant children is the challenge of identifying the age of child migrants/refugees, especially since Serbia lacks a regulated procedure for age assessment. Therefore, age is officially determined exclusively based on the statement of a person. There are numerous instances where the ages (self-) declared by migrants have been the subject of suspicion, a fact that was highlighted in focus groups with professionals and key informer interviews.[3] The most challenging situations are those in which underage migrants are accommodated along with adults. There have been reports of abuse in such circumstances in reception and asylum centres (Drašković et al., 2019). On the other hand, a child may sometimes state that they are older than 18 in order to be able to continue their journey with the group that they are travelling with, as indicated through the research.[4] Another problem that was identified as a major challenge during focus groups with professionals and key informant interviews is the assessment of the vulnerability of children to smuggling and human trafficking. Most children are accompanied by an adult, and it is very difficult for professionals to distinguish a responsible adult from a smuggler. Furthermore, it is difficult to determine whether the adults with whom a child travels are their true relatives, as well as whether they are able to take care of those children adequately.

According to the research conducted in 2016 (Burgund & Branković, 2016), representatives of the CSW claim that language barriers create many problems in assessing the vulnerability of a child. At the practical level, this slows down the process at the moment of a child's identification. On the other side, it affects the quality of care provided because the language barriers interfere with the development of a professional and trusting rapport with the child and therefore present an obstacle to the adequate assessment of the child's situation and needs. The translators are usually engaged by the CSOs, and not directly by the CSW, and no possibility exists for one translator to 'follow' the entire procedure related to a particular child. Additionally, concerns regarding the translators range from confidentiality issues and the use of other children as translators to a lack of official training for cultural mediators.[5] Cultural mediators are concerned not just with ensuring successful interpretation but also with the human situation it presents, as the interaction belongs to and contributes to the larger domain of intercultural dialogue on a community level, thus interacting not only on a social but also a human level (Ali Vještica & Sjekloća, 2020).

3 Data gathered during focus groups with professionals and key informant interviews as part of the research undertaken by the authors of this paper.

4 Ibid.

5 Data gathered during focus groups with professionals and key informant interviews as part of the research undertaken by the authors of this paper.

In a methodological sense, the procedure for identifying migrant children at risk employed by the CSW involves steps similar to those when working with nationals. First, a needs assessment is carried out according to the national child protection case management procedure established in 2008 (Žegarac, 2017) in order to meet urgent needs related to safety, nutrition, personal hygiene and clothing. At the same time, caseworkers gather information about the child, their age, when they arrived in Serbia and who they are travelling with, where their parents are, and whether there are any trustworthy adults around. The risk assessment can lead to the conclusion that the child is not endangered and that they can continue the stay or journey with the group that they are with. In that case, the CSW terminates the continuation of the procedure. The other conclusion may be that the child is at risk and that they need to be relocated and protected, in which case accommodation is organised for the child in alternative care.

One of the major dilemmas for child protection practitioners in determining the best interests of the child is that of whether or not to separate the child from the group with which they are travelling/staying, especially in situations where parents or close relatives of the child are not present (Burgund & Brankoviæ, 2018). The personal opinions of child protection practitioners and unclear criteria within an unmanageable CSW caseload often combine to lead to arbitrary decisions being made regarding this. For children in contact with child protection practitioners, it can also take time to share traumatic experiences with the social workers and to feel confident that their experiences will be heard and valued (Mudaly & Goddard, 2009). As with all practice-based approaches, a great deal depends on the knowledge, skills, values and qualities that social workers bring to their work and the quality of the relationship created. In the Serbian context, access to mental health care is a challenge widely recognised by many actors (PIN, 2020). To date, mental health protection and many other psycho-social services for the migrant population have predominantly been provided by CSOs. Nevertheless, there are many difficulties related to availability, accessibility, adjustment and other factors when it comes to treating the traumatic experiences of migrant children in (mental) health institutions and services.

5 ADAPTED AND INNOVATIVE SERVICES AND RESOURCES FOR CHILD MIGRANTS AND REFUGEES IN SERBIA

Since 2015, when a massive transit of migrants through Serbia began, both CSOs and governmental institutions have established services for children (and families). Services were developed in accordance with the needs of migrants arriving in Serbia; from May 2015 until March 2016, services were mostly concentrated on crisis response; i.e. providing food and clothes and informing new arrivals as to how the transit through Serbia is organised. After the 'closure' of the Western Balkan Route, services were adapted to meet the needs of children in a prolonged stay situation. During transit, many help points were established, geographically distributed throughout

Serbia – at the entrance to the country in Miratovac (a village on the border with North Macedonia), in Belgrade, in Subotica (a city on the border with Hungary), and later in Šid (a town on the border with Croatia). In Belgrade, a help point was organised by CSOs and field workers from the SCRM. At the beginning of the massive influx of refugees and migrants, a grass-roots gathering of volunteers organised the distribution of clothes and food near Belgrade's main bus station in a gathering space established for youths called Miksalište. Soon, Refugee Aid Miksalište was established as a one-stop centre in a nearby location and became a space where many CSOs organised services for children, such as child-friendly spaces, mother-baby corners, and a space for people arriving in Belgrade to await registration at the police station or to be transferred to their allocated accommodation facility.

5.1 OUTREACH SOCIAL WORKERS

In 2015, MOLEVSA issued the first 'Instruction on the Conduct of the CSW and Institutions for Accommodation in Providing Protection and Accommodation to Unaccompanied Minors' (henceforth the Instruction), defining the roles and jurisdictions of the CSW and alternative care residential facilities (Grupa 484, Praxis, ICJ-EI, 2016). As the number of migrant children increased over time, it became obvious that the CSW was unable to provide effective protection due to the heavy workload and lack of support. To ensure a presence of representatives of the CSW, primarily in places where migrants and refugees informally gathered at the entry points to Serbia and, by the end of 2015, in Belgrade, UNICEF employed a number of specialist outreach social workers – qualified professionals from the social work professions and related disciplines (UNICEF, 2015). These outreach social workers undertook tasks related to the identification of unaccompanied minors, urgent needs assessment, accompaniment of a child during registration by police officers, referral to different types of accommodation, and cooperation with other institutions in the process of reunification with parents, and similar.

In 2018, UNICEF stopped funding the outreach social workers, and MOLEVSA took over the coordination of this highly specialised and tailored service. This, unfortunately, resulted in the termination of work contracts with experienced field workers and the employment of new ones, leading to a disruption of services for children and slowing down the provision of services as new outreach workers needed time to adjust and learn the procedures, as indicated in focus groups with practitioners and key informer interviews. It also brought about changes to legal jurisdictions, as new workers were not mandated to act as temporary guardians during the official registration procedure. In the previous period, outreach social workers were afforded temporary legal guardianship, as outlined in the MOLEVSA Instruction. This resulted in prolonged periods for the registration and allocation of accommodation of unaccompanied minors. As a result, instances of children spending days and weeks waiting to be registered occurred. Outreach social

workers continue to provide services of identification and referral at present, but there is a high turnover rate of the (mostly novice) professionals in this position.

5.2 GUARDIANSHIP

Since 2015, CSWs have appointed guardians to unaccompanied migrant children and refugees from among its employees, usually through temporary guardianship (Milutinović, 2016). This form of guardianship is defined by the Family Law (2005) but was more specifically defined within the above-mentioned MOLEVSA Instruction, which has been adapted to the specificities of migrant children. The Instruction defines the powers of temporary guardians related to the protection of child rights and interests, placing special emphasis on providing adequate accommodation. It implies that a professional of the competent CSW on the territory where a child was identified would be appointed as a temporary guardian to that child. This means that case managers also acted as children's guardians in many cases. This led to one employee of CSW having up to 50 or 80 children under their guardianship, for whom they also, very often, simultaneously acted as a case manager, although the by-law envisages separation of the two roles, in order to avoid any conflict of interest (Save the Children, International Rescue Committee, 2017). This resulted in guardians not even having the time to meet the children formally placed under their guardianship before they embarked on a journey further westward and children not knowing the person who should represent their rights. Due to the heavy workload, guardians seem to be in a position where they are unable to implement their roles and responsibilities fully, i.e. their approach lacks child-centred, equitable, inclusive and participative characteristics.

UNHCR and local CSO IDEAS Centre for Research and Social Development initiated the project 'Cultural mediation and strengthening guardianship of unaccompanied asylum-seeking, refugee and migrant children in Serbia (Belgrade)', which received MOLEVSA endorsement in 2017. The project aimed to develop an effective and flexible guardianship model for unaccompanied children by creating a pool of guardians who are carefully selected, trained, supervised and fairly remunerated for their work. Under the supervision of the CSW, a number of such guardians were employed based on their previous experience in working with migrants and refugees in reception and asylum centres, but usually without experience in child protection (Centar za istraživanje javnih politika, 2017). This project contributed to a significant improvement in the provision of guardianship services and unburdened professionals from the CSW as a result of the availability of an additional five full-time and 14 part-time 'professional' guardians (Milanović et al., 2017). Guardians were now able to visit children regularly, create relationships of trust with them and, in cooperation with the CSW and the children themselves, work on the protection of their rights. Even though there were challenges associated with the provision of guardianship through this project (mainly connected to the contents of authority, professional boundaries, protection of children's personal data, recruitment of guardians and the appeals process),

it enabled children to better participate in the decision-making process relating to the fulfilment of their needs. In 2019, the project was endorsed by the Council of Europe as one of the promising practices that implement international standards in child protection (Kilkelly, Rap, Coron & Moschos, 2019).

5.3 FOSTER CARE

Foster care, even though available in theory, has only occasionally been provided to unaccompanied and separated children in Serbia since 2015. In the period of massive transit of migrant children through the country, from mid-2015 to March 2016, foster care was preferred by some CSWs as an alternative to accommodation in residential institutions or collective reception and asylum centres (Grupa 484, Praxis, ICJ-EI, 2016). During this period, emergency foster care was mostly used when children were separated from their parents and waiting to be reunited when parents had an illness and had to undergo urgent medical treatment and/or hospitalisation, or in cases of violence or neglect (Marković, 2019). Emergency foster care, as a short-term solution, was a good alternative for children considering the context at the time (children were moving rapidly, with the waiting period for border crossing being up to a couple of weeks).

However, since the closure of the Balkan Route in March 2016, the duration of children's stay in Serbia has been considerably longer (amounting to months or even years in some cases), indicating the need for long-term care solutions. Recognising this need, Save the Children and the Centre for Foster Care Belgrade organised an educational programme for foster families in 2017, specialising them in fostering refugee and migrant children. In total, 56 foster families were trained (Grinvald, Ristić, Vukašin, 2017). However, the service is not regularly used, as in the period from 2017 to 2019, only six children were placed with foster families. Challenges are two-sided: institutional (difficulties in motivating foster families to take care of children from the migrant population, cooperation between different actors, and problems regarding jurisdictions of different institutions) and contextual (related to the context of children who are in Serbia), i.e. great pressure from their parents/migrant community to continue their journey, and a lack of provision of information about the possibilities and principles of foster care to migrant children (Marković, 2019).

5.4 CHILD-FRIENDLY SPACES

The service of child-friendly spaces (CFSs) was established in most reception facilities in Serbia by several CSOs. The service was tailor-made to respond to the needs of children in transit. It was developed with the aim of building a safe and stimulating environment for children living in collective reception facilities, as well as allowing the exploration of possibilities for building supportive relationships with children and providing them with

empowering experiences. The service was adapted and updated based on the feedback and evaluation from children participating in the programmes organised within CFSs (Avramović, Stamenković, 2018). Two CSOs provided CFS services; the Centre for Youth Integration (in Miksalište, Belgrade, and the Reception Centre in Preševo) and SOS Children's Villages (in the Reception Centres in Šid, Principovac, Kikinda, Adaševci and Divljana, and the Asylum Centre in Krnjača). CFSs primarily function as day centres providing children with educational support, creative and sports activities and different workshops that aim to instil routine and stability in a child's daily schedule. The CFS service provided by SOS Children's Villages ended in June 2020, and the CFS provided by the Centre for Youth Integration has been scaled down and has only been provided in the Asylum Centre in Krnjača since 2020. Despite the importance of these services, which were developed taking into consideration experiences and practices with children in transit and provided a space where children could express themselves freely and in line with their needs, both organisations ceased their provision due to a lack of both national and international funding. Risks caused by the unsustainability of the services are yet to be identified but are perceived as significant, as children need stability and continuity.[6]

5.5 SHELTERS

Shelters are a service established for intermediate care of unaccompanied and separated children as well as children travelling with their parents who are victims of abuse and neglect. Until 2017, unaccompanied and separated children were accommodated in two of the government institutions within the social welfare system; the Institute for Upbringing of Children and Youth in Belgrade and Niš, with the capacity of 30 beds, 15 per institution (with five reserved for girls in Belgrade) (Marković, 2019). The government of Serbia recognised the need to increase accommodation capacities, establishing an additional organisational unit within the residential institution Centre for Protection of Infants, Children and Youth in Belgrade with the capacity to accommodate ten children in 2018. Additionally, in 2017 and 2019, two CSOs established shelters for the placement of unaccompanied children. Namely, in May 2017, the international CSO Jesuit Refugee Service established the first CSO-run shelter in Serbia; the 'Pedro Arrupe' Integration House (Jesuit Refugee Service, 2019), while in January 2019, the CSO Border Free set up the House of Rescue shelter in Loznica (Border Free, 2019). In both of these group home residential facilities, children are placed following a referral from the CSW after the initial risk assessment procedure. Data from the field suggests that the two group homes run by CSOs have performed better in providing tailored protection and care than the official child protection institutions (Drašković et al., 2019). It seems that professionals from the CSW also see shelters run by CSOs as institutions that are better suited to accommodating especially vulnerable children than government-managed residential facilities (Drašković et al., 2019).

6 Data gathered during focus groups with professionals and key informant interviews as part of the research undertaken by the authors of this paper.

Accommodation facilities available for unaccompanied minors under the auspices of the social welfare system are insufficient, thus making it difficult to provide such services for all children in need of this type of care. With a total of 67 beds available for boys and 5 for girls (Marković, 2019), capacities only exist to accommodate a tiny proportion of the total number of unaccompanied children registered in Serbia every year. The need for additional accommodation capacities for children is supported by pertinent research that emphasises the importance of specially designed shelters for unaccompanied and separated children (Dimitropolou & Papageorgiou, 2008; Pakšić Herceg & Borić Jeđud, 2017; Mishra et al., 2020) in order to protect them from violence and neglect, but also to motivate them to continue education while more durable solutions are sought.

6 CREATING A UNIVERSITY CURRICULUM BASED ONCHILD RIGHTS PRINCIPLES

The migrant crisis in Serbia exposed the need to create a specific curriculum for the protection of children caught up in mixed migration[7] in order to provide formal education to a greater number of social workers engaged directly in the response system in Serbia. Such a curriculum became a part of a new course, 'Protection of children affected by migratory movements and forced displacement', established at the Department of Social Policy and Social Work of the Faculty of Political Science, University of Belgrade. The research and curriculum design process was based on the assumption that an effective learning cycle involves experimentation, reflection, research and practice, whereby *active* and authentic learning are the dominantly applied pedagogical principles (Bloomfield et al., 2013).

To create the curriculum, its authors (also the authors of this paper) took an approach of co-creating and co-constructing knowledge (Bradwell & Marr, 2008), also taking into account the theoretical approach of Drury Hudson (1997). Her approach highlights various sources of professional knowledge for social work, including both theoretical and empirical knowledge derived from research, but also knowledge of practitioners (*personal*, gained from intuition, common sense and cultural knowledge and *practice wisdom*, gained from experience), as well as *procedural* (legislative, policy and organisational context within which social work operates, i.e. knowledge obtained from service providers). However, service users' knowledge (in this case, the knowledge of unaccompanied and separated children) is a crucial source in inclusive and participatory models of modern social work (Gould, 2006), as service users' involvement is a core principle of the foundational

7 UNICEF Office in Serbia with the support of the United States Bureau of Population, Refugees, and Migration (PRM) has developed, in partnership with the University of Belgrade's Faculty of Political Science (UB FPS), a multidisciplinary course to enhance the capacities of students and practitioners working with children affected by mixed migration. The course was piloted during the winter semester of 2020, and, from 2021, is accredited by UB FPS to become a standalone course within the academic offer for future social workers, international relations, political science, communication, gender and cultural studies students.

approach in the evidence-based practice of social work (Davies, Gray, 2016). Such an approach arises from critical social science enabling 'sustainable change through practitioner enlightenment, empowerment and emancipation and an associated culture' (Manley & McCormack, 2003: 22). The constructivist paradigm in social work cannot be ignored either, while Cooper (2001) argues that social work knowledge and practice have to focus on the co-construction of viable working relationships with service beneficiaries. This is seen to be the basis for anti-oppressive and participative professionalism, which is also a precondition for an approach based on the rights of the child (Cooper, 2001).

With the aim to generate and share knowledge and learning, the course was developed along the lines of a learning needs assessment, through a participatory process in consultation with front-line practitioners and champions in the field of child migration, and specifically through a consultation process with children and youth affected by migration. The course is based on an interactive methodology, which allows participants to practice and apply learning outcomes in their everyday work. It includes lectures but also problem-solving and reflective activities and tasks, presentations of best practices, exchanges, group discussions and links to a community of practitioners. The programme is based on a strong commitment to child participation and safeguards measures according to evidence-based knowledge regarding child development, child rights-based approaches, gender-based violence and adult learning, supporting the social service workforce in promoting interlinked activities and interventions in a culturally sensitive, child-friendly and family supportive manner.

The preparation of the course included an extensive field research methodology comprising a literature review, focus groups with professionals working with children, and interviews with key informants. Special attention was paid to the construction of consultations with children, both unaccompanied and those travelling with their parent(s). The sample consisted of 47 professionals working directly with children from different governmental institutions and organisations, as well as international and local CSOs. Each focus group was conducted by experienced field researchers, informed by a specially designed guide prepared by the authors of the curriculum based on the findings from the literature review. Additionally, interviews with nine informants who represent the key stakeholders in the area of migrant child protection in Serbia (Save the Children, Centre for the Protection of Victims of Trafficking of the Republic of Serbia, MOLESVA, Education Administration of the Republic of Serbia, SCRM, CSW Savski Venac, CSW Subotica, Republic Institute for Social Protection and UNHCR) were conducted. The questionnaire for interviews with key informants focused on legal procedures, capacity-building and recommendations for an improvement of the current system of child protection and enhancing coordination among different actors, both within the official child protection system and beyond.

Consultations were carried out with 14 children – nine unaccompanied children (all boys) and five children travelling with parents (three girls and two boys). The sample for this research was convenient, with the selection of participating children being undertaken

with the help of government institutions and CSOs working in the field. Unaccompanied children who participated in consultations were accommodated in the government institution for placement of unaccompanied children in Belgrade (two boys), a shelter run by the CSO Jesuit Refugee Service (four boys) and an asylum centre run by the CRM in Krnjača, Belgrade (three boys). This was done to capture differences between the perspectives of children who benefit from the different types of placements available in Serbia. Children travelling with parents were all living in an asylum centre, and all 14 children resided in Belgrade. When recruiting children for the research, particular attention was given to existing ethical procedures, especially UNICEF's Procedure for Ethical Standards in Research, Evaluation, Data Collection and Analysis (2015).[8] Conducting research with and about vulnerable groups of children such as children affected by migration opens many ethical challenges, particularly relating to negotiation with various 'gatekeepers' (officials, professionals and carers, but also guardians and parents) and the multi-layered process of obtaining informed consent to avoid reduction of child *participation* to mere assent. Moreover, privacy and confidentiality issues also exist. The imperative was to treat children with respect and dignity, with the aim of creating a child-friendly and inclusive environment in which protection from harm does not hinder decision-making (Ergler, 2017).

In all consultations with children (five groups in total), a cultural mediator was involved in helping with translation. Cultural mediators were chosen based on the languages they spoke and their experience in working with children; one female and one male mediator were chosen to participate in this process. Upon preparing the questionnaire for consultations, the authors of the curriculum organised a meeting with potential cultural mediators, discussing their role in the research and explaining the methodology to them. The methodology itself was inspired by the Mosaic approach (Clark, 2010) in an interactive mode aimed at providing children with a safe place to express their views, opinions, concerns and wishes (Avramović, Stamenković, 2018; Avramović, Žegarac, 2016).

The method consisted of three maps: the Support Map, the Road Map and the Support Team Map. In the final part of consultations with children, a map of characteristics of good helpers they met on their journey was also used. The purpose of using the Support Map was to give children the space to describe the form(s) of help they deem the most appropriate. The Road Map was created by children to mark important locations during their journey when they needed help. It contained figurines, vehicles they used, emoticons for expressing feelings in these spots, and clouds made of paper to describe events. The Support Team Map marked helpers met by five children while travelling; these individuals helped children or were in a position to help them. The maps were used as a medium to enable communication with children. Using these maps in the consultation was optional; however, it appeared that younger children were more prone to communicate through the maps, while teenagers tended to resort to the maps only on occasion. The last part of the

8 Ethical procedure was reviewed by University of Belgrade, Faculty of Political Science Ethics Review Board.

consultations consisted of talking about the characteristics of good helpers, i.e. children explained the traits of good helpers they met on their journey from their own perspective. Children wrote these positive characteristics on a piece of paper and attached them to wooden blocks. Following this exercise, children were asked to arrange the blocks in order of most important to least important traits and to explain the rationale behind this. Children identified the characteristics of good helpers as those who provide protection, facilitate access to services, and who express care. In many instances, children described a good helper as one having non-negative traits, as an individual who does not abuse or hurt them: 'A good helper shows us respect and treats us well. We ran away from all the bad things in our countries and wanted to come somewhere that we would find some humanity' (16-year-old boy from Afghanistan).

When it comes to the relevant data we collected that elaborates the perspective of children towards the response system in Serbia and the help they need, in very basic terms, we learned that migrant children do not understand the concept of participation, which implies that they have not previously fully participated in decisions impacting their lives. However, they have clearly noted that they would like to be treated with respect and dignity. Furthermore, children could not identify actors in the child welfare system apart from their temporary guardians, who are solely identified as potential helpers from the official system (when and where they are) representing their interests. While the inclusion of migrant children in local schools was praised by the professionals and officials as an example of good practice in Serbia, children with whom we spoke described their experience with an education system quite differently, namely, paved with discrimination and unequal treatment compared to other pupils. They feel excluded and denied their basic right to education. Even though these children attend school, 'the teachers do not provide them with knowledge or assignments, they have no requirements, teachers just want them to *keep quiet*' (14-year-old boy from Afghanistan). Another issue children identified was the language barrier, which (reasonably) prevents them from participating in school assignments and following classes at school.

The most concerning fact is children perceive 'helpers' as people who are not aggressive and violent, commonly identifying smugglers as persons of trust and support (since they have enabled them to reach their desired destination). Children's experiences of migration show that it is a traumatic experience followed by a lack of support and violence, the reason for which they could hardly understand. Most of the information children received came exclusively from smugglers, as the only adults in contact with a child. This might also be the reason for smugglers being perceived by some of the children as support. It seems that some children spent a significant period of time without protection and support, creating a belief that a lack of violence is the most that they can expect from adults during their migration journey.

CONCLUSION AND IMPLICATIONS FOR A CHILD RIGHTS RESPONSE SYSTEM FOR CHILDREN IN MIGRATION

There is no doubt that the initial response to the influx of migrants, when child protection actors adapted their procedures and established partnerships with other non-governmental elements of the response system, focused on the immediate, short-term needs of children. When it became clear that it was not a short-term crisis and that thousands of children would face months-long – or even years-long – asylum procedures, it also became evident that the development of a programme focused on children's rights was needed. Reviewing the child protection response system in Serbia for migrant children, we can tentatively divide it into four different 'eras'. Firstly, the *warming-up era* (2012-2013), without special modification of regulations and services for migrant children. Secondly, the *transition era* (2014-2016), with a noticeable crisis reaction of governmental institutions, CSOs, and international and foreign organisations. Response established at that time dealt predominantly with basic needs and initial psychological aid, while an insight that the child protection system must adjust its mechanisms and capacities also rapidly developed. Thirdly, the *flourishing era* (2016–2019) is distinguished by the establishment of various services and initiatives, as well as the adjustment of institutional mechanisms. And lastly, the (as-yet-unexplored) *pandemic era* (2020-2021), as ultimate freezing, silencing and locking services due to other priorities (in which there has been little room for human rights issues), with a return to the 'good old' institutionalisation and isolation of migrants in closed communities of immigration camps. This final period (which has not yet concluded) has been marked by silence, a lack of communication between public institutions and CSOs, termination of initiatives, and the cancellation of successful and well-established programmes.

It seems that the response system in Serbia has exhibited an unprecedented capacity for adaptability and resilience, openness to innovation and the need to respect the rights-based approach when it comes to migrant children. This is especially evident when comparing the inability of the system to respond to the identified needs of children in the previous ten years or so (Žegarac, 2017), a fact confirmed by two consecutive recommendations of the Committee on the Rights of the Child to the Republic of Serbia in 2017. The benefits of accumulated knowledge from migrant crises around the world brought by international organisations have been used in local practice. Resources (in coalitions, adapted and specific programs, procedural adjustments, accommodation capacities, training, and additionally engaged workforce) were used in a flexible; however, it would appear unsustainable way. A quick shift from one operating mode to another, dictated by current priorities, funds and projects of international organisations, does not seem to have nurtured institutional memory in the response system.

Rights-based social work with migrant children involves complex and competitive practice approaches in different service and practice settings with procedures and norms applied

in different sub-systems and social sectors relevant to a child's wellbeing. It seems that, alongside the demonstrated elasticity, the response system in Serbia, more in principle than in essence, did follow the requirements of international standards in the protection of migrant children. This happened while the system was directed and guided by international organisations and assisted by local CSOs. That, however, did not lead to the development and incorporation of an authentic approach based on the rights of the child since the policies and services have demonstrated only moderate – as opposed to genuine and sustainable – capabilities and outcomes regarding child-centeredness, equitableness, inclusiveness and participation in the application of the CRC principles.

The abandonment of adopted procedures and innovative and advanced practices with relative ease, and the return to bureaucratic procedures, which became especially evident during the COVID-19 pandemic (with the confinement and isolation of migrants in camps, the cessation of numerous psycho-social programs and CSO-led initiatives, etc.), supports such conclusions. Therefore, we need to understand better the processes that contribute to the sustainability of innovations that are assessed as being useful and productive. Also, our experience testifies that it is not only necessary but also fruitful and empowering to involve migrant children in the design, implementation and evaluation of the programme. In this case, the involvement of migrant children and those who are taking care of them is critical to achieving a genuine and sustainable rights-based approach and outcomes.

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PROTECTION OF UNACCOMPANIED AND SEPARATED CHILDREN IN MIGRATION: ACTORS AND MAJOR CHALLENGES IN BOSNIA AND HERZEGOVINA

Tara Kalaputi

ABSTRACT

This research paper identifies key challenges considering identification, assignment of legal guardianship, and access to accommodation for unaccompanied and separated children in Bosnia and Herzegovina, critically assessing the role of the State and non-state actors in the provision of child protection services in the first two years of major migration flows through the country. Data were collected from secondary sources and through qualitative research conducted over eight months between November 2020 and June 2021. For this purpose, 16 interviews with stakeholders and 20 interviews with children sleeping outside the reception centers in Bihać, Una-Sana Canton, were conducted. Major findings suggest that the State has been absent from providing an adequate institutional response, particularly regarding child protection. Desk research and interviews showed that key protection gaps for UASC are identification and assignment of legal guardianship and accommodation. As BiH provided insufficient institutional support, a number of unaccompanied and separated children transiting through remained unprotected. Views and experiences of interviewed children sleeping in squats and informal settlements showed that many are undocumented without access to guardianship and targeted protection services, increasing their vulnerability. While humanitarian actors primarily facilitated children's access to protective and assistance services, there is a dire necessity for a more prominent inclusion of the State and the creation of joint strategies that address their particular needs.

Keywords: *children on the move, child protection, unaccompanied, separated, Bosnia and Herzegovina*

INTRODUCTION

Unaccompanied and separated children (UASC) on the move constitute an integral part of contemporary mixed migration flows. This includes children in various circumstances, including those who left their countries alone, those who have been separated from their families along the journey, and first or second-generation migrants whose parents have been deported (Bhabha, 2009: 412). They may be separated from both parents or their previous legal or customary primary caregiver, but not necessarily from other relatives or adults responsible for taking care of them. The European Migration Network (EMN, 2015) reports that UASC often flee their countries for economic and aspirational reasons, fear of persecution or serious harm, violation of human rights, violent conflicts, and religious or political unrest, among others. The act of their departure should be considered an attempt to resolve the critical situation they are in their countries of origin. From this perspective, their departure should be seen as a desperate act for self-protection (Kirkpatrick, 1992: 7). Surely, children migrating alone are particularly vulnerable as they are often deprived of what is typically perceived as a normal childhood.' The sudden and violent onset of emergencies, disruption of families and community structures, and the acute shortage of resources – deeply affect their physical and psychological conditions.

Existing routes of movement towards the European Union (EU) have been versatile and changing according to the policies and politics of the EU as well as the countries along the route. Since 2018, Bosnia and Herzegovina (BiH) has become the leading transit country for people on the move after Croatia, Hungary, and Slovenia closed their borders. Undoubtedly, UASC constitute a significant proportion of mixed migration movements. According to the latest Unicef situation report, the total number of newly arrived people on the move in Europe in 2020 was close to 95,000, out of which almost 19% were children. (Unicef, 2020)

After the shutdown of major migration routes to Western Europe through the Balkans in 2017, Bosnia and Herzegovina faced an increasing influx of migrants, asylum seekers, and refugees. Close to 60,000 refugees and migrants have been registered in Bosnia and Herzegovina since 2018, and over 6,000 new arrivals have reached the country in the first half of 2020, among which around 12% were unaccompanied children. According to Save the Children, in the first quarter of 2020, around 13,000 people arrived in BiH, while the number of arrivals since January 2018 is over 66,000, and over 9,000 refugees and migrants are estimated to be in the country. The majority were staying in reception centres across the country, mostly in the Una-Sana Canton. Some 1,500-2,500 persons were estimated to be squatting outside of formal accommodation, mostly in the Una Sana Canton. Around 14% of the refugees and migrants sheltered in various accommodation facilities in BiH were children (708). Almost half of them (332) were UASCs. (Save the Children, 2020) In May 2021, according to Unicef, an estimated 6,000 migrants, refugees, and asylum-seekers, including approximately 750 children in Bosnia and Herzegovina, were in need of immediate humanitarian assistance. An estimated 1,900 migrants, refugees, and asylum-seekers,

including approximately 150 unaccompanied children (UAC), were outside TRCs and mostly have been identified as sleeping rough in poor sanitary and hygiene conditions, exposing them to severe health risks in Una-Sana, Sarajevo, and Tuzla Cantons. (UNICEF, 2021)

This research explores the roles of the State and the humanitarian actors in providing child protection, identifying key challenges, and analyses the views and experiences of unaccompanied and separated children who are sleeping outside reception facilities. It is a qualitative case study using secondary data - exploring existing legal frameworks, international standards, official documents, protocols, and guidelines, as well as primary data collected through interviews conducted with relevant state and humanitarian actors, including UASC, outside of reception facilities. The research was conducted between November 2020 and June 2021. Interviews were conducted in Tuzla, Sarajevo, and Una-Sana Cantons, based on the locations of entry, transit, and exit from BiH, locations of registration, and transit reception centres. Key stakeholders interviewed include five representatives from the Centres for Social Welfare (CSW) in Bihać, Cazin, Velika Kladuša, Doboj Istok, and Sarajevo and three representatives from Service for Foreign Affairs (SFA) in Bihać, Tuzla, and Sarajevo. The humanitarian actors interviewed include two representatives from Unicef, one from UNHCR, five from Save the Children, and one from Association Vaša Prava. Lastly, the research included interviews with 20 children sleeping outside of reception facilities in Bihać municipality in two squat locations: Kombiteks – an old abandoned factory, and Žegarsko Polje – a tent settlement. Out of 20, all were male, 15 were unaccompanied, and five were separated from their families but accompanied by an adult relative; their countries of origin were Afghanistan (14) and Pakistan (6).

Due to their vulnerability, ethical considerations were of paramount concern, particularly towards the UASC. In this light, the Centre for Social Welfare in Bihać approved interviewing children outside of reception facilities in the presence of a legal guardian. The purpose of the interview and its intended use were explained to each child in their language with the assistance of cultural mediators. All interviewed UASC verbally affirmed voluntary participation. None of the interviews were recorded in order not to expose them to risks due to the humanitarian conditions in which they live with other people of concern, including single men. Finally, there were certain limitations to the study: the methodological framework and the selection of adequate data were primarily conditioned by the nature of migration, inconsistent availability of respondents, fast changes in the structure of respondents, and Covid-19-related limitations for conducting interviews.

1 POLITICS, POLICIES AND LEGISLATION: INTERNATIONAL AND NATIONAL LEVEL

Although the international policies and legal framework for children's rights may be a brilliant negotiation of conceptions of the child and international relations, certain

tensions in the process of protecting children's rights lead to a lack of clarity that continues to leave children at risk of different violations. Politics, both international and national, surely affects children in migration and often selectively compromises the fulfilment of their rights. Here the article presents the international and BiH national framework for the protection of children in migration before moving on to analysing the main aspects of protection, the role of State and non-state actors, and the children's perspective in light of the BIH political context.

1.1 INTERNATIONAL LAWS AND POLICIES

As stated in Annex VI of the Dayton Peace Agreement, BiH is compelled to follow a number of international and regional conventions on human rights as a succeeding state party or through ratification, particularly in relation to the rights of the child, including the right to asylum and international protection together as well as other civil/political and economic/social rights. Since September 1, 1993, BiH has been a state party to the Convention on the Rights of the Child (CRC). It stipulates that all state parties should ensure all rights of children without discrimination, including the rights of children in migration (CRC, Art 2). According to CRC, the best interest of the child should be the primary consideration in all actions concerning children, whereas state parties are to ensure children's economic, social and cultural rights using all appropriate legislative measures and to the maximum of their available resources (CRC, Art 3).

As a signatory to CRC and a member state of the Council of Europe (CoE), BiH adhered to following specific provisions by the Committee of the Rights of the Child through their General Comments and adhered to relevant Action Plans and Strategies by CoE, even if they are not legally binding. Thus, General Comment No. 6 by the CRC *Treatment of UASC outside their country of origin* includes provisions for the appointment of a legal guardian and care and accommodation arrangements, among other things. It stipulates that states should appoint a guardian as soon as a UASC is identified and that the guardian should have the necessary expertise in the field of childcare to ensure that the interests of the child are safeguarded. It also includes special protection and assistance provided by the relevant State under article 20 of the Convention relating to UASC, particularly establishing mechanisms under national law to ensure alternative care and interim care in large-scale emergencies. Similarly, paragraph 7 of the joint General Comment of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families No. 3 and the Committee on the Rights of the Child No. 22 concerning the *General principles regarding the human rights of children in the context of international migration* (CMW/C/GC/3-CRC/C/GC/22) stipulates provisions on best interest assessment (BIA) and determination (BID) on a case-by-case basis (para. 28). Thus, BIA includes the type of the most appropriate accommodation for UASC with prioritization of community-based care. The BID is aimed at identifying and applying comprehensive, secure, and sustainable solutions, including

further integration and settlement in the country of current residence, repatriation to the country of origin, or resettlement in a third country. Paragraph 2 of General Comment No 23 further defines *State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return*. In the view of the Committees, child protection, and welfare actors should take primary responsibility for children in the context of international migration. When a migrant child is first detected by immigration authorities, child protection or welfare officials should immediately be informed and be in charge of screening the child for protection, shelter, and other needs.

From 2016 to 2019, the Council of Europe (CoE) developed three key documents related to the protection of children on the move: Strategy for the Rights of the Child, Action Plan on Protecting Migrant and Refugee Children in Europe and Promoting Child-Friendly Approaches in the area of migration (CoE, 2019:10). Children in migration are recognized as one of the priority areas in the Strategy, and the Action Plan reflects the establishment of an effective guardianship system, protective shelter for UASC and protection from violence and exploitation. The latest CoE document outlines standards and best practices related to guardianship and accommodation, among other things. Similarly, The European Court of Human Rights (ECHR) has considered that the failure to provide shelter or leaving a child on the streets to fend for him - or herself may constitute a violation of Article 3 of the Convention (CoE, 2019: 17). The ECSR has found that in order to prevent homelessness, states parties were required, under Article 31(2) of the Revised Social Charter, to provide adequate shelter to children unlawfully present in their territory for as long as they are in their jurisdiction, whatever their residence status.

It has to be noted that, aside from being a member state of CoE and UN, BiH is a part of the EU's enlargement process and recognized as an aspiring member state, unlike other Balkan countries which are either official candidates (Albania, North Macedonia) or in the process of negotiations (Serbia, Montenegro). Thus, BiH is strongly relying on the EU's financial support for migration management as close to 88 million € have been allocated since 2018 (European Commission, 2020), and its migration management policies are strongly affected by the migration policies of the EU.

1.2 NATIONAL INSTITUTIONS, LAWS, AND POLICIES

The institutional framework in BiH is comprised of state-level and entity-level bodies divided into two entities – the Federation of BiH and the Republic of Srpska (RS), which are politically autonomous to an extent, as well as the Brčko District. The Federation is divided into 10 Cantons. The two entities within the country, the Federation of BiH and RS - each occupy roughly 50% of the country's territory, having separate administrative and legislative frameworks. According to the Constitution of BiH, policy development and regulation of immigration, refugees, and asylum issues are under the competence

of state-level institutions (Art 3.1). An essential body on a state level for migration management established in 2013 is the Coordination Body for Migration Issues in Bosnia and Herzegovina (BiH Official Gazette no. 10/13, 64/13, and 1/14). As RS refuses to accept people on the move on its territory, political responsibility for migration management has largely been spread into four administrative levels: state level (BiH), federal (FBiH), cantonal (10 cantons in FBiH), and local (municipalities in FBiH). Through exercising their own administrative and legislative framework, the RS authorities deliberately deprived people on the move of any institutional support. Thus, the Serb member of BiH's Presidency publically refused (Trkanjec, 2021) financial support from the EU to build accommodation facilities. Moreover, RS authorities publically supported police pushbacks from RS to FBiH entity, claiming people on the move have solely economic reasons to migrate (Milojević & Sandić-Hadžihasanović, 2021).

Social services, healthcare, culture, and education sectors are under cantonal administration and thus regulated by cantonal laws. Thus far, only cantonal authorities within FBiH have provided support to people on the move, including children. There are seven temporary reception centers (TRC) in BiH, each with relatively limited space and its own admission criteria/eligibility and process, and some require referral. TRCs in Una-Sana Canton in the country's north-west border with Croatia, and Sarajevo Canton, are coordinated by the International Organization for Migration (IOM) as part of a wider EU financial assistance. The State manages two reception centres: Salakovac Refugee Reception Centre in Herzegovina Neretva Canton, managed by the Ministry for Human Rights and Refugees, and the Delijaš Asylum Centre in Sarajevo Canton, managed by the Sector for Asylum within the Ministry of Security. Save the Children's Operations manager stated that UASC are accommodated in designated zones in three reception facilities in USC (TRC Borići, Sedra, and Miral) and one in Sarajevo (TRC Ušivak), all managed by IOM, while Save the Children manage designated zones through UNICEF's support.

During his visit to BiH in 2019, the Special Rapporteur (SR) on the Human Rights of Migrants stated that the Coordination Body had failed to allocate suitable premises as reception centres for accommodating in a timely manner asylum seekers and migrants. In addition, the SR expressed his concern about the lack of preparedness and a strategy of the State-level authorities for the challenges faced by the Coordination Body in enforcing its decisions at the entity, cantonal and municipal levels. Despite their awareness of an increased number of people on the move, it generated frustrations among local citizens (Special Representative, 2019). Surely, none of the developed Action Plans envisages contingency planning for emergency response with clearly defined roles and responsibilities, including provisions on protection, particularly child protection. Instead, they are focused on the security and permeability of the borders. For instance, the most recent document related to migration management - The Action Plan of Urgent Measures to be taken with a focus on illegal migrants (Ministry of Security 2018) includes

priorities only related to strengthening border controls to combat irregular migration and implementation of readmission agreements, without any provisions on protection (Ministry of Security, 2021).

BiH has developed numerous documents related to migration management, the most relevant being The Action Plan in the Field of Migration and Asylum, as adopted by the Council of Ministers (CoM) in 2004 and respective 5-year Strategies since 2008, while The Action Plan 2021-2026 is still in preparation (Ministry of Security, 2021). The strategies and action plans outline the development of the migration and asylum system by defining the goals, activities, deadlines, and parties responsible within the fields of residence, migration, asylum, and protection of foreign victims of human trafficking.

Social welfare centres play a crucial role in the official assistance scheme for children on the move, as they are mandated to provide family protection, child protection, social protection, and family protection against violence and juvenile delinquency, as defined by the relevant laws on social protection. Major national legislative frameworks pertaining to child protection can be found in the Family Law, the Law on Asylum (*Official Gazette of Bosnia and Herzegovina*, no. 11/16), and the Law on Aliens (*Official Gazette of Bosnia and Herzegovina*, nos. 36/08, 87/12), the latter one replacing the Law on Movement and Stay of Aliens and Asylum. Article 11 from the Asylum Law recognizes that the Ministry of Security (MoS) in BiH, with other responsible bodies, is to proceed in all actions according to the best interest of the child as established by the CRC. Article 11 from the Law on Asylum prescribes that UASC must be promptly assisted during identification, protection, and care periods. The Law on Aliens, with its Article 123, gives special attention to the protection of minors' rights, stating that competent authorities in BiH are to treat children with particular care in line with the CRC, recommending detention of children or families with children in immigration centres only as a last resort, and providing other specifications related to social care protection and non-voluntary return (Law on Aliens, Art 123).

Family law applies to children on the move under the same conditions as to BiH citizens and includes provisions on legal guardianship, including special guardianship. Section 5 Art 201 of the Family Law further defines special guardianship recognizing the right of the guardianship authority to restrict the scope of responsibilities and rights of the guardian in particular circumstances. In addition, the territorial jurisdiction of the guardianship authority is determined according to the place of residence in Art 202, suggesting that if the residence of the UASC changes, the jurisdiction of the legal guardianship also changes. However, there are no provisions related to the specific roles and responsibilities of the legal guardian that would include qualification training, vetting procedures, training, monitoring mechanisms, and accountability measures. Further, BiH authorities have not developed any bylaws, protocols, or official guidelines that further define the roles and responsibilities of legal guardianship, nor are there established Standard Operating procedures (SOPs) for child protection for children on the move. In late 2018, UNICEF

initialized establishing Guidelines for the Centers for Social Welfare for the protection and care of UASC on the move with relevant authorities on a federal level, including pathways for the identification and referral of UACS, which at the time of conducting the research – have not yet been approved (Save the Children, 2021).

2 PROTECTION FOR UNACCOMPANIED AND SEPARATED CHILDREN IN BOSNIA AND HERZEGOVINA

According to the Guidelines on Minimum Standards for Child Protection in Humanitarian Action (CPMS), child protection is the prevention of and response to abuse, neglect, exploitation, and violence against children, including specific activities conducted by local, national, and international child protection actors (CPMS, 2019: 32). Lead by identified gaps by interviewed stakeholders and children themselves as well as numerous press releases and reports regarding BiH, protection of UACS is analysed here through identification, assignment of legal guardianship and the accommodation possibilities.

2.1 ASSIGNMENT OF LEGAL GUARDIANSHIP AND IDENTIFICATION

Prompt identification and appointment of legal guardians is the initial and most significant step towards providing adequate protection of UASC, as the guardian has the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements, and seeking a durable solution. Responsible actors for identification can be local citizens, (I)NGOs and state institutions, including representatives of the border or local police, registration officials, respective centres for social welfare, etc., while the responsibility of the assignment of legal guardianship is with the guardianship authority. In an assessment conducted by OSCE in 2018, where employees of 24 CSWs were interviewed, representatives stated that they received neither funding nor instructions on how to handle migrant and refugee cases, including an action plan at the local level (OSCE, 2018:28). The assessment concluded that most CSWs interviewed lacked the capacity for identifying and addressing signs of violence, abuse, trafficking, and exploitation, and lacked knowledge of existing mechanisms in place for assisting vulnerable groups, such as UASC, pregnant women or people with disabilities. Out of 24, only 9 CSWs were engaged in the assignment of legal guardianship through escorting the child, being present during the hearing, helping to provide accommodation, and providing representation for all formal legal actions. As for referral mechanisms, only half were cooperating with other relevant institutions such as SFA, police, and humanitarian organizations. Similarly, the most recent Concluding Observations on the combined fifth and sixth periodic reports of Bosnia and Herzegovina by CRC in 2019, identified provision of adequate care of children on the move as one of the main areas of concern, with a particular focus on the lack of capacity of the authorities

to implement the Law on Asylum (2016) with respect to the provision of guardianship for unaccompanied and/or separated children (CRC, 2019:8). Moreover, during his visit to BiH in 2020, the SR on the Human Rights of Migrants noted that UASC faced difficulties in obtaining access to guardians in a timely manner, which further delayed their access to asylum procedures (SR, 2019: 14). He further expressed concern that the process of determining the best interests of the child seems flawed and that due to the large number of UASC entrusted to guardians, guardianship often extends only to legal representation and not to the promotion of the child's overall well-being and the safeguarding of the child's best interests.

From interviewed representatives of relevant CSW, most were professional social workers, and some were lawyers. Most claimed that they were not aware of any developed SOPs on the provision of guardianship for UASC, and two claimed there are none. All confirmed they had been trained by Save the Children on Child Safeguarding and Safety and Security, but none were trained in the provision of guardianship by CSWs. None had more than 30 UASC under guardianship. All were aware of best interest assessment procedures but did not know the difference with best interest determination. Legal guardians from Kalesija and Sarajevo did not participate in BIA/BID as mostly UASC are transiting through. In contrast, the ones from USC claimed that BIA is conducted by a multidisciplinary team comprising CSW, case workers, child protection officers, cultural mediators, and other actors according to the need. Legal guardians from TRCs in USC also noted that they regularly participate in the Boys Parliament (Save the Children, 2021: 7), where UASC express their views, and humanitarian actors coordinate joint actions to respond to their needs. The main concerns identified by interviewed legal guardians were: the scope of guardianship, lack of guidance by relevant CSWs, and coordination between CSWs when the child is moving from one municipality to the other.

All interviewed representatives of CSWs confirmed that guardianship, in practice, is restricted to crucial administrative responsibilities requiring a signature, mainly registration with SFA, medical screening, court representation, and escort to accommodation. While some CSWs place children under guardianship immediately after registration with SFA, the procedure in CSW in Velika Kladuša take about a week after a child is accommodated, when many UASC have already left TRC. Interviewed guardians claimed that they mostly know the children under their guardianship, but lengthy administrative procedures prevent them from providing adequate care. Moreover, the duration of legal guardianship varies but is mostly linked to the duration of stay in TRCs. Thus, if a child leaves TRCs, guardianship is terminated. Only a CSW representative in Bihać claimed that the duration of guardianship is extended to 10 days after the child leaves the TRCs. The reason for that is the expected return of the child after an unsuccessful attempt to cross the border with Croatia. In other TRCs, guardianship is terminated as soon as the child leaves the TRC, while the appointment of legal guardianship is reinitiated in case of the child returning, requiring complex administrative work. None of the legal guardians was

aware of coordination between CSWs from different municipalities. Still, legal guardians from USC claimed that they follow the movement of a child from one municipality to the other by heavily relying on caseworkers employed in each TRC by Save the Children. However, legal guardians from Sarajevo and Tuzla Canton did not communicate with CSWs in USC when they would identify children registered there previously.

Despite identified challenges, there has undoubtedly been significant progress in terms of provision and care for identified UASC in BiH since 2018, namely: UASC are accommodated in designated safe zones where they receive targeted 24/7 child protection support, including case management (respondent 15) and legal guardians are able to participate in protection procedures related to best interest assessment due to heavily decreased caseload. Namely, Unicef noted that in 2019 CSW Bihać had a substantial lack of capacity with two guardians for more than 400 UASC. Owing to advocacy towards the EU aimed at increasing state capacities for guardianship, the number of guardians increased to eight, while the number of children in Bihać decreased to about 250 in April (respondent 15). However, UNICEF and Save the Children expressed dire concern for the children who are not identified and thus cannot benefit from the assignment of legal guardianship (respondent 16). That includes children who register as adults, children who are transiting through BiH without registration, and children who are sleeping rough. Surely, guardianship is conditioned by identification and registration, as per Article 12 of the Law on Asylum, which means that if a child is not identified, they cannot be assigned a legal guardian and thus remain invisible to the authorities and lack the necessary protection.

2.2 ACCESS TO ACCOMMODATION

Every child should have the right to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development (CRC, 1989, Art 27). Thus, care arrangements should be supportive and protective, and the environment should respond to the specific needs of the child and promote their full potential. According to the UN Guidelines for the Alternative Care of Children, the use of residential care should be limited to cases where such a setting is appropriate and in the best interest of the child. States should adopt a deinstitutionalisation strategy that will allow for the progressive elimination of institutions as alternative care arrangements (UN General Assembly, 2010).

The most recent Concluding Observations on the combined fifth and sixth periodic reports of Bosnia and Herzegovina by CRC in 2019 outlined that the insufficient capacity of reception centres to accommodate migrant and asylum-seeking children results in being forced to sleep on the streets without adequate shelter and in unsafe and unsanitary conditions; Similarly, during his visit in 2020, the SR of the Rights of the Migrants expressed concerns for several aspects of accommodation for UASC (SR, 2019: 18). Namely, he claimed existing reception capacities for people of concern, and the conditions of some

temporary reception centres do not sufficiently meet the current needs, both in terms of capacity and protection-related requirements. In addition, he noted that there is a lack of appropriate alternative housing provided by the State for UASC and victims of abuse and exploitation. Although families with children and UASC are lodged in designated areas, the lack of possibility to fully separate various populations increases protection risks, including being exposed to human traffickers or smugglers.

During his visit, SR also found that due to the fact MoS does not conduct age assessment when they are in doubt, there are cases of UASC who claimed to be older than their actual age in order to be accommodated with adults for various reasons, including trying to get closer to sources of information about smugglers or on smuggling routes. Another related trend due to the lack of procedures for establishing family links by MoS is "pretend families", where single men who did not have access to accommodation pretend to be family members of UACS in order to acquire access to services, and abandon the child when they continue their journey, which further exposed UASC to manipulation and exploitation (SR, 2019: 40). Last but not least, he observed that although victims of gender-based violence and other abuses have been identified in various centres, due to a lack of safe houses available in BiH, victims cannot be effectively separated from the alleged perpetrators and are accommodated in different collective TRC instead.

All interviewed representatives of the Services for Foreign Affairs and Centres for Social Welfare, where accommodation facilities are established, agreed that despite the designated zones for UASC, there is a need for alternative accommodation possibilities for UASC, including a Safe House for identified victims of violence and exploitation. None of them claimed that reception facilities are adequate for the provision of protection and care. Interviewed humanitarian actors identified the three main gaps when it comes to accommodation of UACS in BiH: restrictive policies by cantonal authorities, no alternatives to collective accommodation, and preventive Covid 19 measures.

Save the Children, and UNICEF representatives expressed concern for the decision of the Cantonal Ministry of Health, Labor and Social Policy in December 2020 that prevented accommodation of UACS in USC, provided that all identified UACS can only be accommodated in the Centre for Children and Youth in Doboj East, Tuzla Canton. According to SCI Child Protection Coordinator for Tuzla Canton, having in mind Tuzla Canton is the point of entry to BiH, many children refuse to go back, which has resulted in a high number of them sleeping in squats or tent settlements (Save the Children, 2021). All interviewed stakeholders were aware of the high number of UASC who are sleeping rough and do not possess any documentation, which prevents the assignment of legal guardianship and provision of protection services.

In a press release in January 2021, Save the Children noted that the children travelling alone are among the estimated 2500 people scattered around the country without proper

accommodation, and as temperatures have fallen below zero during the nights and COVID-19 infections continue to rise, children are spending their days and nights outside, with limited access to food, water, sanitation and no access to protection, health, asylum or education services (Save the Children, 2021). According to officials, there were around 500 UASC in various shelters in the country and some 450 children with their families. Still, after the closure of two large camps last year (*ibid.*), the number of shelters for refugees and migrants in BiH has drastically decreased. UNICEF representative said that restrictive Cantonal policies on entrance and following disembarkations from public transportation upon entry to the canton further exacerbate the conditions of UASC in BiH. Thus, there were more than 50 UASC stranded at the Velečevo checkpoint[1] in 2020, deprived of access to accommodation and services, and most resorted to walking to Bihać and sleeping rough.

Finally, COVID-19 prevention measures affected accommodation capacities as the reception capacities previously designated for UASC were instead repurposed for preventive isolation of newly arrived refugees and migrants before their admission to mainstream reception facilities (Save the Children, 2021). The introduction of a mandatory quarantine-conditioned admission to TRCs with ten days of isolation where families, UACS, and adult men have separate compartments. Children do not have designated spaces or child protection in isolation areas, which has resulted in severe consequences for their mental health. According to the case management coordinator from Save the Children, the vulnerability of children intensified with the introduction of isolation areas, thus resulting in self-harm, suicidal thoughts, violent incidents, and similar negative coping strategies.

2.3 CHILDREN'S VIEWS

Child participation is one of the core principles of the CRC, which asserts that children and young people have the right to express their views freely and that there is an obligation to listen to children's views and to facilitate their participation in all matters affecting them. Undoubtedly, undocumented children and sleeping rough often do not have any platform to express their opinions, nor can they benefit from child protection services as children in reception facilities. Their contribution to this research was vital, as it provides deeper comprehension of identified child protection issues described by interviewed stakeholders and relevant reports.

Out of 20 interviewed children, 15 were unaccompanied, while five claimed to be separated from their parents and accompanied by a related family member. Only five UASC had been registered with the Service for Foreign Affairs, while the rest did not have any document issued in BiH and thus did not have a legal guardian appointed. Their countries of origin were Afghanistan (14) followed by Pakistan (6). 13 were older minors

1 Velečevo is situated between RS and FBiH, specifically upon the entrance to Una-Sana Canton.

aged 14 and 17, while six had less than 16, the youngest being 13. All were aware of what a legal guardian is. Still, UASC, who have been previously registered in TRCs, showed a more significant understanding of legal guardianship and child protection services in general. For example, all five claimed they trusted their legal guardian and talked to them if they needed assistance. Two said they would speak to Child Protection Officers or cultural mediators if something bad happened to them because the legal guardian was always absent. Also, they were aware of the roles and responsibilities of state institutions and organizations such as the police, SFA, centre for Social Welfare, legal guardians, child protection officers, etc. All five said they left their TRC to continue their movement but were pushed back by the Croatian border police. Three of five said they tried to return to their TRC but were not allowed, while two did not even try as they heard no UASC can be accommodated in USC anymore. None of them knew why.

When asked whether humanitarian actors offered them accommodation, all 20 said they were offered Centre for Children and Youth in Doboj East but refused because it is too far away. It requires a lot of money to pay a smuggler to take them back to USC. When asked how much time they have been sleeping rough, five said about ten days, seven said more than one month, and eight said more than three months. All stated that they receive food and non-food items but lack medical assistance and drinkable water. Six of 20 said they do not feel safe because of violence among migrant groups, the poor and unstable infrastructure of abandoned buildings, and robberies. When asked whether anything bad happened to them while sleeping in the squat, 13 said no, and seven did not want to answer the question. All confirmed that they would feel safer in TRCs but must continue their journeys. Four out of 20 said they do not wish to go further but must. Also, all said that even if there were accommodations in USC, they would still stay to sleep rough as they would not go to isolation for ten days. The ones registered in TRCs said that isolation is the worst part and that many children harm themselves when in isolation because it is dark and there is nobody to talk to. When asked under what conditions they would be accommodated, they all said with their group of friends and in Una – Sana Canton due to the closeness of the border.

About 25% of the interviewed UASC who are sleeping rough have been registered before, meaning they were appointed with a legal guardian. They had access to protection services in designated zones within TRCs. In contrast, 75% have never been registered, which means they are invisible to the authorities and cannot access adequate protection and care. While most UASC who have been registered show an understanding of existing child protection platforms and services, UASC who have not been registered tend to be unfamiliar and thus do not know who they can rely on for assistance. Legal guardianship is generally a known concept. However, UASC are only familiar with legal representation and not so much with the provision of protection by their legal guardian. Concerning accommodation, all UASC preferred collective accommodation with their friends, supposedly due to the smuggling networks that prevail in those circumstances. Indeed,

UASC obtained recent information about the availability of accommodation but were not aware of specific reasons as to why accommodation is not available. Importantly, UASC were aware of the risks of sleeping rough, but most would compromise that as their primary goal is to continue their movement.

In general, interviews showed that children cannot always act in their best interest as their parents, smugglers, and potential perpetrators influence their decisions. As the critical responsibility of the best interest principle in all decisions regarding the child is with the State, if the authorities do not identify the child, they cannot benefit from this decision. Where the State does not take action, protection lacks to meet the basic rights of these children.

CONCLUSION

Findings suggest that the State has been exceptionally absent from providing an adequate institutional response, particularly regarding child protection. Despite existing international and national legal frameworks and policies, no strategic documents or standard operating procedures define the State's and humanitarian actors' roles and responsibilities regarding migration management, including child protection. Without a doubt, the complex political and administrative structure, unwillingness to cooperate between the two entities, and political constraints have made BiH heavily dependent on humanitarian actors. Notwithstanding significant progress by the humanitarian community that includes protective accommodation, assignment of guardianship, and targeted child protection services, BiH has neither developed any Guidelines nor has it introduced legal provisions regarding the appointment and role of legal guardians or special protection measures for children on the move.

Secondly, desk research and interviews showed that critical protection gaps for UASC are identification and assignment of legal guardianship and accommodation. In this regard, the respective Centre for Social Welfare lacks the adequate capacity and tools and does not implement a synchronized and coordinated approach, nor do they follow when a child leaves temporary reception centres and moves to a different municipality. Adequate legal guardianship is compromised by legal provisions that limit the scope and duration, thus restricting it to crucial administrative rather than protection responsibilities. Humanitarian child protection actors conduct individual needs assessments, case management, and best interest assessment. Accommodation solutions and access to those are the most critical issues for children due to Covid 19 prevention measures, restrictive policies for admission by cantonal authorities, and lack of alternatives for identified victims. Despite designated safe zones within reception facilities operated by humanitarian actors, access to accommodation has been severely compromised. Specifically, former capacities became preventive Covid-19 isolation areas, thus reducing

existing capacities. Further, cantonal authorities introduced several restrictive measures (disembarkation from public transportation, prohibition of accommodation of UASC) that disallowed children to access reception facilities, even if they had been registered there before. That has contributed mainly to an increasing number of unaccompanied and separated children sleeping rough undocumented, and without protection.

Finally, through analysis of the views and experiences of children sleeping in squats and informal settlements, findings showed that large numbers are undocumented without access to guardianship and targeted services. Even though most have a basic knowledge of their rights and responsibilities, those registered before showed a greater understanding of child protection concepts. Living in substandard unsanitary conditions and often in groups with unrelated single men, they are increasingly exposed to security, medical and protection risks due to unstable infrastructure, no access to drinkable water or medical assistance, and susceptibility to manipulation by parents and smugglers. Undoubtedly, children outside institutional care are at further risk of trafficking, sexual or economic exploitation, and violence. Issuance of documents and assignment of guardianship is severely compromised by the availability of accommodation, leaving children invisible to the authorities and without any protection.

As BiH provided insufficient institutional support, many unaccompanied and separated children transiting through remain unprotected. While humanitarian actors primarily facilitated children's access to protective and assistance services, there is a dire necessity for a more prominent inclusion of the State and the creation of joint strategies that address their particular needs. The main consequence of an inadequate response is that children either do not enter the care systems or deliberately leave them. To avoid children falling through the cracks, BiH has to adhere to its national and international legal obligations and improve existing frameworks guided by children's opinions and participation. Undoubtedly, children should not be the victims of a dysfunctional system but rather sources of knowledge whose emancipatory contribution could improve the design of child protection responses in migration.

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ALTERNATIVE CARE FOR UNACCOMPANIED ASYLUM-SEEKING CHILDREN WITHIN THE DE-INSTITUTIONALISATION REFORM IN BULGARIA

Denica Markova

ABSTRACT

In times of increased regional migratory movement and the creation of new routes within Southeast Europe, Bulgaria started to experience an increase of unaccompanied asylum-seeking children present on its territory during the last five years, since 2016. Yet, unaccompanied asylum-seeking children tend to be placed in reception centres which share the characteristics of institutional environments thereby no longer recognised as appropriate childcare services on international and national levels as they fail to respect children's rights. Having this in mind, this research analyses the provision of alternative care to unaccompanied asylum-seeking children in Bulgaria. By examining migration, deinstitutionalisation and child protection processes and practices supported by relevant inputs from a survey conducted online, this research shows that unaccompanied asylum-seeking children have been left out of the deinstitutionalisation-related reforms in Bulgaria. The research offers insights on some of the contributing factors for their exclusion and argues that recent reception improvements contribute to the maintenance of dominant institutional care responses for these children.

Key words: *alternative care, Bulgaria, deinstitutionalisation, guardianship, unaccompanied asylum-seeking children*

INTRODUCTION

In contrast to the European 'crisis' narrative which points to 2015 as the peak year, it was 2013 when the number of people seeking asylum in Bulgaria tripled, after nearly a decade of unchangeable asylum flow circumstances (SAR, 2020). Against the tendency of an overall decrease of asylum applications after 2016, Bulgaria saw an increase in the number of unaccompanied children who seek asylum, reaching a peak of 3,170 in 2021 (Eurostat, 2021). Hence, it has been nearly a decade since the country's leadership, its asylum experts and the child protection community started to recognise the specific group of unaccompanied asylum-seeking children (UASC) arriving or passing through Bulgaria in its official statistical data. This evoked a conversation about a range of topics concerning the distinctive needs of these children, their access to the asylum procedure, reception conditions, legal representation, guardianship, social services, and similar. The debate brought about legislative and policy changes and has driven the introduction of many novel project-based activities mostly led by international or local civil society organisations, designed to support UASC within the reception environments they were placed in. On the other hand, the local child protection system, led by the principle that families are the best environment for the development of every child (National Council for Child Protection, Art. 2), lags to integrate UASC (UNHCR, 2018; Atanasova, 2020). As a result, some of the major protection measures (Šiška & Beadle-Brown, 2020:25-28) designed to move towards deinstitutionalisation, namely family-based care, are rarely applied as alternative care solutions for UASC (*ibid.*). By making a grounding referral to the Convention of the Rights of the Child (CRC), more specifically the right to special protection, assistance and alternative care for children deprived of family environment (Art. 20), it is, therefore, time to ask if and how the rights of UASC essentially deprived of family environments are respected.

The situation of asylum-seekers, migrants and refugees is a topic of growing interest and concern of several scholars. When it comes to the so-called transit countries in South East Europe (SEE), attention is paid to the securitisation of the migration debate in Bulgaria (Krasteva, 2017) and Slovenia (Vezovnik, 2018), regional disputes between Serbia and Croatia over handling refugees at the time when the Balkan route was 'open' (Sicurella, 2017), the emergence of new transit countries such as Bosnia and Herzegovina and the role of international organisations in tackling violence against migrant communities across the Balkan route (Stojić-Mitrović et al, 2020). Legal studies on migration and asylum in Europe examine the positive and negative effects of international and domestic laws, yet they may focus on the protection of migrant children in destination countries (Crock & Benson, 2018). Despite its substantial contribution, the scholarly debate on UASC in countries of the SEE region such as Greece (Buchanan & Kallinikaki, 2020), Slovenia (Zaviršek & Rajgelj, 2019) and Bulgaria (Ilieva, 2018) has not yet fully explored the questions of institutionalisation, alternative care and guardianship systems for UASC with a few valuable exceptions (See: Connellan, 2020; de Ruijter de Wildt et al, 2015).

Hence, the overall objective of this research article is to understand what factors contribute to the neglect of UASC by child protection systems in Bulgaria. This is done to capture dominant care models and analyse them within the context of the deinstitutionalisation reforms. For this reason, special attention is given to the analysis of the access to special protection rights, assistance and alternative care instead of standards and implementation of the asylum procedure for UASC. This research firstly aims to determine the relationship between UASC and the deinstitutionalisation of childcare systems in Bulgaria. Secondly, it aims to discuss specific risks UASC are facing from the initiation of their journey in very diverse contexts until the movement is discontinued in the outskirts of the EU, including Bulgaria. The purpose is to identify repetitive violent/harmful episodes and construct solutions where distinct forms of alternative care, such as foster care and functional guardianship, appear to have a direct positive impact on prevention and mitigation of certain risks prominent in transit environments such as Bulgaria. And, lastly, the research strives to explore the current state of access to rights of UASC in Bulgaria such as the most frequent forms of alternative care provided to UASC including the duration of their stay in institution-like settings, the quality of guardianship systems, as well as legal representation along with some of the most pressing challenges in this area.

This is mainly done through desk-research examination of international, regional and local legislation, policies and practices within migration, asylum and children's rights margins. An emphasis is put on the developments in SEE, in particular post 2016 Bulgaria, as well as on the impact they had on children. The primary research findings are based on evidence collected through an online survey disseminated to stakeholders, mainly the representatives of responsible governmental agencies and other local actors in Bulgaria between December 2020 and February 2021.[1] Following the self-assessment model, the participants were approached directly or randomly via online channels. While the survey is not fully representative within the larger local child protection and asylum professional communities, it still provides a strong indication of data as it includes 12 respondents - social workers, psychologists, legal advisors, persons involved in management - working for key agencies such as the Catholic Relief Services, Centre for Legal Aid – Voice in Bulgaria, International Organization for Migration – Bulgaria, Lumos Foundation – Bulgaria, Multi Culti Collective and the State Agency for Refugees. For ethical reasons, data is presented as collective statistics or anonymous individual statements. As the survey was conducted in the Bulgarian language, all translations are done by the author. Solely related to Bulgaria, these case-study findings may not apply in other contexts but might increase the understanding of alternative care provision to children similarly affected by institutionalization in (transit) countries alike with socialist legacy in the SEE region and beyond.

1 The survey was consulted and promoted by the regional initiative which encourages continuous improvements of child protection practices and policies in SEE - *Child Protection Hub*: https://childhub.org/en.

1 UNACCOMPANIED ASYLUM-SEEKING CHILDREN – THIRD-WORLDERS *PAR EXCELLENCE*

This section begins with a layout of the rights stipulated in the CRC pertaining to UASC while pointing to the dichotomy between child and minor terminologies. It shows how these rights are most often violated as the overreliance on minor or migrant terms diminishes the importance of child-centred perspectives, thus positioning them rather as third-worlders. It further illustrates restrictive border regimes in the EU periphery which led to systematic violence taking place at Bulgarian borders. The section attempts to group risk factors which reflect children's experiences and aims to better understand their realities when preparing to move, during their journey and when migration is discontinued, mirroring the precariousness in transit contexts. Finally, it directs towards best primary interventions to prevent violence against children, namely non-institutional forms of alternative care.

1.1 CONCEPTUALIZATIONS IN RELEVANT INTERNATIONAL AND REGIONAL LAW

UASC is a complex legal term and a living reality that tends to be decomposed into two juridical viewpoints. The first one refers to a child-centred perspective, ingrained in the CRC and further developed in the UN Guidelines for the Alternative Care of Children (UN Guidelines). Relying on these documents, UASC is a person under 18, not taken care of by a parent or another adult responsible by law or custom (UN General Assembly, 2010). The second is grounded in the asylum or international protection perspective, established through the regional legal framework of the Common European Asylum System (CEAS) and national legislation in the EU countries. This perspective refers to the term 'minor' as a third-country national or stateless person below the age of 18 years who arrives on the territory of an EU state not accompanied by an adult responsible by law or by the practice of the given EU country (L337/9, Art. 2(1)(L)). Asylum seeking or application for international protection (as the preferred terminology within CEAS) signifies the beginning of the asylum procedure for any third-country national or stateless person who requests protection based on a claim of being persecuted or being exposed to serious harm if returned home. These claims refer to the two most common international protection categories recognised within the EU – refugee and subsidiary protection statuses.

Non-discrimination principles in international law prohibit discrimination on the grounds of age, gender and nationality. As the most important international agreement in the field of children's rights, the CRC sets four rights as guiding principles for the realisation of all other rights ingrained therein - the right to life, survival and development (Art. 6); non-discrimination (Art. 2), the best interests of the child (Art. 3) and the right to be heard (Art. 12) (CRC Committee, 2003). The non-discrimination principle implies that States parties to the CRC should enable access to all rights and to every child, irrespective of any personal

characteristics. In addition, non-discrimination is a fundamental right included in the Charter of Fundamental Rights of the EU (Art. 21) which also reaffirms the CRC principles (Art. 24). The Charter is binding to all EU member states when implementing European law, while the rights of children are directly included in the instruments of CEAS (EASO, 2016).

Despite non-discriminatory norms, UASC rarely enjoy comprehensive protection. The Human Rights Council finds that the rights stipulated in the CRC in regard to UASC are those most often violated, especially the right to non-discrimination, the right to development, the right to special protection measures, the right to family reunification, the right to education and the respect for children's best interests (UN General Assembly, 2015). This is why many international, local and scholarly organisations continuously advocate for children to be, first and foremost, treated as such, and then as migrants, refugees or asylum seekers. However, research in the EU shows that examples of functional systems of protection in the best interests of unaccompanied children are scarce (IBA, 2019).

Irregular movements back and forth often expose children to increased violence and limited protection. Over the past few years, Bulgaria alongside Croatia has turned into the EU border protector, while other SEE countries like Bosnia and Herzegovina (BiH) and Serbia have become the 'buffer zones' for children and adults who are 'unwanted' (Mitrović et al, 2020). Restrictive border controls introduced in the EU periphery resulted in systematic border violence. In 2019 alone, more than a thousand children were pushed back within the Western Balkan Route with most incidents of violence reported at the Bulgarian borders (FRA, 2020: 10). This restrictive reality, along with the practice of clustering people at the EU external borders, is ritualized with the New Pact on Migration and Asylum (ECRE, 2020) proposed by the European Commission towards the end of 2020. Early analysis of the proposed pre-entry mandatory border procedure at EU borders points to concerns regarding the lack of provisions for the appointment of legal guardians and diminished access to national child protection systems for UASC (Finch et al, 2021; KIND & Child Circle, 2020).

1.2 RISKS AND RISK FACTORS FOR THE WELL-BEING OF UNACCOMPANIED CHILDREN

In addition to the alarming impact migration policies have, the conversation about UASC in the EU has been consistently focused on the multiple risks children in migration are exposed to. Some studies have looked at risks in countries of origin, transit and destination, as well as those which might occur during travelling per se when researching, for instance, mental health (Kronick et al, 2021). Others examined risk factors, according to specific categories, include married children, children at risk or victims of trafficking, missing children, children with disabilities, LGBTI+ children, etc. (EASO, 2019). On this account, various international organisations have called on

governments to take risk-mitigating measures for UASC in the EU and in SEE (Council of Europe Commissioner for Human Rights, 2021; Rađenović, 2021;

Save the Children & International Rescue Committee, 2017; UNCHR, UNICEF & International Rescue Committee, 2017). Thus, available data allows to outline risk factors reflecting children`s experiences as to further understand their common realities. Extracting provisional categories from migration as a process, children's movements have been typically divided into three major periods: pre-migration, during migration and post-migration. However, building on the previous section, and particularly considering the current fluctuations across the SEE region, the risk classification utilises the first two but re-names 'post-migration' to 'discontinued migration' in an attempt to acknowledge limbo situations and precariousness in transit contexts. The proposed grouping of risks is non-exhaustive, and it should not be understood as reducing the experiences of children solely to their vulnerability. Instead, its purpose is to demonstrate the frequency of certain risks and the novelty of others that appear to be directly linked to the stage of the movement. Such typology further illustrates utmost demands for flexibility when developing policies, service provision and support for UASC where alternative care and guardianship are immutable.

Existing research has looked at how personal characteristics, such as age and gender, as well as social, economic and political situations in diverse contexts, immensely affect the well-being of children. Age, well-knowingly associated with exacerbating vulnerability, make children easily influenced by their environments (EASO, 2018). Gender, being profoundly linked to the culture of each country, may expose unaccompanied girls to marry forcefully and thus make them responsible of taking care of children on their own, to be protected from sexual violence (EASO, 2018: 7). Along with sexual harassment, assaults and rape, these are common realities in contexts like Afghanistan (Human Rights Watch, 2021: 21) and Pakistan (*ibid.*, 520). Country specific situations where adverse events such as war, death, loss and sexual abuse have been researched and found immensely affect the mental health and emotional state of children (EASO, 2019: 49-50). Internal fighting, external interventions, the collapse of governmental structures such as those in Somalia (Besteman, 2016: 10), Iraq (Saleh, 2020), and the decades of fighting in Afghanistan which "remains one of the deadliest countries for civilians", to name a few, where a large part of fatalities are children (Maurer, 2020), have caused large displacements globally. This is why, research has been continuously emphasising the frequent occurrence of trauma in children in their home environments (Plessis-Schneider, 2020). While motivations to migrate might be very complex and of mixed nature, many children leave their environments strongly influenced by the decisions of their parents, violence, family issues, economic insecurity and persecution (Jovanoviæ & Besediæ, 2019: 10) which often takes child-specific forms such as under-age recruitment, child trafficking and female genital mutilation (UNHCR Executive Committee, 2007).

Some research has also examined dominant circumstances surrounding unaccompanied children during the course of their journey. Distance from home and separation from families are considered as conditions that allow for extensive exposure to violence, exploitation, trafficking, and physical, psychological and sexual abuse (EASO, 2018: 7). In the absence of safe and regular migration channels, children tend to take on dangerous journeys, often coordinated by smugglers (Rađenović, 2021). However, smugglers are highly controlling actors who decide on movement, means of transport, communication, breaks and meals, and too often exercise violence, including sexual violence (Jovanović & Besedić, 2019: 10).

Once movement is discontinued, be it because of transiting or settling down, children begin to face different social, economic and legal difficulties. A recent study concludes that family pressure and expectations to return travel loans or to provide financial support might expose UASC to even more exploitive situations while they move along (Healy, 2019). Such expectations appear to be directly linked to the ways how children set priorities in their process of adapting to new environments. Financial pressure, for example, might put finding employment in focus, instead of continuing education (Jovanović & Besedić, 2019: 10). Although not all unaccompanied children enter the asylum procedure (partially because of incomplete identification by competent authorities and advice from smugglers (UNCHR, UNICEF and International Rescue Committee, 2017: 7)), those who claim asylum formally are asked to present evidence, which is a very difficult requirement to follow considering the lack of documentation, the conditions under which children flee their countries, the effect from the traumatic journey and the very fact that they are children (Clayton, Gupta & Willis, 2019). The growing culture of mistrust, created by political debates which see migration as a threat to national security and identity, makes children`s narratives not to be believable (*ibid.*).

So far, analyses of specific forms of alternative care for children have shown their provision is crucial for the prevention of violence against children or their disappearance. Housing facilities, along with prolonged procedural waiting, indeed contribute for children absconding from the authorities' sight (Missing Children Europe, 2019). Nevertheless, specialized community-based facilities for children are considered to be among the best primary interventions for the prevention of violence against children (Digidiki & Bhabha, 2017: 29). When compared to those who live in other care arrangements, foster care has been linked to improved mental health conditions of children (Bronstein et al, 2012: 54). Guardians, on the other hand, have been defined as the 'agents for change' who have the potential to reclaim the centrality of trust necessary for effective protection, mitigate the negative influence from smugglers, and facilitate the access to services, including alternative forms of care (UNCHR, UNICEF and International Rescue Committee, 2017: 4). The right to such is the subject of the next section.

2 ALTERNATIVE CARE FOR CHILDREN SEPARATED FROM FAMILIES

Grounded on the principle that families are "the natural environment for the growth and well-being of children", the CRC has been recognizing the civil, economic, social and cultural rights of children for over 30 years. The CRC makes specific provisions for distinct groups of children, such as those without family and children in migration. Children who are not cared for and their families are temporarily absent have the right to special protection, assistance and alternative care provided by the state (Art. 20). Both unaccompanied and accompanied refugee and asylum-seeking children are to enjoy the same protection as any other child, and the responsible state authorities are to ensure all rights within the Convention are respected (Art. 22). Regardless of the involvement and support from NGOs, this remains a state obligation (Nowak, 2019: 513).

Different forms of alternatives to family care are defined in the UN Guidelines. According to the document, alternative placements can take shape of kinship care (e.g., the child is living with extended family or friends to the family), foster care, family-based settings, residential care facilities such as group homes and large-scale institutions and independent living arrangements (UN General Assembly, 2010). However, the UN Guidelines and the Common European Guidelines for the Transition from Institutional Care to Community-based Care, among others, exhibit the firm international consensus that large-scale institutions should never be used to care for children. This child-rights evolution was achieved through years of scholarly work on the negative effects institutions have on the life of children (Lumos, 2019; van IJzendoorn et al, 2020).

2.1 CONSEQUENCES OF INSTITUTIONAL CARE

Decades of research have shown that institutions have long-term negative consequences for children (Lumos, 2019; van IJzendoorn et al, 2020). All residential places in which institutional needs take a lead over the individual, where residents are isolated from the local community and have no control over their lives and decisions are to be called institutions (CRPD, 2017; Bulić & Anguelova-Mladenova, 2012). Removal of possessions, exposure to fixed daily routines and habits with no accounts for individual preferences are common practices that occur in institutional environments (CRPD, 2017; Setter et al, 2020). Similar is the logic standing behind the creation and functioning of reception centres or refugee camps. As Khosravi argues – the idea is "to place undesired people outside the society"; camps are "spaces but not places" which "protect the wellbeing of society" through surveillance and isolation from "ordinary social life" (Khosravi, 2010: 70-71). Another important contribution of research on institutionalized children is that they tend to be exposed to abuse, segregation, stigmatization, have limited access to support services, not to mention the formation of institutional identities (Greenberg et al, 2020). Analogically, refugee camps impose 'refugeeness' not merely as a legal category but 'as a

mode of being, an identity, on individuals' (Khosravi, 2010: 70-71). In these environments, as previous studies have found, children struggle to form healthy attachments to others, and this heavily impacts their socioemotional development (Lumos, 2019; van IJzendoorn et al, 2020). Compared to all other external assistance, families are perceived as the most important form of support, even when communication is, too frequently, done at a distance (Sierau et al, 2019).

2.2 INTERNATIONAL COMMITMENTS TO DEINSTITUTIONALISATION

The awareness of the importance of the family environment and the consequences of institutionalisation along the focus on children`s rights generated a global commitment to transform and de-institutionalize care for children. Guided by the CRC and generally characterized by the closure of large scale institutions for children and adults, deinstitutionalisation represents a complex social reform. With the adoption of international human rights documents such as the European Convention on Human Rights (ECHR) and the CRC, among others, institutional care responses for children are now seen as insufficient policies and violation of human rights such as the right to private and family life stipulated in article 8 of ECHR (Bulić and Anguelova-Mladenova, 2012). Moreover, placements in institutions are found to be in violation of Article 3 prohibiting torture, inhumane and degrading treatment, by the European Court of Human Rights (*L.R. v. North Macedonia*, no. 38067/15, 23 January 2020) and in breach of the right of children to social and economic protection, that is article 17 of the European Social Charter (*ERRC and MDAC v. the Czech Republic*, complaint no. 157/2017, decision on the merits, 17 June 2020). Although the EU has already prohibited the allocation of funding for building or renovating institutions (Hainsworth, 2019), and despite non-discrimination norms, a number of children are left outside the deinstitutionalisation reform (Bulić & Anguelova-Mladenova, 2012). Research has indicated that Roma children are overrepresented in institutional care settings in Bulgaria, the Czech Republic, Hungary, Italy, Romania and Slovakia (European Roma Rights Centre, 2011). Similarly, children with disabilities tend to be excluded from the DI reform and community-based support (Rosenthal, 2019) whereas unaccompanied children, especially those older than 16, are rarely offered foster care (de Ruijter de Wildt et al, 2015; Bronstein et al, 2012; Morris, 2005).

2.3 INSTITUTIONALISATION OF UNACCOMPANIED CHILDREN IN BULGARIA

Studies examining the Bulgarian context found that UASC are commonly placed in institutional environments, such as reception centres, which accommodate children for long periods of time despite being intended to provide initial housing and basic services (Connellan, 2020; de Ruijter de Wildt et al, 2015: 10). Furthermore, UASC have been placed in detention centres, often mixed with adults in both reception and detention

environments, where they are commonly exposed to limited security and protection, and physical and mental health risks (UNCHR, UNICEF and International Rescue Committee, 2017: 15). Countries across the SEE region have struggled to ensure adequate reception conditions and support for the UASC and their experiences of living together with adults in overcrowded spaces (Save the Children & International Rescue Committee, 2017: 6). Old army camps, car parks, tents, warehouses and factories and other unused locations outside main cities, such as the case in Greece, (Digidiki & Bhabha, 2017: 13) are well documented.

Although reception facilities in the context of SEE were built to respond to the fact that adults and children have been continuously staying outdoors – a scenario in Serbia (Save the Children & International Rescue Committee, 2017: 6) and in BiH (IOM, UNFPA, UNHCR & UNICEF, 2021) – reception centres fail to meet children's needs (Pinheiro, 2006: 201) and rights; individualised support is rarely provided, thus serving the needs of the institution rather than those of the child (Connellan, 2020). It has been found that EU countries, including Bulgaria, typically opt for the development of small-scale residential care (likely a more expensive approach) rather than investing in alternative family-based care (*Ibid.*). Additionally, new practices such as 'safe spaces' within reception centres for UASC with 24 hours supervision were created in Greece (Digidiki & Bhabha, 2017: 13) and Bulgaria (IOM, 2019).

3 DE-INSTITUTIONALISATION AND CHILD PROTECTION POLICIES IN BULGARIA

Between the 1980s and 1990s, the deinstitutionalisation reform in Central, Eastern Europe and SEE began with the social and political changes. Similar to other former Soviet states, the childcare system in Bulgaria was, for decades, based on socialist and collectivists' values aiming at dominating over the life of families and children where the majority living in institutions were children with living parents (Markova, 2019). Changing this understanding is not a linear process and depends on factors such as law, public policies, management of services and the practical implementation from various actors involved which is why it fluctuates (Llorente et al, 2003) as if a relapse to dependency - Bulgaria not being an exception.

3.1 BACKGROUND AND DEVELOPMENTS OF THE DE-INSTITUTIONALISATION REFORM

To bring children closer to family environments, Bulgaria stepped into the action phase of DI in 2010, with the agreed National Action plan for implementation of the 2009 National Strategy Vision for Deinstitutionalisation of Children in the Republic of Bulgaria aiming to remove all children from institutions by 2025. For about two decades, multiple structural

changes in law and policy happened towards completing the transition from institutional to family and community-based care. Having policy-making and coordination functions, the State Agency for Child Protection (SACP) was created in 2001 alongside Child Protection Departments (CPD) in all Bulgarian municipalities. These units function as part of the State Agency for Social Assistance (SASA) and are mandated with child protection case management (Rogers, 2014). Governed by the Law on Child Protection, among others, it is this legislative and institutional structure that embodies the state responsibility to provide alternative care for all children.

Initially, the country committed close to more than 130 institutions to establish family and community-based care services for more than 7,000 children and to leave no more than 2,000 children in institutional care by 2020 (Rogers, 2014). In this way, the number of foster families increased ten times since 2010; small group homes or family-type placement centres expanded from 48 in 2010 to 283 in 2017 and the number of community-based services increased by 151% between 2010 and 2017 (UNICEF, 2017). Nevertheless, the studies that looked at the process of deinstitutionalisation in Bulgaria pointed on the barriers to successful deinstitutionalisation practices. As Markova argues, the neglect of the impact of institutionalization over individuals and the EU top-down approach for funding DI projects re-creates the institutional culture of management and control (Markova, 2019). Recent regional research reveals that the pressure on governments, coming from and within the EU, shifted attention towards meeting deadlines for implementation instead of putting emphasis on meeting the individual needs of children (Greenberg et al, 2020). As a consequence, certain groups of children were additionally stigmatized. Among them are children with disabilities, Roma children, adolescents and older children seen as "hard to place or reintegrate" and therefore disproportionately residing in institutional settings (*ibid.*). As UASC, predominantly between 15 and 17 years old, are prone to similar exclusions, those under 16 are placed in foster care arrangements more often than those older than 16 (Morris, 2005; Bronstein et al, 2012). Bulgaria has been additionally criticized that it 'has replaced a system of large, old orphanages with newer, smaller buildings that are still operating as institutions' (Rosenthal, Ćirić Milovanović & Ahern, 2019) and thus risks to encourage similar investments instead of developing family-like care (Disability Rights Initiative, 2017).

Social workers, being directly involved in the work with children, including UASC, have an important role in challenging institutionalization but also specific contextual practice development which might impact the success of a social transformation like deinstitutionalisation. Although social work adopts critical paradigms, questioning of power relations and domination (Fook, 2002) and fosters human rights approaches (Ife, 2008), in western contexts (in Bulgaria), as Petrov suggests, the corrective narratives of social pedagogy are overwhelmingly present, fuelling not only the social workers per se but standing behind the philosophy and the design of institutions, policies, and reforms such

as the DI (Petrov, 2019). Contextually speaking, if social workers, sieged with institutional paradigms from both corners - theory and practice, guide their practice by a pedagogical dominance and essentially apply it (Petrov, 2018), social work then also ceases to be anything but an institution. Thus, theoretical pedagogical approaches in social work are not merely a barrier to deinstitutionalisation as a practice – they are where the power of institutionalisation is kept alive. DI is not merely the absence of large institutions. It is the presence of accounting to individual needs, the presence of social work which addresses issues of social control and injustice, not administering pedagogical control, with the latter having to be transformed.

3.2 NATIONAL POLICIES REGULATING THE CHILD RIGHTS PROTECTION

The state policy on child rights and protection is implemented on the basis of the National Strategy for the Child, following the core principles of the Child Protection Law (*Official Gazette of the Republic of Bulgaria*, no. 99/2020). As far as unaccompanied children are concerned, the strategic document covering the period from 2008 until 2018 pays attention to the specific group and urges to ensure and strengthen their access to health care, education, social services and guardianship systems (National Assembly, 2008). The strategic child protection priorities set during this period (*ibid.*) indicate a political awareness of structural discrepancies in social systems where alternative and guardianship care are included, and thus demonstrate a political will to improve them. However, looking at the process of adoption of the most recent National Strategy of the Child, designed to define the long-term vision on child rights and protection from 2019 until 2030, the commitments to implement necessary reforms appear interrupted. During the consultation process before adopting the Strategy, many organizations welcomed the novel adoption of the child-rights approach which goes beyond categorizations based on risks and vulnerabilities (Ombudsman, 2019). However, as Bulgaria importantly notes, the UNHCR National Strategy does not provide specific goals for the inclusion of UASC into the local child protection system and lacks commitment from state authorities to better coordinate efforts in their work with UASC (UNHCR, 2019). These developments lead to the conclusion that the state hardly recognizes UASC as an integral part of policies aimed at improving children's rights in the country.

4 UNACCOMPANIED CHILDREN IN BULGARIA – ALTERNATIVE CARE AND GUARDIANSHIP SYSTEMS

There has been an increase in the number of UASC asking for asylum in Bulgaria during the last four years. While arrivals of UASC from 2013 up until 2016 were on a constant rise, reaching their peak of nearly three thousand in 2016, their number in 2017 started

to decrease (Eurostat (2021).[2] Yet, looking specifically at the period of the last four years, the number of UASC has risen again. According to the SACP, a total of 1,332 children (out of which 241 were UASC who stayed in the country for a longer period) have passed through or stayed in Bulgaria in 2017, (State Child Protection Agency, 2018). These were mostly boys (230), the majority (215) between 14-17 years old, coming from Afghanistan, Iraq, Syria and Pakistan (*ibid.*). In 2018, out of the total of 891 children who claimed asylum, 481 were identified as unaccompanied or separated children, with 81% between the ages of 15 and 17 and nearly all boys with the same, most common, nationalities mentioned above (UNHCR, UNICEF & IOM, 2018). In the following year, the number of UASC continued to grow, reaching 524 and, subsequently, 799 by the end of 2020; with identical nationality profiles (Afghanistan dominating) and unchanged gender and age profiles (SAR, 2020). Comparing the presented data against the overall number of asylum-seeking persons in Bulgaria, it appears that UASC represent about 20% of the total asylum applications during the last three years which is why it is important to examine the ways of how the importance of their protection can be reclaimed. Hence, the section begins with a description of the child protection system in Bulgaria along with main provisions for legal representation and guardianship, followed by analysis of recent developments in alternative care pertaining UASC.

4.1 PROTECTION OF UASC IN THE NATIONAL LEGAL FRAMEWORK

The Child Protection Law defines a child as any person below the age of 18 (Art. 2). Therefore, the rights of UASC are to be respected in the same way those prescribed for national children are. Applied from the UN Guidelines, the Law, similarly, provides the following forms of alternative care: family-based care (Art. 4(1)), kinship care (Art. 4(2)), adoption (Art. 4(3)), foster care (Art. 4(4)), residential-type care (Art. 5(5)), and others. Although the Child Protection Law does not contain specific provisions for UASC (de Wildt et al, 2015: 98), cross-reference to the Refugee and Asylum Law ensures that kinship, foster care, and residential care should be accessible under the terms of the Child Protection Law. However, it also provides for other forms of accommodation with special conditions for minors until reaching the age of majority (Art. 33).

Participation in the decision-making to find appropriate placement for UASC, although multidisciplinary in principle, is led by state social workers representing the CPD. Appointed guardians and/or legal representatives have a crucial role in supporting the child in understanding administrative and other procedures whilst ensuring the necessary protection is in place. The two roles differ. As the Fundamental Rights Agency suggests, the main difference lays in the mandates the two roles have – the legal representative carries a more restricted mandate whose major goal is procedural representation, whereas

2 The earliest aggregated data by age and other characteristics recorded by Bulgarian state institutions has been publicly available as of 2017. This is why data from previous years are taken from Eurostat.

a guardian has the overseeing responsibility not only to represent but also to safeguard the best interest and the overall well-being of any given child (FRA, 2015: 15). Bulgarian legislation distinguishes both roles in two separate legal acts, namely the Refugee and Asylum Law (*Official Gazette of the Republic of Bulgaria*, no. 89/2020) and the Family Law (*Official Gazette of the Republic of Bulgaria*, no. 103/20).

The Refugee and Asylum Law regulates the right to legal representation of UASC. The amendments from 2015 mandated the mayor of each municipality to appoint a legal representative to UASC residing on its territory (EMN, 2017: 6). As of October 2020, the Refugee and Asylum Law includes new provisions in regard to the right to legal representation of UASC shifting the accountability to an independent state body - the National Bureau of Legal Aid. UASC are, therefore, to be represented by a registered lawyer whose role is closely linked to the asylum procedure until the child reaches the age of majority or until he/she is appointed a guardian according to the provisions of the Family Law (Art. 25).

The Family Law recognises two guardianship systems for children whose parents are unknown, deceased, legally unaccountable or deprived of parental rights. The first is designed for children below the age of 14, whereas the second prescribes the process for children above 16 years (Art. 153(1)-(2)). Guardianship authority falls onto the mayor of the municipality where the child resides. The mayor is mandated to assign a board of trustees consisting of either four members in the case of children below 14 years (a guardian, a deputy guardian and two advisers recommended to be relatives) or only two members (a guardian and a deputy) for children above the age of 16 (Art. 154-157).

4.2 ACCESS TO ALTERNATIVE CARE

Although these legislative documents compose the national framework for the protection, compliance with them seems to be continuously inconsistent. As UNHCR reported in 2014, the lack of proper identification of UASC resulted in long and/or recurring stays, unseparated from adults, in detention facilities, border police units, Registration Reception Centres (RRCs) and in institutions for children deprived of parental care (UNHCR, 2015). State social workers have been engaged with UASC mostly for the sake of fulfilling procedural requirements during asylum interviews which usually meant mere presence thereto (*ibid.*). Two years later, the Bulgarian Ombudsman's Office evaluated the dominant practice of accommodating UASC in RRCs, permitted by article 33 of the Refugee and Asylum Law, as not an appropriate place for children, especially because it cannot provide for a safe and secure environment or allow individual work with UASC residing within the RRCs (Ombudsman, 2016: 8-12). The practice of detaining unaccompanied children, the persistent lack of adequate accommodation, effective legal representation and assistance have driven the European Commission to issue a formal notice to Bulgaria concerning

the implementation of the EU asylum legislation, namely the Asylum Procedures Directive and the Reception Conditions Directive, as well as the Charter of Fundamental Rights in November 2018 (UNHCR, 2018: 3).

To be accommodated in a reception centre means to reside in one of the three RRCs in Bulgaria, located in the regions of Sofia, Haskovo and Sliven or a transit centre in the village of Pastrogor, Haskovo region. The RRC in Sofia is divided into additional three-unit centres situated in three different neighbourhoods on the periphery of the capital city and all managed by the State Agency for Refugees (SAR). The two other RRCs and the transit centre are located in rather remote areas of the country. In an attempt to fill in the gaps, several actors periodically introduced support services to UASC or committed to do so. The FICE Foundation, for example, introduced a short-term social service 'Mobile centre for unaccompanied refugee children' which ran for four months, between 2014 and 2015, at the RRC in Sofia, unit centre Ovcha Kupel (Peneva-Kovacheva, 2014). The SACP committed to the creation of an independent (of the RRCs) centre for UASC by the end of 2017 (EMN, 2017). However, such a specialized service has not been established to date. Towards the end of 2017, the Lumos Foundation commenced the first of its kind project in Sofia aiming to support local authorities such as municipalities, CPDs, police and RRCs with additional capacity and training in child protection, along with alternative care to prevent institutionalisation of UASC (Lumos, 2017) which, however, was discontinued.

In 2019 and 2020, two Safety Zones, jointly managed by the International Organization for Migration (IOM) – Bulgaria and SAR, were built within the RRC - Sofia to provide 24/7 care to nearly 240 UASC (IOM, 2019). Referring to the methodology for the functioning of the safe zones (*ibid.*, 9-10), the IOM employed social workers for the day, night and weekend shifts whose primary responsibility was the accommodation of UASC, preparation of individual care plans, organization of group activities, attendance verification while ensuring UASC follow daily schedules and rules of the zones. The methodology further mentions that four of the social workers spoke either Farsi, Arabic or Kurdish. Additionally, security staff was ensured who, together with the social workers, could conduct the attendance verification every morning and evening and each do half-hour rounds on every floor.

As the Bulgarian Helsinki Committee points out, with the opening of the first Safety Zone the situation of UASC improved significantly (Katchaunova et al, 2020: 42). The practice of not separating children from adults and the lack of security have been critical factors responsible for the ongoing violence against children (Ombudsman, 2016: 1-2). From these perspectives, the Safety Zones reform the reception conditions for UASC not only with infrastructure improvements but also with the increase of staff presence, including social workers who can communicate in the native language of some of the UASC. However, building on the right to special protection, assistance and alternative care (CRC, Art. 20), the UN guidelines and the discussion on deinstitutionalisation, several reflections can be drawn. First, as the Safety Zones methodology outlines the responsibilities of IOM,

SAR and the employed security staff (*ibid.*, 9), it is clear that the national child protection network - SASA and CPD – is completely absent, meaning a parallel protection system for UASC is formed. This is a finding that corresponds to previous research results (Connellan, 2020) and the Safety Zones participate in it. Second, while the existence of an individual care plan is crucial in responding to the needs of children, the ways in which this is coordinated with the national child protection network are not defined. Third, the peripheral location of the RRCs and the frequent security inspections within the Safety Zones resonate with what Khosravi describes as the purpose behind refugee camps: protecting the host societies by means of surveillance and social isolation. The operating pattern, when it comes to unaccompanied children, is not the replacement of large institutions with small homes; these are built within the institution itself, as if a yet 'lower class' of children has been created and subjected to a sort of 'lazier form of reform'.

According to the primary research, conducted through a survey, 70% of the participants deemed access to alternative care of UASC more limited when compared to legal representation, psycho-social and legal support, education and information (Q16). At present, UASC continue to be accommodated mostly in RRCs, specifically in the RRC - Sofia unit centres Voenna Rampa and Ovcha Kupel and in the largest RRC in the country, in the town of Harmanli, Haskovo region (Q4), which has mixed dormitories and hosts both children and unrelated adults in many cases in the same rooms (Savova, 2021: 63). Due to the wider access to services in the capital and the existence of the Safety Zones in Sofia, the authorities started to adopt the practice to refer UASC mainly to RRCs located therein (Q4). However, considering the number of UASC for 2020 alone, which is nearly 800, the majority of UASC then do not have the access to the safe zones.

Data from the online survey further suggest that UASC rarely benefit from non-institutional care. All of the respondents point out that residential forms of alternative care – crisis centre[3], family-type accommodation centre[4] and specialised institutions for children – have been provided to UASC in the past, whereas kinship and foster care have been indicated by none of the respondents (Q10). This finding corresponds to previous studies which found out that only one migrant child was placed in foster care in 2016 and 4 in 2017 (Nidos, 2019). There is an established referral mechanism to CPD social workers, yet survey participants evaluate that only 0 – 20% of the referred cases are provided with alternative care (Q11).

3 The earliest aggregated data by age and other characteristics recorded by Bulgarian state institutions is being publicly available as of 2017. This is why data from previous years are taken from Eurostat. see Bibliography - ASA, Register of the types of social services).

4 Family-type accommodation centre for children is a type of state-supported social service, which offers family-like environment to a maximum of 15 children with or without disabilities (Ibid.)

CONCLUSION

During the 2013 - 2021 period, the situation of UASC, with regard to their access to alternative care, underwent a series of attempts for local law amendments and policy changes, supported by projects mostly implemented by international or local civil society organizations. Despite that, access to these rights remains limited and the local child protection system struggled to incorporate children who applied for asylum. Hence, an overwhelming majority of UASC are institutionalized through their placements in mixed reception environments. By analysing available sources and survey data, the care of UASC appears to fall within institutional paradigms. Non-residential forms of care are generally not utilized in the context of Bulgaria. Instead, new infrastructural changes are introduced inside reception environments. However, new infrastructure does not prevent the maintenance of institutional models of care. Interim approaches such as the Safety Zones bear the risk of encouraging similar investments instead of putting a focus on other non-residential forms of alternative care. While attempts for the prevention of institutionalisation of UASC existed before 2019, despite being fragmented and centralised in the capital city, such efforts are currently in decline in children's policy debates and other available services. Deinstitutionalisation in Bulgaria reveals institutional paradigms are maintained through a powerful system of dominance that keeps on carrying communist structural legacies through social work education. As regards its practise, findings point to well-preserved institutional patterns transferred to small-group residential homes. Similar to children with disabilities, UASC Roma children and older children seem to be prone to exclusion from the deinstitutionalisation reform. Foster care continues to be an unavailable option for them as the general system lacks comprehensive vision and depends on less sustainable funding. Failing to implement key reforms, the state demonstrates a lack of political will and interest in the field of children's rights.

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GUARDIANSHIP OF UNACCOMPANIED AND SEPARATED CHILDREN IN SERBIA

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ABSTRACT

This article examined the main shortcomings in the current guardianship system while also exploring ways towards its improvement with the view to adequately respond to the complex needs of children passing through or staying in Serbia. Although the obligation to provide them with adequate support arises from the international instruments that Serbia has ratified along with national legislation, this analysis shows that it is required to improve the implementation further to adhere to them fully. Some of the main shortcomings are the lack of guardianship protection until children are identified by the relevant authorities; unsatisfactory quality of services provided owing to the overburdening workload of guardians; scarcity of translators as an impediment to better communication between children and guardians; and the practice of appointing guardians for one purpose only that prevents children in building a stable relationship with them. These deficiencies can be overcome by precisely prescribing and allocating responsibility among relevant actors while improving other factors as well, such as the increasing human and financial resources, among others.

Keywords: *child rights, unaccompanied children, refugees, migrants, guardianship, Serbia*

INTRODUCTION

According to the International Organization for Migration (IOM), there were 272 million migrants worldwide in 2019, representing 3,5% of the world's population (IOM, 2020: 19). Just in 2020, 82.4 million people were forcibly displaced, whereby 26.4 million were likely to be refugees in light of Article 1A of the Convention relating to the Status of Refugees, and 4.1 million were in the process of seeking asylum in different countries (UNHCR, 2021: 2). Serbia is among the countries vastly impacted by mixed-migration flows of people likely in need of international protection. The country had experienced very high numbers of daily arrivals and quick transit in 2015 when over a million people crossed its territory that year solely to escape conflict, violence, economic upheaval, lack of opportunities and increasing negative effects of climate change (UNICEF, 2018: 7).

Looking at the age structure, 42% of all forcibly displaced people in the world are children (UNHCR, 2021: 3), many of whom are crossing international borders in an irregular manner, lacking authorisation and proper personal documentation(s), exposed to violence and abuse by the hands of smugglers and human traffickers (CMW/C/GC/4-CRC/C/GC/23: § 39). Reasonably, the vulnerability of children on the move is further enhanced if a child is embarking on an unsafe migratory journey unaccompanied by his or her parents or legal guardians. Their protection usually falls through the cracks of various systems, such as asylum, immigration or child protection. In some situations, migrant children have no access to proper and appropriate identification, registration, age assessment, documentation, family tracing, guardianship protection or legal advice (CRC/GC/2005/6: § 3; CMW/C/GC/4-CRC/C/GC/23).

One of the main procedural safeguards for respecting the best interests of the child, guaranteed by the Article 3 of the Convention on the Rights of the Child (CRC), for unaccompanied children on the move is the appointment of a competent guardian (CRC/GC/2005/6: § 21; *M.A.B. v. Spain*, no. 24/2017, § 10.8, 24 March 2020; *M.B.S. v. Spain*, no. 026/2017, § 9.15; 2 November 2020; *S.M.A. v. Spain*, no. 40/2018, § 7.14, 20 November 2020). This should take place expeditiously as possible, ideally after a child is being identified as unaccompanied by his or her parents or legal guardians (CMW/C/GC/4-CRC/C/GC/23: § 17). A failure to appoint a guardian to UASC was recently found to be connected with serious and irreparable injury to the integrity of refugee and migrant children without parental care at immediate risk of life, physical and moral integrity (*International Commission of Jurists (ICJ) and European Council for Refugees and Exiles v. Greece*, complaint no. 173/2018).

During the first two years since the beginning of the increased mixed-migratory flows through its territory, Serbia adopted a humanitarian approach, allowing thousands of refugees and migrants to cross its territory and stay at the reception facilities throughout the country (SG/Inf(2017)33; Petrović, 2016). Keeping in mind that children were in a quick transit and would spend only a few days in the country before moving on (*ibid.*),

the majority would not even come into contact with the official protection providers. The guardianship system was functioning to a certain extent, often limited to highly procedural matters connected to the most urgent needs of accommodation or access to health care, whereby children would not have meaningful contact with a guardian officially assigned to them (Milutinović, 2019: 5). After EU-Turkey Statement (Brussels 2016), the number of persons stranded in Serbia increased, whereas the duration of their stay was significantly prolonged. Thus, the situation has evolved from an emergency crisis into a condition that requires additional efforts of the authorities and donors to meet more medium to long term needs of unaccompanied children on the move.

While official definitions of unaccompanied (separated from both parents and other relatives) and separated (separated by both parents, however not necessarily from other relatives) differ, the authors will use 'unaccompanied and separated children' or UASC when speaking of all children in migration, regardless of their legal status, who found themselves on Serbia's territory without being accompanied by parents. The main reason for the utilisation of such terminology relates to challenges in the identification and registration of children in Serbia, making it difficult to assess whether persons claiming to be the child's relatives are indeed being so.

Considering the complexity of the subject matter elaborated above, it is apparent that this study is relevant for better understanding what the main shortcomings in the currently established guardianship system in Serbia are and how it can be improved to adequately respond to the various needs of unaccompanied children on the move and to provide them with adequate support and protection. In this socio-legal analysis, primary and secondary data and different methods were used. Primary sources were collected through qualitative research methods like semi-structured interviews conducted with the five representatives of the most relevant civil society organisations, among who some of them are directly engaged in working with children, while others deal with the creation of policies and decision making in the field of unaccompanied children on the move protection. Secondary data were identified through desk-based research and include international policies and instruments, reports of state institutions, qualitative analysis of legislative documents and public policies that concern unaccompanied children on the move, with the aim to synthesise gathered data compare and draw conclusions. Some conclusions will rely on one of the authors' seven-year-long professional experience in direct work with children on the move as a legal representative in the asylum procedure and numerous regular field visits to the reception facilities in which these children are accommodated.

In this paper, after a brief statistical overview, the international standards relating to unaccompanied and separated children's guardianship protection and the role of a guardian are analysed, relying primarily on the CRC and CRC Committee's standards. The second part provides an insight into Serbia's legal framework, while the third part provides an overview of practice regarding the guardianship of unaccompanied children

on the move in Serbia against the legal framework and international standards. In the end, concluding remarks are presented along with concretely formulated recommendations for improving guardianship protection in Serbia.

2 UNACCOMPANIED CHILDREN ON THE MOVE IN SERBIA

A comprehensive data collection at the state level of all refugee and migrant children who enter Serbia is still missing, with different institutions and organisations providing, often differing, data (Trifunović, 2020: 104). This is closely connected with poor identification procedures in the country, resulting in many children still being outside of the official child protection radar (*ibid*; also see Šošić and Behlulović in this collected volume). It should be noted that it is not rare that children are 'attached' to one of the older persons travelling in the same group, whereas family links are in the vast majority of cases not interrogated. Moreover, there is no official data disaggregated to unaccompanied children and separated children. Nevertheless, some data is available, especially concerning the asylum procedure (Ministry of Interior), the number of children residing in one of the reception facilities managed by the Commissariat for Refugees and Migration (CRM) or in one of the child protection residential institutions under the jurisdiction of the Ministry of Labour, Employment, Veteran and Social Affairs (MoLEVSA). Moreover, various international and local civil society organisations working closely with refugees and migrants in the field provide some valuable insights into the numbers of children that are outside the official response system.

The data provided by the Serbian Ministry of Interior shows that while the overall number of persons who expressed their intention to seek asylum decreased since 2015, the percentage of UASC among all children started rising in 2018. In 2015, children constituted 29.9% of all persons who expressed an intention to seek asylum in the country, with 6.2% of them being UASC (Tošković, 2017: 37). The following year, among all registered children, UASC constituted 2.2%, whereas, in 2017, the percentage increased to 5.9% (Trkulja, 2018: 19). In the next two years, there were 30.3% and 28% UASC among registered children respectfully (Trkulja, 2018: 13; Petrović, 2020: 13). In 2020, they constituted 11.1% (Trifunović, 2020: 16) of all children registered by the Serbian Ministry of Interior. It should be borne in mind that in practice, the number of UASC is higher because the Ministry of Interior's statistical data shows only the number of UASC that have expressed an intention to seek asylum, and this does not include those UASC who had not done so. In that regard, it is noteworthy to mention that among children accommodated in one of the asylums or the reception centres under the mandate of the CRM in mid-2020, there were 56% or 1.445 UASC (*ibid.*: 104). As the access to reception conditions is not dependable on seeking asylum, this number includes undocumented children.

Aside from three institutions in the social protection system (two in Belgrade and one in Niš), unaccompanied children on the move are also accommodated in two facilities managed by

civil society organisations (Jesuit Refugee Service and Border Free). Alternative care in these facilities is provided on the basis of a special decision of CSWs under whose supervision they operate. Unaccompanied children on the move are additionally provided with accommodation in asylum centres in Krnjača, Bogovađa and Sjenica. However, these facilities are not a part of the official child protection system and do not have social workers present at all times.

3 INTERNATIONAL STANDARDS ON GUARDIANSHIP FOR UASC

Every child, temporarily or permanently deprived of parental care, is entitled to special care and protection (CRC, Article 20(1)). That special protection also includes the appointment of a competent guardian to make sure that the child's best interests are duly respected in all procedures in which a child might be involved. As such, a guardian represents one of the main procedural safeguards for children (CMW/C/GC/4-CRC/C/GC/23: § 17(i)), acting as a statutory representative of the child in all proceedings in the same way that a parent represents her or his child (CRC/GC/2005/6; A/HRC/11/L.13; FRA, 2014). A guardian's mandate extends, however, beyond legal procedures and representation of a child therein. The role of a guardian includes the promotion of a child's overall well-being, moreover, serving as 'a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child' (CRC/GC/2005/6: 33). In several instances, the European Court of Human Rights established that the absence of a guardian infringed, *inter alia*, the right of a child to exercise the right to a legal remedy in contravention with Article 13 of the European Convention on Human Rights and Fundamental Freedoms (*Rahimi v. Greece*, no. 8687/08, 5 April 2011; *Housein v. Greece*, no. 71825/11, 24 October 2013). The appointment of an independent guardian with adequate expertise to UASC is thus extremely important early on upon identification.

A guardian should be in a capacity to promote the adoption of the most favourable decision for the child and make sure that the child's best interests prevail in any given stage of deciding on a child's future and durable solution. Keeping in mind such important obligations that guardianship bears, it is beyond doubt that a person acting as a legal guardian must have specific personal and professional characteristics, which should be properly assessed and monitored by the guardianship body. The key skills of a competent guardian are relevant expertise in the child protection system and sufficient knowledge of the legal framework, as well as skills in intercultural and child-friendly communication (FRA, 2014: 33). They should be independent (A/HRC/11/L.13: § 103), qualified (*ibid.*, CRC/GC/2005/6: §§ 33 and 95), responsible (CRC/GC/2005/6: § 33; A/HRC/11/L.13: §§ 19, 101), adequately trained (CRC/GC/2005/6: § 95; A/HRC/11/L.13: §§ 57, 103) and they should not be in conflict of interests (CRC/GC/2005/6: § 33).

In 2019, the Committee of Ministers of the Council of Europe adopted a recommendation introducing nine guiding principles and implementing guidelines for effective guardianship

for unaccompanied and separated children in the context of migration, which should serve to integrate those children into the mainstream protection system without undue delay. The recommendation enlists the most important obligations of a guardian, including ensuring that children understand their rights and are informed of their situation, initiating adequate procedures in cases when a child's rights are violated and ensuring that a child has proper legal representation (CM/Rec(2019)11: 17). Moreover, a guardian is mandated to secure that child's voice is heard whenever a decision is to be made on issues concerning a child and to challenge the failure of authorities to safeguard the best interests of a child (*ibid.*).

4 NATIONAL LEGAL FRAMEWORK ON GUARDIANSHIP FOR UASC

The legal framework in Serbia is largely allowing for a high standard of child protection, which UASC can benefit from even during the transition period to adulthood (Social Protection Act, *Official Gazette of the RS*, no. 24/2011, Art. 41(2)(8)). According to its highest legal act (*Official Gazette of RS*, no. 83/2006), all ratified international human rights treaties and generally accepted rules of international law are directly applicable in the domestic legal order (Art. 18(2)). Moreover, the position of international agreements and generally accepted rules of international law is ranked higher than the position of laws and bylaws, and the latter must be in accordance with them (Dimitrijević et al., 2012: 66-68). Keeping in mind that Serbia, or more specifically its predecessor, Yugoslavia, made no reservations to the CRC, the rights enshrined therein are an integral part of the Serbian national legal framework and are justiciable before domestic courts. The Constitution itself protects the rights of the child, which are further regulated by lower legal instruments (Art. 64) and provides for special protection for children without parental care (Art. 66).

Serbia still does not have an overarching umbrella act on children's rights. Currently, around 80 laws directly or indirectly regulate the position of children in Serbia (Krasić, Milić, Šahović, 2017: 15). For the matter of UASC's guardianship, the provisions of the Family Act (*Official Gazette of the RS*, no. 18/05, 72/11 – other law and 6/15) and the Asylum and Temporary Protection Act (*Official Gazette of the RS*, no. 24/2018 - ATPA) deserve further attention. The core guardianship regulation is the Family Act, which sets out the obligations and responsibilities of guardians, its scope, the procedure for appointing guardians, the duration of guardianship, the possibility of filing complaints about guardianship, and other relevant aspects thereto. The procedure of appointing guardians, as well as the process of monitoring and evaluation, is within the scope of work of territorially competent Centres for Social Work (CSWs), established by the MoLEVSA. These SCWs are referred to as the guardianship authority and are established around the country with territorial jurisdictions (usually on the municipal level). The procedure for appointing a guardian to UASC does not differ from the procedure set for citizens. It is

due to start as soon as the child is identified as in need of guardianship (Art. 332), and it can be initiated by either SCWs acting *ex officio* (Art. 329(1)) or by other authorities, civil society organisations or even individuals (Art. 329(2)). The direct mandate to appoint a guardian lays on the SCW on whose territory a child deprived of a guardian was identified (Art. 330), and the process is by its nature urgent and should not, in any chance, exceed the period of 30 days (Art. 332). However, the protective measures should start even before, i.e. accommodation should be provided to a child under 24 hours from receiving the information on such need (Art. 332(2)).

Despite the many forms of guardianship set out in the Family Act, the most common model administered to UASC, as foreign nationals on the territory of Serbia, is a temporary guardian, enshrined in Article 132 (Milutinović, 2019: 12). The concept of temporary guardianship is envisaged in a way that the care, representation and protection of the child's rights and interests are limited to a certain period, procedure or specific problem. It means that a guardian is solely appointed to act on behalf of the child in one particular aspect, i.e. accompany a child to receive health service, access to accommodation facility, and similar (*ibid.*: 12; Žegarac, 2014: 100). Such specific legal actions that the guardian may undertake are enlisted in the CSW decision on the appointment of a guardian and depend on the circumstances of each specific case (Art. 132(3)). In the context of migration, this limits the capacities of the guardian and reduces the scope of action to care for the children that already have various needs due to the vulnerable position in which they found themselves. Bearing in mind that the UASC, during their stay in RS, often change three or more guardians (Krasić, Milić, Šahović, 2017: 61; Milutinović, 2019: 13), this practice cannot be assessed as positive since it undermines the possibility for creating a meaningful relationship between a child and his or her guardian. The ineffectiveness of such a system was highlighted by several international mechanisms (CRC/C/SRB/CO/2-3: § 65(b); SG/Inf(2017)33: 22; CCPR/C/SRB/CO/3: §§ 32-33; European Committee of Social Rights, 2020: 35).

The guardians themselves are recruited from the pool of social workers already affiliated with the CSWs. The Family Act is specifically providing that a guardian cannot be a person who is deprived of legal capacity or parental rights, whose interests are in conflict with the child's, as well as a person of whom it is not reasonable to expect that he/she will adequately assume guardian's responsibilities (Art. 128). The temporary guardians' work with children is coordinated and instructed by case managers, whose specific roles are closely elaborated in the Rulebook on organisation, norms and standards of work of the centres for social work (*Official Gazette of the RS*, no. 59/2008, 37/2010, 39/2011 – other rulebook, 1/2012 – other rulebook, 51/2019 and 12/2020).

However, the MoLEVSA found it necessary to further elaborate these norms through special instruction to CSW in 2015 (No. 110–00–00469/2015–14 from 10 July 2015), which was amended in 2017 and 2018. According to the instruction, the CSW is obliged to

immediately, after receiving a written or oral notification from the Ministry of Interior, Police Directorate - Border Police Administration or the CRM, that there is a UASC present in the territory of its local and actual jurisdiction, to provide the child with either a temporary guardian or accommodation in a social welfare institution (Part III of the Instruction). To clarify the procedures for different actors in the field and enhance their cooperation in protecting UASC, the MoLEVSA, Unicef, UNHCR, and local civil society organisations developed a standard operating procedure in April 2016. Despite its significance and potential (Kilkelly et al., 2019: 22-23), the reach of these instruments is limited and did not lead to increasing the quality of protection (Milutinović, 2019: 6; Trifunović, 2020: 102-107).

The guardianship of UASC is also, to an extent, regulated by the asylum legislation. ATPA reiterates the necessity of imposing a temporary guardian to UASC as a precondition for conducting official legal actions in the asylum procedure, starting from expressing an intention to seek asylum prior to submitting an asylum application (Art. 12). After notifying a child that he/she is put under guardianship (Art. 12(2)), a guardian should immediately inform the child about the asylum procedure, as well as about his/her rights and obligations while in the procedure (Art. 12(3)). This, of course, presupposes that guardians possess knowledge of asylum regulation in Serbia, which in practice is rarely the case.

Guardians, regardless of the training they undergo, do not have sufficient expertise and knowledge regarding the details of the legal framework related to the right to asylum, *inter alia*, because they are not lawyers. Practically, this further means that it is necessary that qualified lawyers must legally advise guardians and UASC in a large number of cases in order to be familiar with the legal framework and practice and provide better legal protection for UASC in the asylum procedure. Currently, this is done by representatives of civil society organisations, including IDEAS (respondent 4).

5 THE GUARDIANSHIP OF UASC IN PRACTICE

In the previous chapters, we have shown that the legal framework and accompanying soft law in Serbia are providing quite high protection for unaccompanied and separated children on the move. However, the Serbian guardianship system seems not to be able to cope with many challenges that occur in practice (CRC/C/SRB/CO/2-3; SG/Inf(2017)33: 22). Here, we will focus on some of them; namely, the lack of an adequate number of guardians (child-to-guardian and or/case manager ratio), the related preoccupation with bureaucracy (Budimir, 2020: 12), the lack of interpreters for languages unaccompanied and separated children usually speak (respondent 3), also tackling upon issues related to the guardians' assignments and the scope of work, challenges in the cooperation and information exchange between different CSWs and guardians (Krasić, Milić, Šahović, 2017: 61; Milutinović, 2019: 13) as well as how the outbreak of the Covid-19 in Serbia has affected the system.

Available sources suggest that the guardians in RS are faced with work overload and with a large number of children assigned to them (SG/Inf(2017)33: III 4.3). Based on the available data, the Serbian social protection system, in general, is understaffed, which was recognised by different monitoring mechanisms, *inter alia*, CRC Committee, as well as the state itself (MoLEVSA, 2018: 13). Coupled with highly bureaucratised procedures and the lack of other resources (Žegarac, 2014: 77), this directly reflects a guardian's ability to engage with a child beyond merely procedural matters. Moreover, austerity measures introduced in 2014 limited the number of public sector employees, having an especially negative impact on the provision of child protection services (CRC/C/SRB/CO/2-3: 6-7).

This situation was, to an extent, circumvented through the implementation of several projects funded by international organisations, such as Unicef, UNHCR and IOM, since 2016. Through these projects, the funds for employing additional guardians in the protection system were provided, in order to improve the quality of services (respondent 4), whereas guardians received other support in terms of capacity building. These guardians were officially appointed and supervised by the CSWs, with expert supervision and mentoring, including, *inter alia*, burnout prevention provided by the partner organisations. Solely through one of these projects, a pool of 10 carefully selected, trained, supervised and fairly remunerated guardians was created in 2017 (IDEAS, 2020: 5), benefiting several hundred children monthly (UNHCR, 2020).

By establishing an effective and flexible guardianship model for children on the move, this project was recognised as an example of good practice by a regional mechanism (Kilkelly et al., 2019: 51-52; respondent 5). Namely, 2,229 children were provided guardianship through this project in the 2018-2019 period, the vast majority of which were boys (99.7%) older than 15 (86.4%) (IDEAS, 2020: 6). Around two-thirds of children were under guardianship for less than three months, whereas only 9.1% were for more than a year (*ibid.*). Guardians are in direct contact with UASC daily, developing a relationship of trust, advocating for their rights and ensuring their best interests are respected by all relevant institutions and service providers (Kilkelly et al., 2019: 51-52). The project additionally supported a certain number of case managers. As opposed to a guardian, who provides day-to-day care to a child and represents him or her in different procedures, a case manager coordinates the work of different actors in the child protection system in the process of providing care to a child from identification until case closure. However, a disparity between the number of professional workers engaged and children in need of guardianship (Budimir, 2020: 12) was still visible in subsequent years. For instance, in 2018, there were 71 unaccompanied and separated children living in the asylum centre in Krnjača, whereas there were solely four guardians from the municipal CSW taking care of them (Galijaš, 2019: 94). A year later, there were 13 guardians and two caseworkers available to take care of all unaccompanied children residing in Krnjača, whereas one guardian had under their responsibility at least 26 children (Petrović, 2020: 103).

While there are no minimum standards for the number of children per guardian, it has been suggested by some that in the current system, it would be the most appropriate to have up to 15 children per guardian (Milutinović, 2019: 13). However, it was not rare to have more than two hundred children per guardian (SG/Inf(2017)33: 22; respondent 2), which seriously undermines their ability to perform their duties in the best interest of the child. The data suggests that there were 175 children per caseworker (Petrović, 2020: 103), which is seven times more than envisaged by the minimum standard ratio (The Alliance, 2019: 41). Similar is in Bogovađa, where there were only two engaged temporary guardians, whereas, in the asylum centre, there were 302 unaccompanied children accommodated solely in the first six months of 2020 (Trifunović 2020: 106).

The guardianship model set up through this project was, from the beginning, intended to serve as a pilot project which will eventually be adopted by the state once it is developed and proved to be adequate and functional. One of the issues is that it almost entirely relies on various projects funded by the international community, including the EU, through the Instrument for Pre-Accession Assistance (*IPA*) currently allocated through the IOM (IOM Serbia, 2019). Having this in mind, it is not surprising that practitioners are worried about what will happen once international aid is withdrawn and the system has to cope by itself (respondent 1).

A further problem that the guardians face is that, in addition to working directly with UASC, they also have other responsibilities within the institution related to the general social protection of the local population (respondent 2). Therefore, guardians employed in the CSW, once they are hired as temporary guardians, find it difficult to perform their duties, given that they are not narrowly specialised in working with children on the move. Keeping in mind that the range of their responsibilities is extremely wide (respondent 2), this prevents them from devoting themselves to children to a sufficient extent and at a higher level.

Despite legal provisions that demand each child without parental care to be placed under guardianship as soon as the child is identified, without delay, this does not seem to be respected in practice. One of the reasons is the unsatisfactory identification and registration of children in Serbia. According to several sources (respondent 2), this placement usually follows after a child is already accommodated in one of the reception facilities, which is in line with the MoLEVSA's instruction of 2017. In this period, a guardianship body usually directly performed a guardianship duty (Family Act, Art. 131) through its case managers (*ex officio*) or, since 2018, through outreach workers by special authorisation by the CSW. Outreach workers have been contracted by CSWs, usually on a project basis, to visit reception and asylum centres, as well as informal places of gathering of migrants and refugees, in order to identify UASC and provide preliminary support along with undertaking emergency interventions to protect their rights (MoLEVSA, 2017: 16). The competent territorial CSW, later on, formally appoints a temporary guardian to a child who has been identified to perform a limited number of child protection actions

(Milutinović, 2019: 12), which can go from urgent placement of a child in adequate alternative care, accompanying a child to a health care centre, to representing child's best interests in the asylum procedure. In situations where a child under guardianship is, for whichever reason, transferred from the territory of jurisdiction of one CSW to another, he or she will be assigned a new temporary guardian. Such a situation cannot be described as providing the sustainability needed for achieving a strong and meaningful bond between a child and a guardian who is appointed to the child. In some cases, as explained by one respondent, UASC are placed under the guardianship of two or more different temporary guardians during their several weeks or months-long stay in Serbia (respondent 2). Moreover, the cooperation and information exchange between different CSWs and temporary guardians seems to be paved with challenges (Krasić, Milić, Šahović, 2017: 61; Milutinović, 2019: 13), hindering the sustainability of care provided to a child.

The system was further convulsed by the outbreak of the Covid-19 in Serbia and the measures introduced by the Government to mitigate the situation. After imposing a state of emergency on 15 March 2020 (*The Official Gazette of RS*, no. 29/2020), the Government adopted a decision to restrict freedom of movement to all asylum seekers and irregular migrants accommodated in an asylum or reception centres in Serbia (*The Official Gazette of RS*, no. 32/2020) practically deriving them of their liberty (Kovačević, 2020). The occupancy rate in some centres, such as the one in Sjenica, exceeded the maximum available number of beds, with more than 428, mostly UASC being accommodated there at one point (Trifunović, 2020: 82). At the same time, due to curfew and strict lockdown in the subsequent period, guardians were deprived of visits to these facilities, being forced to communicate with children under their guardianship solely via telephone and Internet (respondent 3; respondent 4). In some instances, temporary guardians were left without official support in terms of providing them with adequate means of alternative communication with children, as well as protective equipment against the Covid-19 once they were again allowed to visit centres where children are accommodated (respondent 2).

CONCLUSIONS AND RECOMMENDATIONS TO IMPROVE THE GUARDIANSHIP SYSTEM IN THE RS

The qualitative analysis of the legal framework regulating guardianship against the practice of providing guardianship to UASC in Serbia showed a large disparity. While the legal framework supported by various guidelines and standard operating procedures enshrines the basis for a high degree of protection, the practical challenges in providing quality guardianship to each and every child still persist. Some of the most striking are related to the lack of a sufficient number of qualified and adequately remunerated guardians available to unaccompanied and separated children, as well as a complicated and bureaucratised social protection system that has a tendency to stand in the way of devoting meaningful time to a child by a guardian.

These challenges, firstly, require a change in the concept of guardianship in the sense that the guardians are not appointed for one purpose only (e.g. to express the intention to seek asylum, to enrol in an educational institution, etc.) in order to enable the sustainability of the relationship between a child and his or her guardian. In the long term, it is necessary to allocate more funds from the official state budget to support the work of the CSWs, which would allow employing more qualified guardians. The presented model of cooperation between the state and a civil society organisation on establishing flexible guardianship in some municipalities proved to be very efficient, which was also recognised by the Council of Europe in 2019. However, more guardians and case managers are needed to respond to the current number of children in need of guardianship present in Serbia to reduce the number of children per one guardian or case manager. The current number of 50 or even more than 100 children per one guardian or case manager is non-sustainable in terms of providing adequate and quality care for unaccompanied and separated children in Serbia. Moreover, providing financial resources in the state budget for the work of guardians would enable their sustainable and continuous work, and it would not depend on donations from international organisations and the duration of various projects.

As a prerequisite for any meaningful communication between a temporary guardian and his *protégé*, each speaking different languages, there must be adequate culturally sensitive interpretation. In this regard, translation services should be made available to guardians in order to improve communication between them and UASC. This needs to be ensured during the first meeting of UASC with the guardian, in all of the procedures, as well as in the facilities where the UASC are placed. Given the Covid 19 pandemic and the state of emergency in RS, it is required to create an emergency response plan in order to avoid collapse in the work of social protection bodies, especially those caring for children, so that guardians are available to children every day (24/7). This plan should gather all of the actors involved in the work with children, primarily CSW and guardians, as well as representatives of other state bodies (MoLEVSA, Ministry for Family Care and Demographics, Ministry of Health, and others, including representatives of international governmental and non-governmental organisations and civil society organisations). Finally, it would be crucial to strengthen the guardians in terms of logistical support, especially during a state of emergency, like it was the Covid 19 pandemic, by providing them with the necessary means of communication, coronavirus protection aid, equipment and etc., so that they can perform their duties unhindered.

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Respondent 5, Programme Director – Balkan Migration and Displacement Hub, Save the Children, interview conducted on 26 April 2021 in Belgrade

FROM SCHOOL ACCESS TO QUALITY EDUCATION OF REFUGEE CHILDREN: A PARADIGM SHIFT IN BULGARIA ENDANGERED BY COVID-19

Iva Partsaleva

ABSTRACT

The Bulgarian government took a brave step forward with the establishment of a legal mechanism in 2017 that guaranteed unobstructed access to education for all asylum-seeking and refugee children. It gave preference to a model of direct 'immersion' of these children in the national educational system rather than the establishment of parallel literacy or Bulgarian language classes. With schools and teachers compelled to swiftly adapt and start working with their new pupils, the approach led to a six-fold increase in enrolment rates. While these policies proved to be very successful for the socialization and training of younger students, the opposite is true for the ones in secondary school, especially unaccompanied children who experience severe hardship to cope with even minimum educational requirements and tend to drop out. COVID-19 and the transformation of the teaching process into a digital or paper-based one turned the system upside-down and exacerbated the challenges, putting quality under threat for those who had performed well and the question of retention back on the agenda for those who had faced difficulties earlier. This article looks into the development of the Bulgarian model for the provision of education to refugee children, its achievements and persisting challenges.

Key words: *refugees, children, education, COVID-19 pandemic, Bulgaria*

INTRODUCTION

In September 2017, when the Ministry of Education and Science (MES) in Bulgaria issued orders for the school enrolment of 32 asylum-seeking children residing at a reception centre in the small town of Harmanli, close to the Turkish border, all school principals and teachers were in shock. The coexistence between asylum-seekers and locals, up to this moment, had not been an easy one with bloody protests and clashes between the foreigners and the police occurring just several months earlier. The initiative was such a risky endeavour that it was intentionally kept under the public radar with asylum-seeking children being sent to school two weeks after the opening of the year, thus skipping initial celebrations and meetings with parents.

Five years later, this tension seems long forgotten. Hundreds of children from Afghanistan, Syria, Iraq, Iran, and lately, from Ukraine, have learnt to read, write and speak in Bulgarian in the nine schools in the Harmanli municipality. Many more have done so in Sofia, Plovdiv, Varna and other cities and villages around the country. School administrations and teachers have invested countless hours of additional work to help refugee children feel safe at school and overcome illiteracy. Many touching stories of friendship and communal support were written. More often than not, the school enrolment of children helped debunk myths about refugees among Bulgarian parents, especially in smaller places such as Harmanli.

All these achievements were made possible thanks to the creation and adoption of a 2017 legal framework that guaranteed unobstructed access to school for asylum-seeking and refugee children and its consistent application by the relevant authorities (Refugees: Today and Tomorrow, 3/2020: 6). The formal opening of school doors created a rare domino effect of enthusiasm among state institutions and civil society structures alike, both of which invested efforts and funds to support and facilitate the educational process. As a result, the main discussions today in the area of refugee education have gone beyond simply ensuring school access, moving forward to quality in the teaching process. While such a paradigm shift is, in itself, an admirable achievement, addressing the newly occurring challenges in the classrooms is a far more complicated and multifaceted process.

Despite the inevitable obstacles, education has become and remains to this day the most successful integration sectoral policy of Bulgaria concerning refugees. Put in perspective, this accomplishment is considerable in a country famous for the lack of an overall vision or functioning system for the integration of beneficiaries of international protection. With the rise of asylum applications, Bulgaria scrapped its existing integration programme at the end of 2013 and, ever since, the vast majority of refugees and subsidiary protection holders are left without any options for housing, jobs, language classes, etc. Civil society

organisations (CSOs) are usually the only providers of such support[1].

This article will first explore the international and European law provisions concerning the right to education and will then look more deeply into the philosophy of the educational policy of Bulgaria towards asylum-seeking and refugee children. It will dig into the factors that contributed to the actual establishment of a working enrolment mechanism: general educational reform which provided space for new and progressive legal stipulations, political will, personal conviction of educational staff, and cooperation among numerous stakeholders. Furthermore, it will analyse the effects that the new measures have on the refugee communities, school administrations, pedagogical staff and, most importantly, the partnership between government and CSOs. Some existing good practices operationalized in schools are to be further mentioned. It goes without saying, though, that emphasis will be put on the persisting challenges that remain unaddressed, such as the adequate inclusion of unaccompanied children and illiterate older students in educational activities. Finally, one cannot turn a deaf ear to the elephant in the room – the COVID-19 pandemic – which caused serious disruption to the educational process and its consequences endangering some of the achievements from the previous years. Recommendations will be outlined at the end.

The article is based on observations and data collection of almost five years of educational monitoring the author has performed as part of her professional responsibilities as a member of the UNHCR protection staff. During this period, I have been actively involved in the initial roll-out and subsequent long-term application of the new educational policies targeting refugees. Since 2019, I have regularly visited 30 schools where refugees are educated and have discussed good practices and challenges with their principals and the pedagogical staff. I have participated in numerous teachers' training and coordination meetings that provided a further basis for analysis. The data to be presented here is further collected through desk research of existing integration-related and educational materials, such as reports, academic articles and statistics. Unfortunately, very few publications discuss the relatively young topic of refugee education in Bulgaria; thus, proper citations are not always possible, and some statements are based on personal observations and assessments which is an obvious constraint of this article.

1 THE RIGHT TO EDUCATION IN INTERNATIONAL AND EUROPEAN LAW

The right to education, including that of asylum-seeking and refugee children, is guaranteed by several legal instruments adopted at the international level. The most important

1 The integration process is formally regulated by the Ordinance on Integration Agreement from July 2017 (State Gazette, no.60/2017), which does not envisage targeted measures for integration support, but rather confirms rights that individuals enjoy based on their status as beneficiaries of international protection. Furthermore, the activities under the Ordinance lack state funding, and thus, are implemented exclusively as part of EU projects for a limited number of persons.

provisions fall within the scope of the International Bill of Human Rights consisting of the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) and the 1966 International Covenant on Civil and Political Rights (ICCPR). The right to education is also guaranteed in the international legal instruments on the rights of the child, as well as international refugee law.

Article 26 of the UDHR recognises that everyone has a right to education. This constitutes the first-ever recognition of a general right to education in an international instrument in explicit terms (Beiter, 2006: 86). Article 26 has, subsequently, been reaffirmed and further developed by the provisions of the legally binding ICESCR. Articles 13 and 14 recognize the right to education of everyone, lay down obligations of the state parties in pursuit of the realization of this right and articulate a specific state obligation: the provision of compulsory, free of charge, primary education for all. In the case of both secondary and higher education, accessibility is to be achieved 'by every appropriate means, and in particular by the progressive introduction of free education' (Art. 13(2)(b) and (c)), bringing a notion of progressiveness in state obligations. Articles 13 and 14 are comprehensive provisions that may be viewed as constituting a codification of the right to education in international law (Beiter, 2006: 86). Therefore, they may be considered the most fundamental formulation of the right to education in an international agreement. The ICCPR also contains a provision that is relevant to the right to education, namely Article 18(4) protecting the right of parents to ensure the religious and moral education of their children in accordance with their convictions – a right confirmed in several other international and regional instruments.

The Convention on the Rights of the Child (CRC), adopted in 1989, protects the right to education in two provisions, namely Articles 28 and 29. The provisions of Article 28(1) are comparable to the ones in the ICESCR recognizing the right to education. Some authors consider the phrasing in the CRC as weaker due to the use of the wording '[states] make primary education compulsory' (compared to 'primary education shall be compulsory' in ICESCR), which, in the case of the CRC, introduces the notion of progressiveness to the obligation, even with regard to primary education (Beiter, 2006: 117). The CRC, though, introduces a number of new elements not provided for in the ICESCR with two of them being of importance, as we shall further see, in the case of Bulgaria: states are obliged to make educational and vocational information and guidance available and accessible for all children (Art. 28(d)(1)); states parties take measures to encourage regular attendance at schools and the reduction of drop-out rates (Art. 28(1)(e)). The CRC has a specific provision that treats the rights of asylum-seeking and refugee children, namely Article 22 which obliges states parties to take appropriate measures to ensure that refugee children can enjoy the rights under the CRC.

Finally, Article 22 of the 1951 Convention Relating to the Status of Refugees of 1951 and Article 22 of the 1954 Convention Relating to the Status of Stateless Persons provide, in

the same words, that contracting states must accord to refugee/stateless persons 'the same treatment as is accorded to nationals with respect to elementary education'. On the contrary, states parties may treat refugee/stateless persons less favourably than nationals when it comes to secondary education: '[W]ith respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships', contracting states are expected to accord to refugee/stateless persons 'treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances'.

A number of legal instruments provide protection against discrimination in the field of education on the respective bases of religion, race and gender, the main ones being Article 5(e)(v) of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination and Article 10 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women.

As far as Europe is concerned, the instruments which contain provisions on the right to education have been prepared by the Council of Europe (CoE) and the European Union (EU). While CoE's 1951 Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) does not protect the right to education due to its focus, mainly, on civil and political rights, Article 2 of Protocol No. 1 to ECHR from 1952 states that '[n]o person shall be denied the right to education'. Throughout the years, vast case law has been assembled on Article 2 of Protocol No. 1 by the European Commission of Human Rights and its successor – the European Court on Human Rights – which, by having the mandate to deal with both interstate and individual cases with legally binding rulings for contracting states, has established an advanced, if not the most advanced, regional human rights system (Beiter, 2006:159).

Bulgaria as a member of the EU is also bound by its numerous legal instruments. The Charter of Fundamental Rights of the EU, (2007/C 303/01) which became legally binding with the coming into force of the Treaty of Lisbon in 2009, proclaims in its Article 14 that everyone has a right to education but adds the principle of free compulsory education, as well as the right to access to vocational and continuing training.

The schooling of asylum-seeking and refugee children is regulated by the legally binding Reception Conditions (2013/33/EU) and Qualification Directives (2011/95/EU), respectively. The first one requires that member states grant access to minor children of applicants, and to applicants who are minors, access to the educational system under similar conditions as their own nationals (Art.14(1)). In the same provision, it further allows for such education to be provided in the accommodation centres and forbids the withdrawal of secondary education for the sole reason that the minor has reached the age of majority. An important procedural guarantee is that 'access to the education

system shall not be postponed for more than three months from the date on which the application for international protection was lodged by or on behalf of the minor' (Art. 14(2)). Furthermore, the Directive stipulates that 'preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the education system...' (Art.14(3)). The Qualification Directive in its Article 27 lays down the obligation for member states to grant full access to the education system to all minors granted international protection, under the same conditions as nationals. Adults granted international protection should also have access to the general education system, further training or retraining, under the same conditions as third-country nationals legally residing in the respective country.

2 THE CASE OF BULGARIA

Bulgarian constitution (*Official Gazette of the RB, no. 56/1991*) guarantees the right to education. Its Article 53 makes school attendance to the age of 16 compulsory, with primary and secondary education free of charge. The stipulations specifically related to asylum-seekers and refugees are to be discussed in detail in the following chapters.

2.1 THE MAKING OF A WORKING MODEL

The rise of applications for international protection in Bulgaria started earlier than in other Balkan states – at the end of 2013 – and continued rising into 2015-2016 when roughly 20 000 asylum-seekers were registered with the State Agency for Refugees (SAR) on an annual basis (see Chart 1). Bulgarian educational system, like many other sectoral infrastructures, appeared to be completely unprepared to the new realities on the ground. The Ministry of Education and Science had to find a mechanism for access to school of thousands of children whose mother tongue was different than Bulgarian and whose educational path was interrupted for months and years by war. These children often lacked certificates to prove previous school training, and some suffered from psychological or sometimes physical trauma.

Two requirements laid down in a ministerial ordinance that had entered into force more than a decade earlier, in 2000, restrained access to school for asylum-seeking and refugee children. The first was the necessity for the children to possess a certificate for successful completion of a three-month Bulgarian language course within the premises of the SAR; the second was being able to prove proficiency in various subjects in front of an examination commission who had the freedom not to allow the child into the school system in case of insufficient Bulgarian language knowledge (MES, Ordinance 3, *Official Gazette of the RB*, no.74/2000, repealed in 2017). At the end of 2013, the language requirement became insurmountable, as the SAR stopped organising any integration-related activities,

including language training. Thus, solutions were sought in an ad-hoc manner with only a handful of children being able to benefit from their right to education. In the years prior to 2017, the enrolment rate was about 10% with the actual enrolment de facto violating the existing requirements. Nevertheless, the efforts to identify an admission path for every single school application, despite legal obstacles, were a result of the personal conviction of a few educational officials who, later on, would be the driving force behind the establishment of a facilitated enrolment system.

What turned out to be a fortunate coincidence was that in the 2010-2015 period an overarching reform which culminated in the adoption of a new Law, in September 2015, on Preschool and School Education (LPSE) and its coming into force on August 1st, 2016, was underway in the educational system (Official Gazette of the RB, no.79/2015). The main goal of the new educational policy was the enhanced quality of training through competence-oriented teaching, improved teacher training, focus on vocational training, inclusive education and digitalization. Another important element of the new legislation was the effective enrolment and permanent inclusion of all school-age children in the country. Within such a framework, the establishment of a functioning admission mechanism for asylum-seeking and refugee minors became not only possible but also necessary.

2.1.1 STEP ONE: CREATION OF A LEGISLATIVE FRAMEWORK

A working group consisting of experts from the 'Inclusive Education' Directorate of the MES, the Regional Educational Administration - Sofia (the local branch of the MES), the State Agency for Refugees, UNHCR - the UN Refugee Agency and UNICEF, was established in 2016. Upon discussions of various models of inclusion and training of refugee children an entirely new procedure was created and stipulated in the Ordinance on the Terms and Conditions for the Admission and Training of Asylum-Seekers or Beneficiaries of International Protection, dated 6 April 2017 (*Official Gazette of the RB*, no. 32/2017).

This legislative piece envisages asylum-seeking and refugee children to be enrolled in schools without any requirements to prove previous education levels or basic command of Bulgarian language. According to Art. 4 of the Ordinance, parents (or legal representatives) fill an enrolment application to be submitted to the respective Regional Educational Administration (REA) which needs to issue an order for the enrolment of the child in a specific school. The school is chosen by the REA with personal preferences and permanent address of the family considered. Article 5 envisages the creation of a special teachers committee, in the respective school, whose members need to be a Bulgarian language teacher, teachers in other relevant subjects, school psychologist or pedagogical adviser. The committee interviews the child to identify previous educational experience and level of Bulgarian language proficiency, as well as other skills and/or needs. On the basis of the information collected during the interview, the committee writes a report to

the school principal proposing the grade and the specific class which the new pupil is to be referred to. Measures for additional support, including additional classes in Bulgarian language or other subjects, are also outlined in the report. The school principal issues an order for enrolment within three days of receiving the committee's proposal (Art. 6, p.7). The maximum period for enrolment is framed within 24 working days from the enrolment application or about a month.

The mechanism stipulates requirements for the placement of children in a specific grade: for those who are to be enrolled in grades 1-4, the placement is exclusively based on age (meaning seven-year-olds go to first grade, eight-year-olds to second, etc.). For older pupils, a specific provision restricts the enrolment to a grade that is no more than three years prior to the one that corresponds to the age of the child. Furthermore, the Ordinance has two other stipulations of major importance: it allows for the enrolment of asylum-seeking and refugee children throughout the school year, except for the last 30 days thereof. In addition, it places their admission above the number of pupils approved in the state or school enrolment plan. For those asylum-seeking and refugee children who are in possession of original educational certificates, another ordinance (Ordinance 11 on the Assessment of the Results from the Training of the Pupils, *Official Gazette of the RB*, no. 74/2016) is in place, which allows for their enrolment upon diploma recognition by a school principal (up to sixth grade) or by the REA (seventh to twelfth grade).

The legislative initiatives of the Ministry, also as part of the process for developing a regulatory framework under the new PSEA, allowed for the inclusion of asylum-seeking and refugee children as a target group under the Ordinance on the Acquisition of the Bulgarian Literary Language (*Official Gazette of the RB*, no. 67/2016) which specifically mentions them (Art. 10, p. 3) as entitled to additional Bulgarian language classes (two classes per week for preschool groups, three for first-fourth grade, four for fifth-seventh grade, and five for eighth-tenth grade). In October 2017, two national programmes for teaching Bulgarian as a foreign language to asylum-seeking and refugee children and to adults were officially adopted by the Minister of Education. Last, but not least, the Ordinance on Inclusive Education (State Gazette of the RB, no. 86/2017) envisages the inclusion of asylum-seeking and refugee children in additional training in other subjects where such support is necessary.

2.1.2 PHILOSOPHY OF THE LEGISLATIVE FRAMEWORK

The so-presented framework, as established by the relevant authorities, has one very important feature - the inclusion of refugee children in the general educational process along with their Bulgarian peers without the organization of separate introductory or literacy classes, or other forms of parallel educational activities. The philosophy of this approach lies in its overarching goal: socialization rather than very high educational

results. Such understanding is confirmed by the confession of the REA representative in the working group drafting the admission ordinance that 'there was a necessity to leave behind some of the expectations that educational authorities have towards Bulgarian students' (Refugees: Today and Tomorrow, 3/2020: 26).

This prioritisation of inclusion comes from three main considerations taken into account by the authorities and outlined by MES representatives on numerous occasions. First, the transitory character of the Bulgarian refugee context, which, in the majority of cases, predetermines the relatively short period of stay of children in the country and in the educational system, respectively. This entails inclusion as fast as possible. Second, such speedy admission to ordinary classes means exposure of refugees to the Bulgarian language environment in all school subjects, as well as in the non-formal communication with classmates and teachers, conducive to the fast improvement of their language skills. Third, regular school lessons entail the (re)establishment of a learning regime and habits and a 'a sense of normalcy' for children whose education was interrupted for longer periods. The inclusion in a modernised (or modernising) educational system aims to provide protective space away from the reception centres of the SAR.

All these legislative initiatives meant that by the end of 2017, in contrast to many other sectoral policies, education measures specifically targeting refugees were developed and operationalised. The decision to allow refugees to study alongside Bulgarian children led to a dramatic increase in enrolment rates. This, on the other hand, put school administrators and teachers on the front line and made them face numerous challenges.

2.1.3 STEP TWO: OPERATIONALISATION

Once the legislative work was finalized, the MES stepped up its efforts to implement in practice the new measures. The Ministry organized meetings with school principals in Sofia and in Harmanli (the latter within the premises of the reception facility) in the eve of the 2017/2018 school year to discuss the new policies. These meetings allowed for the participation of SAR and UNHCR, thus, creating a basis for wider cooperation and coordination. An example for a specific result from these encounters was the hiring of a special educational mediator in the town of Harmanli to facilitate the communication between schools and refugee families inside the reception centre (a social expert, part of the Bulgarian Red Cross team). Despite initial fears, no school refused to accept newly referred pupils from the reception centres. In the next few years, the flow of children would prove not only pedagogically enriching but also financially beneficial for the schools due to the state subsidies that they receive for each enrolled child.

Upon securing schools' support, MES and SAR organized meetings with accommodated individuals in the reception centres and presented them with the new educational

opportunities for the children. The reluctance of parents to allow their children to leave the centres was addressed by organized group visits to the local schools. In Harmanli, the SAR approached an Afghan community leader, a lady asylum-seeker, who herself was a school principal in Kabul to encourage family participation. It proved an important step, as the first dozen of enrolment applications were all submitted by Afghan nationals. Once the majority of children accommodated in the SAR centres started attending classes, the enrolment of the newly arrived kids became a routine procedure - initiated by SAR social experts but facilitated and encouraged by the members of the community themselves.

The implementation of the new legislative framework resulted in a six-fold increase in the enrolment rate of asylum-seeking and refugee children. In 2016/2017, it was about 10% or 119 enrolled pupils from a total of 1356 children in compulsory school age (5/6-16) accommodated in the SAR reception centres. In 2017/2018 the percentage reached 60% - 189 pupils out of 338 in SAR facilities (see Chart 2). This percentage remained stable in the next two school years, until decreasing (within the COVID-19 context) to about 40% in the current school year. The majority of children who attend classes are basic and primary school pupils, with those in secondary school only a quarter of the pupils (see Chart 3). This signifies the easier inclusion and adaptation of younger children in their new school environments (to be discussed in the next part).

Since 2017, more than 30 schools in Sofia, all nine in Harmanli municipality, as well as schools in other locations (Plovdiv, Varna, Burgas, Nova Zagora, Svishtov, Belitsa, etc.) have welcomed children from the refugee community (see Chart 4). The Regional Educational Administrations in Sofia, where the pupils are most numerous, as well as in Haskovo (responsible for those in Harmanli), have adopted an approach for referral of small numbers of refugees to larger numbers of schools. This is implemented with the aim to: 1) facilitate the integration of the pupils through preventing their self-isolation within groups and through exposure to the Bulgarian language environment, 2) enhance the capacity for more school administrations and teachers working with refugees, 3) expose more Bulgarian students to the phenomenon of forced migration, thus encouraging tolerance and understanding.

2.1.4 THE DOMINO EFFECT: STORIES OF SUCCESS

The inclusion of refugee children in the educational system proved to be a major development both for the displaced communities, but also for the practitioners who provide services and support. Not only did the SAR actively encourage families to send their kids to school but it stepped up to organize transportation from its centres to the schools in Sofia, where school buses did not exist. It granted access to its facilities, as well as classrooms, to NGOs which started providing support with lessons and homework. The

civil society coordinated joint donation campaigns for backpacks and school materials and allocated specific budgets for the provision of necessary textbooks.

Until today, the feedback from teachers and principals on the performance and behaviour of refugees in school remains almost exclusively a very positive one (personal communication, 2018-2021). Younger children tend to learn Bulgarian very fast and face no challenges in the training process. Teachers often underline the profound respect that both children and parents have for the schooling process and the pedagogues, as the tradition follows in most of the countries of origin.

School administrations have benefited from new training opportunities focused on inclusive education practices, teaching Bulgarian as a foreign language, information on countries of origin, etc. which are provided by MES and SAR experts, UNHCR and NGOs. Numerous schools have been involved in networks for exchange of experience and good practices with teachers being able to participate in study visits in other EU member states through international policy networks such as Sirius (European policy network on migrant education). Professional networks were established also nationally, including an Association of Teachers of Bulgarian as a Foreign Language registered officially in 2020.

The presence of refugees in schools also contributed for a positive change in the attitudes of communities (Refugees: Today and Tomorrow, 3/2020:24). Good examples of this direction are the numerous donation campaigns organized by parents and teachers for these children but also lobbying and support before SAR for granting international protection to a given family.

On the other hand, some of the refugee and asylum-seeking families who have decided to remain in Bulgaria motivate this step with the successful school path on which their children have endeavoured and the support and attention they have received by their teachers and classmates (personal communication, 2018-2021). Even within the 2017/2018 school year, children enrolled in school started acting as interpreters to their parents in the SAR centres. Accompanying children to school made some parents leave the SAR premises for the first time and experience contacts with Bulgarian public.

2.2 THE REMAINING PART OF THE PUZZLE: PERSISTING CHALLENGES

Despite the undoubted success, serious challenges exist. Some of those are related to the overall weaknesses of the Bulgarian educational system and others specifically concern refugee policies.

The fact that children are allowed to enter the classroom without any initial requirements benefits the younger ones who usually manage to catch up with their mates in short

periods of time. There are cases of exceptional school attainment such as the winning of the Sofia regional contest in history by an asylum-seeking boy enrolled in fifth grade in 2019/2020 (Dnevnik, 24 December 2020). Yet, when it comes to older pupils and especially those in secondary education, such achievements are rare. Many of those children have missed numerous years of schooling, with some being completely illiterate. They end up in a classroom, often with younger classmates (as they are usually placed in lower grades), where various challenging subjects such as literature, chemistry, biology, etc. are taught in a language they do not understand. Those who are illiterate in their own language have almost no chance of successfully finishing the school year.

This issue is further aggravated in the case of unaccompanied children, in the majority of cases boys in their 16s and 17s from Afghanistan. Factors such as: lack of motivation due to plans and pressure by family members to leave Bulgaria for Western Europe, very low recognition rate for Afghans – about 4% (EMN Country Factsheet, 2020), lack of parental control and inclusion in employment activities, further complicate the tasks of their educators. Thus, although no official statistics are collected, it is safe to say that the majority are not enrolled in school and those who have low results with only a handful of unaccompanied children successfully passing a grade.

The challenges that these children experience are exacerbated by the lack of flexibility and individual approach of the Bulgarian educational system, which also affects other groups of vulnerable pupils. According to the last Monitoring Report by the European Commission, the percentage of early leavers (years 18-24) from education and training is 13,9%, with 10,2% being the EU average (EC, Education and Training Monitoring, 2020: 5). Bulgaria has one of the highest drop-out rates in the EU with about 3% of those who start the school year not finishing it (Education Bulgaria 2030, Monitoring Report 2020: 7). This worrying trend was the reason why, in 2017, a special Inter-institutional Mechanism to tackle early dropouts started operating. By February 2020, it managed to bring 51,460 children back to school, the majority of whom were 5-6 year-olds (Strategic Framework for 2021-2030, MES: 5). Yet, only in the beginning of 2019, 6000 of those repeatedly dropped out (Bulgaria Education 2030, Monitoring Report, 2020: 28). The reasons behind these trends are both educational and social with authorities failing to offer a holistic approach to training and care upon readmission, which necessitates the participation of various stakeholders and a flexible and individualized teaching process (Bulgaria Education 2030, Monitoring Report, 2020:29). The lack of literacy classes and dedicated measures to keep the children in school affect both vulnerable Bulgarian and refugee children. For these reasons, there are numerous calls on the part of the non-governmental sector for a deeper analysis of the Inter-institutional Mechanism, precisely in its part on retention of the children in school.

Another challenge that affects all pupils in the country is the relatively low quality of education and the prevalence of mechanical memorization of subject knowledge over competency-based training. Although the MES has been investing serious efforts in

this direction in the last years, according to the Programme for International Student Assessment (PISA) for 2018, almost half of the 15-year-old Bulgarian pupils are functionally illiterate and do not meet the basic requirements for literacy in reading, mathematics and science (up from 40% in 2015) (OECD, PISA 2018). This is twice the EU average. With its slow pace of introduction affecting all pupils, even more so, asylum-seekers and refugees, the educational shift towards skills and competencies is yet to become a reality in public schools. Thus, some school principals confessed that many of the children learnt the technique of reading and writing correctly in Bulgarian but did not understand and do not know how to work with the information that is transmitted in the written text.

Due to anti-discrimination policies, no information is collected by the MES regarding the school performance of refugee or migrant children. The Ministry, and therefore all other stakeholders, rely on the verbal feedback of some school principals or teachers. This impedes the improved understanding of refugees' educational integration and, as a consequence, the creation of targeted measures to tackle existing issues. Most teachers usually point out that refugee children face the largest difficulties in the humanities and especially Bulgarian literature, history and geography (personal communication, 2018-2021). In personal conversations, pedagogues confessed that students memorized the terminology relatively quickly for each subject but lack a general understanding of the sciences in the part related to the Bulgarian national life, history, mythology and folklore.

In addition to the general weaknesses of the educational system, some challenges remain entirely refugee-centred. A percentage of asylum-seeking children accommodated in SAR centres which is in no way neglectable, remains out of the school system. The great share of these children are UAMs (previously discussed) but there are also cases when families refuse to allow their children going to school. Usually, this is a result of fear, lack of interest in education or gender and cultural considerations (personal communication, 2018-2021). Although education in Bulgaria is obligatory for all children up to 16 years of age, SAR social workers have very limited space to manoeuvre in such situations due to lack of any mechanisms for compelling families to send their children to school (which for example, exists for Bulgarian parents who stop receiving family benefits in such cases).

Furthermore, school committees face difficulties when trying to assess the grade of a newly referred child. Lacking more specific guidance from the Ministry, each school has developed its own mechanism for assessing and class placement of refugee pupils. Those mechanisms can be theoretically split into two approaches. The first, practised by the majority of schools, envisages a social interview with the child and his family that aims to establish previous educational experience but also the current legal, social and economic situation. The second approach includes written and/or oral examination of the child in subjects like mathematics, English or world geography. The lack of guidelines, control or test templates, leads to diverse practices in many schools with some children being wrongly placed in lower or (more rarely) higher grades.

Another, very crucial issue is related to parental inclusion in the educational process which is often prevented by the lack of common language between principals and teachers and the parents. There are schools that have tried to attract family members through various extra-curricular activities (usually cultural events such as dancing or cooking) but nevertheless in the majority of cases, the contacts are few, if any. What contributes further to this unfavourable situation is the restricted access to all levels of education that adults have in contrast to children. Such access is only possible if an adult is in possession of an original educational certificate. No validation procedures are allowed for asylum-seekers or refugees above 16 years of age.

2.3 THE GAME-CHANGER: COVID-19

Like in many other countries, the COVID-19 pandemic changed the regular conduct of educational activities in Bulgaria. The second term of the 2019/2020 school year took place almost entirely in a distance learning form (from March 16, 2020, until the end of the school year). The next one started with in-person classes in September 2020, but the spread of the virus caused a swift roll-out of digital learning programmes which remained in place in various forms until the spring.

UNHCR has estimated that, while children in every country have struggled with the impact of COVID-19 on their education, refugee children have been particularly disadvantaged (UNHCR 2020: 5). On a global level before the pandemic, a refugee child was twice as likely to be out of school as a non-refugee child (see Charts 7 and 8). This is set to worsen because many may not have opportunities to resume their studies due to school closures, difficulties affording fees, uniforms or books, lack of access to technologies or because they are being required to work to support their families (UNHCR, 2020: 5).

Bulgaria made no exception to these negative trends. While the majority of Bulgarian schools managed to organize online training in real-time, about 44% used other methods, such as providing paper-based materials and tests for self-study and preparation (Global Metrix, 2020:4). Both approaches were utilized with regard to asylum-seeking and refugee children, and both turned out to be unsuitable for a successful learning process. Worst affected were most children accommodated in SAR centres who lost any connection with their respective teachers, with only a handful being able to join online classes. In many cases, the newly arrived children were not referred for school enrolment as they lacked any Bulgarian language knowledge, and thus could not participate in a meaningful learning process online. This resulted in the lowest enrolment rate of 40% (SAR, monthly statistics) since the introduction of enrolment procedures in 2017.

UNHCR's 2020 online survey on COVID-19's impact on the lives of refugees in Bulgaria, carried out among 112 asylum-seekers, beneficiaries of international protection and stateless individuals, provides an important insight into the difficulties faced by refugees

with regard to education. The lack of educational support by teachers and by NGOs, as well as the language barrier, are the most common grounds for school drop-outs; and the largest sources of frustration for those who have remained in the educational system. (See charts 4 and 5).

The challenges faced by pupils could be categorized into three separate groups: technical, educational and social. For those enrolled in online classes, the technical difficulties are related to the lack of internet access, technical devices and skills to use them. The reception centres of the SAR offer limited internet connection to the accommodated individuals, with such service available only in several specifically designated rooms, often locked and inaccessible to children. Although in the summer of 2020, a hundred laptops were bought with the EU funds for the purposes of online schooling, the usage of those was logistically difficult and not efficient. Many of the children lack information on the school platforms used by their teachers, username and passwords, etc.

Furthermore, as explained earlier, the distance learning form excluded one of the most important aspects of the refugee educational mechanism: the immersing in the language and social environment of the school. Outside of the school premises and lacking the support and guidance of their teachers and peers, children were unable to cope with their lessons. Self-study, especially for newly enrolled pupils with limited knowledge of Bulgarian and little orientation in the whole educational system, turned out to be almost impossible. Due to COVID-19, it was aggravated by the restricted access of all NGOs, including Caritas Sofia and CVS Bulgaria which, in the previous years, had provided educational support in various periods to pupils in the reception centres.

Lastly, the pandemic affected many refugee families' ability to meet their financial needs, thus putting them in a precarious and often uncertain economic situation. According to the UNHCR survey's findings, almost 50% of the responders' work is negatively affected by the pandemic (UNHCR, AGD PA 2020 – unpublished). Moreover, 16 of 28 who had a job and 5 of 9 who were self-employed became unemployed due to the pandemic. Consequently, 67 of the respondents say that they cannot meet their basic needs (UNHCR, AGD PA 2020 – unpublished).

As a rule, those children who have been enrolled in school for longer periods had managed to go through the distance learning phase better than their newly arrived peers. The full effects of the pandemics must be assessed in the upcoming months.

2.4 THE UKRAINIAN CRISIS

The creation of a legislative framework and its operationalization in the period 2017-2021 laid the ground for the educational authorities' flexible response to the Ukrainian crisis

that unfolded in 2022. Between 24 February 2022, when the war in Ukraine started, and 10 April, Bulgaria welcomed more refugees than it ever had since the ratification of the Geneva Convention in 1992: 171 795 persons, out of whom about 80 000 have remained in the country, with about 40% of those, or 32,000, being children. The national educational system had to prepare a swift answer to this huge challenge. The Ministry, jointly with the UNHCR organized staff training of its regional branches, developed informative materials in relevant languages and claimed to have readiness to immediately enrol up to 20 000 children.

Yet challenges are manifold:

- The vaccination calendars of the two countries differ significantly, resulting in the introduction of further requirements for enrolment by the health authorities (vaccination certificate for the children to be enrolled in kindergarten and a stool sample for those in school).
- The majority of the families are accommodated in hotels located in sea resorts where educational infrastructure is missing (no kindergartens, no schools). Transportation needs to be arranged.
- The enrolment takes place at the end of the school year which complicates the issuance of certificates for successful completion of the grade. In the absence of regular preparatory classes, the authorities need to work on a plan for classes during the summer vacation that will allow for children to acquire basic Bulgarian language knowledge and attend examinations in September.
- A certain percentage of the children continue their studies online and are still enrolled in their Ukrainian schools. This requires for the provision of space and devices these children can use.

A special working group on educational issues has been set up by the Council of Ministers in Bulgaria (which is the body that coordinates the overall response to the Ukrainian refugee crisis), jointly between the Ministry of Education and Science, international organizations and NGOs that is to search proper answers to the above-mentioned challenges.

CONCLUSION AND RECOMMENDATIONS

COVID-19 exposed the fragility of the educational system with regard to refugees. The most obvious result was the decreasing enrolment rate of asylum-seeking children but, beyond that, serious issues in terms of access to and quality of distance learning were raised. Led by educational officials and supported by various stakeholders, these challenging developments put the undisputable progress made in the previous years at risk. In order to preserve the positive results attained so far, it is of utmost importance that the authorities take time to analyse the impact of the pandemics on

refugee children, as well as the persisting challenges in their education preceding the health emergencies. Only flexible and individualized approaches can guarantee the right to quality education for each refugee child. All these considerations lead to the following recommendations.

Recommended to the Ministry of Education and Science are:

- participation in meetings with asylum-seekers in SAR reception centres (families and children) to encourage children's enrolment in school;
- monitoring and assessment of educational attainment of asylum-seeking and refugee children through data gathering of their school results;
- analysis of the reasons for early drop-outs and poor school performance of high-school students with a focus on unaccompanied minors;
- mapping of good practices on working with such groups such as inclusion in vocational and dual forms of education;
- more flexible and individualized approaches in the teaching process of these groups, including through establishment of dedicated literacy classes;
- involvement of wider network of interested stakeholders, including SAR social workers, child protection units and NGOs;
- introduction of opportunities for validation of previous education for asylum-seekers and refugees above 16 years of age;
- establishment of a mechanism for access to school education for adult refugees who are not in possession of original school certificates from their countries of origin;
- creation of guidelines for grade assessment with template questionnaires and tests (which are to remain as support materials and do not aim to limit teachers' creativity and flexibility);
- allocation of resources for educational mediators;
- that schools assess the effects of the distant learning on their pupils and work individually with each child for compensating missed material.

Recommended to the State Agency for Refugees are:

- provision of free internet connection in all reception centres;
- adequate usage of available technical devices and training of staff on their usage;
- encouragement of 100% enrolment rate through regular information sessions and organized group visits to schools;
- establishment of direct contact between social experts of the SAR and teachers of the children who are accommodated in the respective centre;
- ensuring access of NGOs providing educational support in all reception centres;
- organization of Bulgarian language classes in each centre;

Recommended to civil society structures and international organisations are:

- enhancement of the ability to provide educational support, including through volunteers;
- targeted provision of information and assistance for school enrolment to children living at external addresses;
- organization of trainings on best practices for working with unaccompanied minors and illiterate students;
- establishment of networks of practitioners, including space for exchange of experience;

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ANNEX: CHARTS

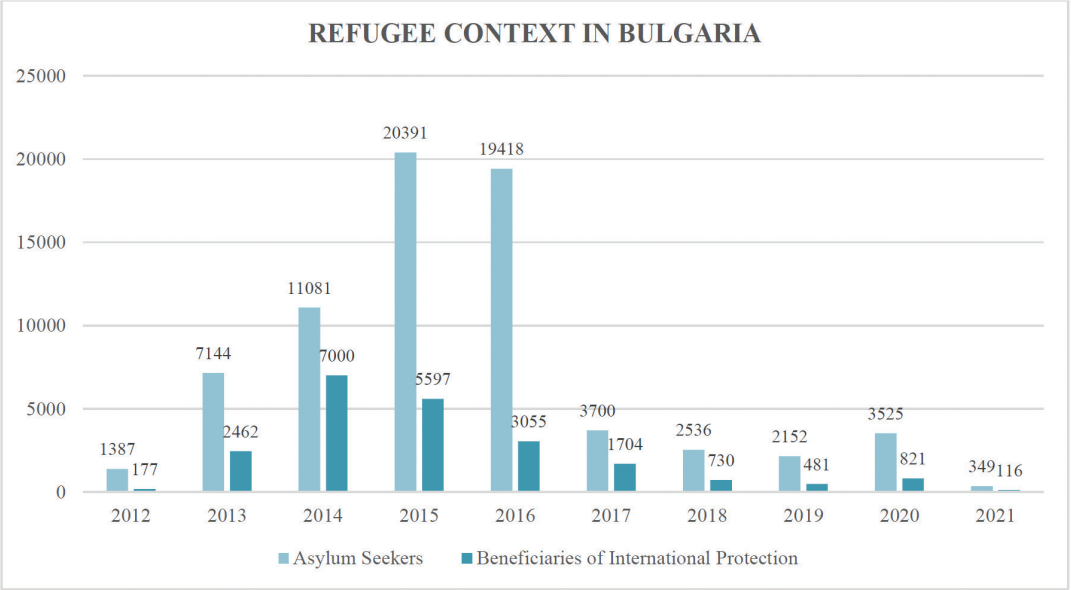


Chart 1: Number of Asylum Application and Decision for Granting International Protection (source: SAR)

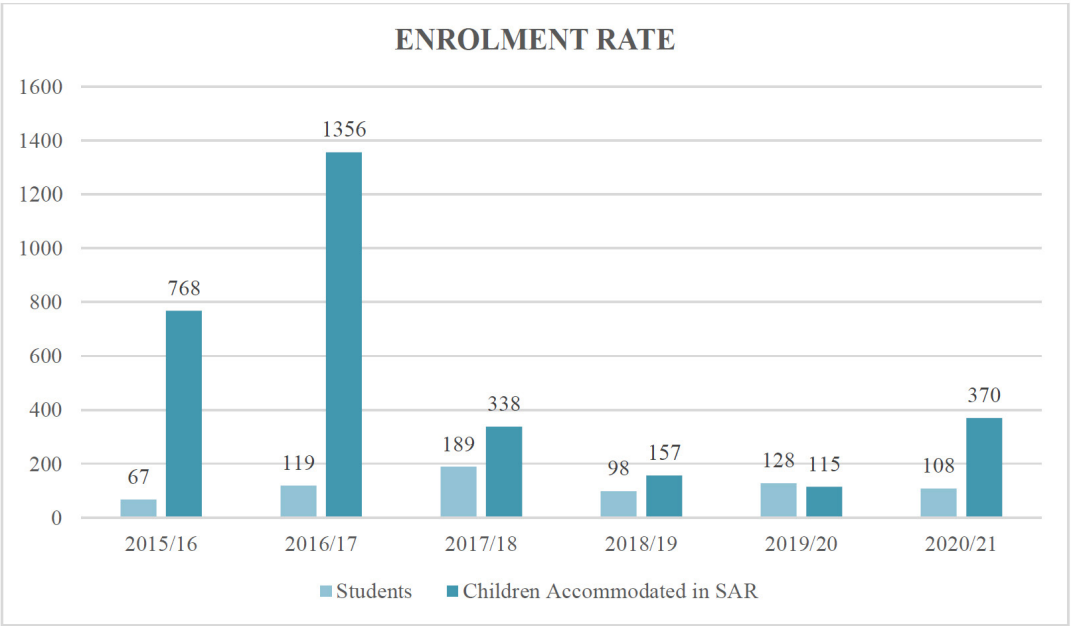


Chart 2: Enrolment Rates for Asylum-Seeking and Refugee Children (Source: MES)

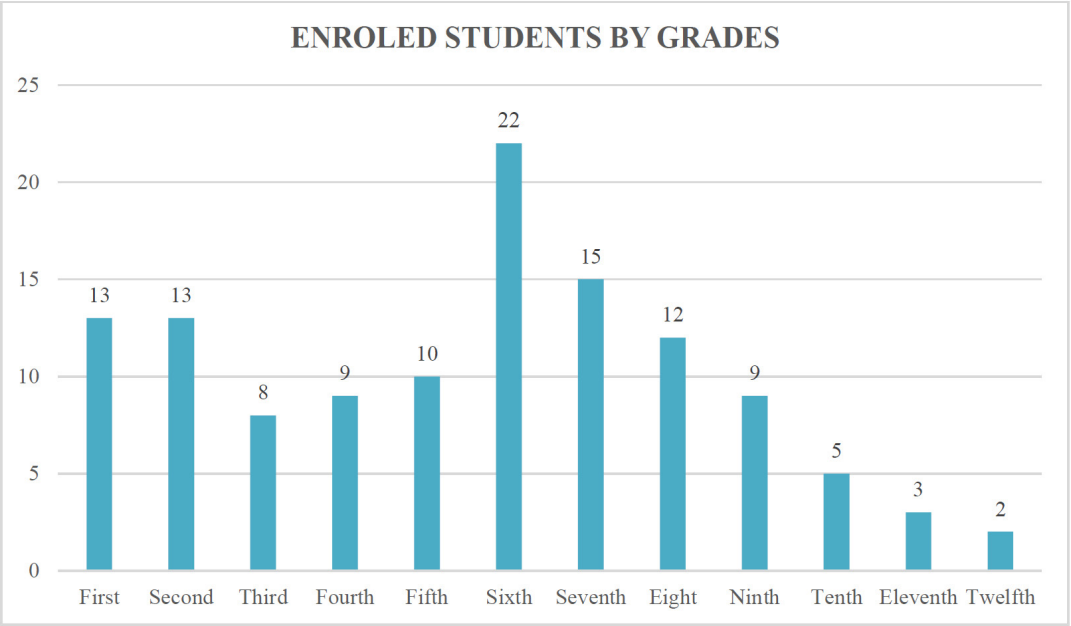


Chart 3: Grades of Enrolled Students (2020/2021)

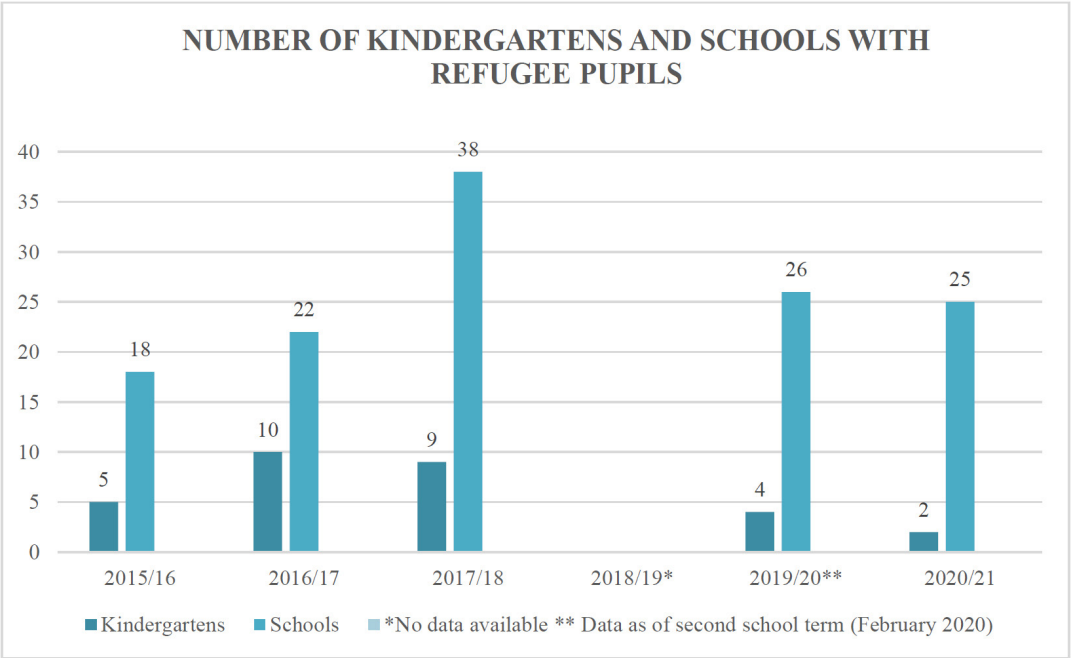


Chart 4: Number of Kindergartens and Schools with Refugee Pupils (Source: MES)

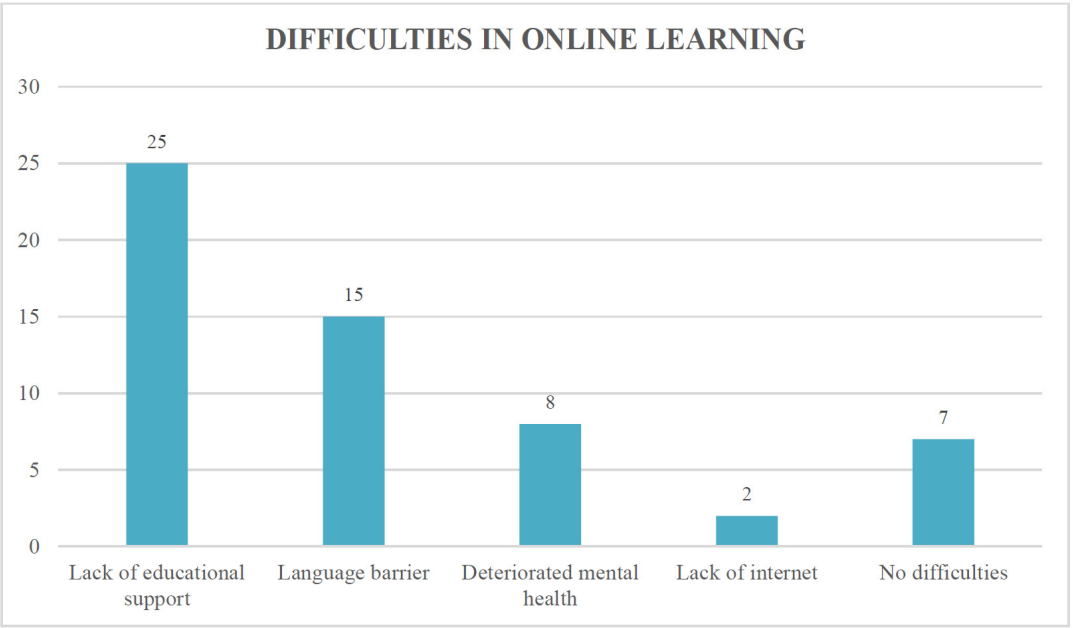


Chart 5: Difficulties in Online Learning (Source: UNHCR)

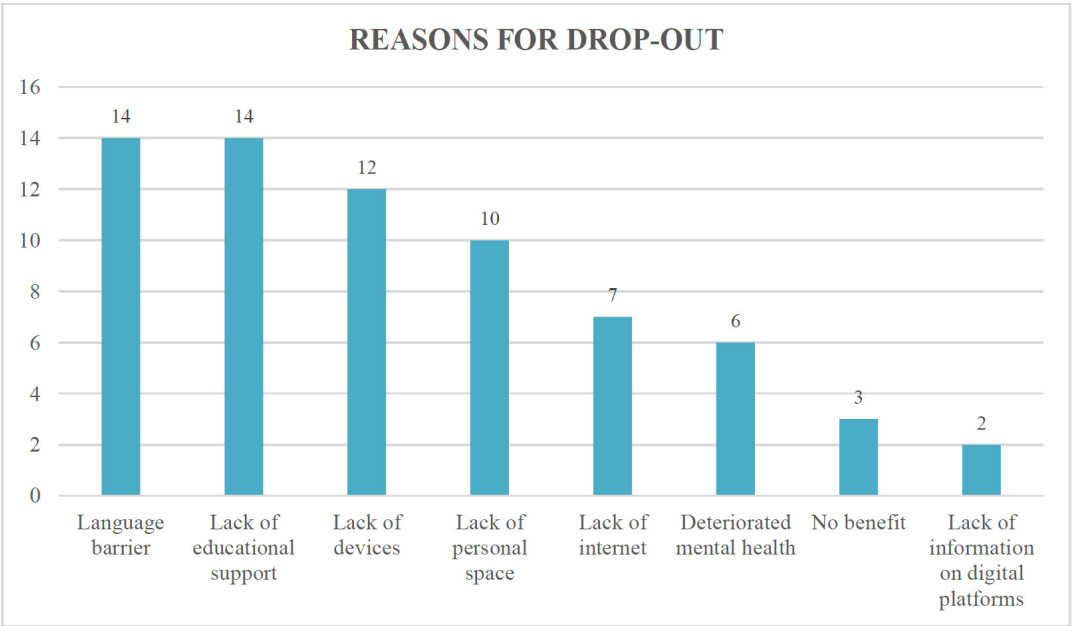
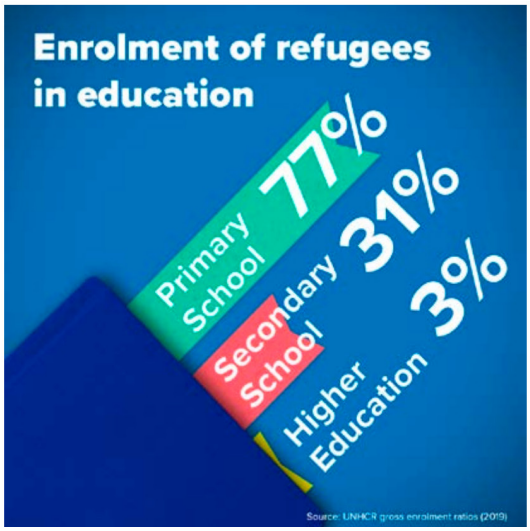


Chart 6: Reasons for Drop-Out (Source: UNHCR)



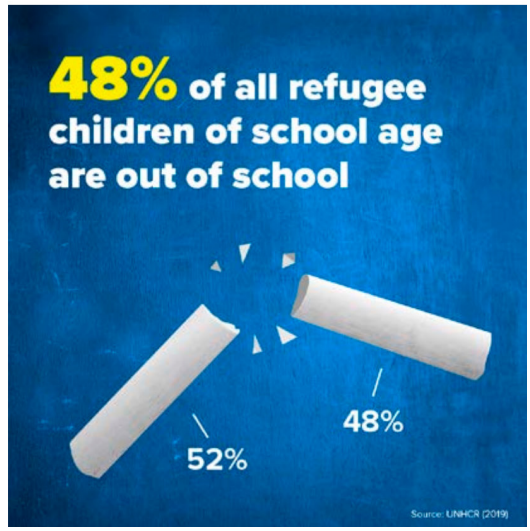


Chart 7 and 8: Global Perspectives on Refugee Education (source: UNHCR)