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MIGRANT CRISIS - LEGAL AND ILLEGAL MIGRATION

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Abstract: *The main attention of the author is focused on the migrant crisis that escalated in 2015 in the form of a massive influx of refugees and illegal immigrants from Asia, Africa and the Middle East to European Union countries, and Montenegro's response to that challenge. The issue of migration management on the European continent has also shown significant differences between the member states of the Union, namely those that have shown readiness and openness to accept migrants, and other members that are trying to build a "wall" on their borders. Unlike the mentioned current trends in Europe, Montenegro has taken a responsible approach in dealing with migrant challenges, which requires effective coping with the complex task of maintaining border security, while providing adequate conditions for persons seeking international protection. Starting from that, the paper will, in addition to theoretical and normative examples, list some practical aspects of the considered issues.*

Keywords: *Migrant crisis, human rights, border security, readmission, Montenegro.*

INTRODUCTION

The migrant crisis that hit Europe in 2015 escalated in the form of a massive influx of refugees and illegal immigrants from Asia, Africa and the Middle East to European Union countries, pointing to many shortcomings of national systems in the Union, but also a lack of cohesion among its members. On the other hand, the crisis has highlighted the need to strengthen regional co-operation, exchange experiences and information, prepare a joint response to this phenomenon and exchange missing resources among Member States and candidates.

The issue of migration management on the European continent has also shown significant differences between the member states of the Union, those who have shown readiness and openness to accept refugees from the Middle East and other migrants, and other members who are trying to build a “wall” on their borders.

Unlike the mentioned trends current in Europe, Montenegro has taken a responsible approach in dealing with migrant challenges, which requires effective coping with the complex task of maintaining border security, while providing adequate conditions for persons seeking international protection.

„The Montenegrin border police still do not have a biometric system for registering and identifying migrants. The risk of double registration of migrants following secondary movements, re-entry and subsequent asylum applications remains a concern. Montenegro needs to establish an information and communication infrastructure that can support an efficient process of identification and registration of mixed migration flows in line with EU standards and best practices.“ (www.ec.europa.eu)

Montenegro has an Action Plan in case of mass influx of migrants and refugees in transit through the territory of Montenegro. This plan was adopted in 2015.

In accordance with the Plan, the Operational Team was formed, and the obligations of the bodies related to the registration of persons at the border, security of migrants, reception and accommodation, medical protection and hygiene, informing migrants and the public were defined.



The Balkan route is a transit region to EU countries

Montenegro is only a transit destination for migrants from Syria, Iran and Afghanistan on their way to the countries of the European Union. Migrants come to Montenegro through Macedonia, Serbia, Albania and enter Montenegro. In most cases, it was about subsequent movements of illegal migrants, who come from the territory of Greece to the Republic of Albania, less often to Kosovo and Metohija, and then enter Montenegro illegally. During 2020, the Montenegrin route has been somewhat relieved, at least in terms of numbers, by opening another route by which migrants enter Serbia and by the Covid 19 Pandemic, which points to the very good organization of those who organize migration.

Regarding migration, the increase in illegal migrants in 2018 was confirmed in 2019. „During 2019, 7,978 illegal migrants were detained, which is an increase of 60% compared to 2018. All the detained migrants expressed their intention to seek asylum, and so the pressure on the reception facilities in the country continued.“ (www.ec.europa.eu)

On the way to Western Europe, a large number of migrants pass through Pljevlja, a border municipality in the north of Montenegro, which, due to its geographical position, naturally found itself on the migrant route. The municipality of Pljevlja is located on the border of Montenegro, Bosnia and Herzegovina and Serbia. Migrants mainly use the Metaljka border crossing to cross into BiH. Some manage to cross the

border illegally, but there are also those who survive the real Golgotha, who spend several nights in these forests and cliffs, so that in addition to being hungry and tired, they are often injured, trying to reach the promised lands in the west. .

The position of the Government and the Ministry of the Interior is that they must take care of the whole problem on their own, and the international community is there to support them in their processes.

HUMAN RIGHTS OF (ILLEGAL) MIGRANTS

Legal framework:

- **Law on Foreigners**, which regulates the conditions for entry, movement and stay of aliens in the territory of Montenegro.

- **Law on Asylum**, which regulates the principles, conditions and procedures for granting asylum; recognition of refugee status and granting additional and temporary protection;

- **Law on Employment and Work of Foreigners**, which regulates the conditions for work and employment of foreigners, as well as *persons with approved protection in the asylum system in Montenegro*;

- **Law on Free Legal Aid**, which regulates *the right of stateless persons (apatrids) legally residing in Montenegro and persons seeking asylum in Montenegro, to free legal aid*.

In terms of legislation, Montenegro, by adopting the new Law on Foreigners, whose implementation began on March 3, 2018, significantly improved the framework in the area of regular and irregular migration, because it harmonized with most EU directives in this area. In the field of asylum, the adoption of the Law on International and Temporary Protection of Aliens in December 2016, which entered into force on 1 January 2018, harmonized the legal framework with the *acquis communautaire* and international standards. The adoption of this law established an efficient and unique asylum system in which foreigners seeking international protection are guaranteed, as in EU countries, equal chances for success in the procedure, as well as guarantees for the same treatment.

„**The Law allows** for the granting of refugee status or subsidiary protection status, and the government has established a system for providing protection to refugees. Authorities did not effectively use methods such as prioritization or accelerated procedures to manage mixed migration movements.“ (www.state.gov)

„**Access to basic services:** When the asylum procedure began, asylum seekers had the right to access free health and education services for minors in accordance with international standards, although barriers, including linguistic and cultural differences, sometimes limited practical access.“ (www.state.gov)

„**Permanent solutions:** The path to citizenship exists, but it is mandatory to provide evidence that the applicant has renounced the citizenship of his / her country of origin. The government provided support for the voluntary return or reintegration of displaced persons from the countries of the former Yugoslavia. Those who chose the option of integration rather than return to their country of origin had access to the same rights as citizens, including access to basic services and naturalization in the country, but did not have the right to vote.“ (www.state.gov)

„**Temporary protection:** The government also provided subsidiary protection to individuals who did not qualify as refugees and provided such protection to approximately five individuals.“ (www.state.gov) According to the law, persons who have been granted subsidiary protection have the right to a facilitated integration plan for a period of three years after acquiring the status. „The integration plan is tailored to the specific needs of the individual and includes support in accessing education, Montenegrin language classes, job search and accommodation for up to two years. Beneficiaries of refugee status or subsidiary protection may appeal to the Administrative Court against decisions relating to their rights.“ (www.state.gov)

Institutional framework:

The Ministry of the Interior, within which, for the issue of asylum and illegal migration, the following are responsible for:

- **The Asylum Directorate**, which receives asylum applications, conducts the procedure and makes decisions on the asylum application, makes decisions on termination and termination of asylum, conducts the procedure and makes decisions on the status of persons who already have status, issues identity documents abroad.
- **Border Police Sector**, which performs border control (state border surveillance, border checks and threat assessment for state border security); gives consent for the issuance of visas at the request of diplomatic and consular missions of Montenegro; exceptionally issues visas at the border crossing; cancels stay up

to 90 days and temporary stay; cancels the stay of a foreigner on the basis of a visa issued for a longer stay (visa D); sets a deadline for a foreigner residing illegally in the country to leave Montenegro; executes measures of forced removal of aliens; determines the accommodation of a foreigner in the Shelter; determines the obligatory stay of an foreigners who cannot be forcibly removed immediately; decides on the termination of compulsory residence, etc.

- **Shelter for foreigners**, which is organized as an organizational unit of the Department for Foreigners, Visas and Suppression of Illegal Migration.
- „**The Directorate for the Care of Refugees** is a body that performs activities related to the accommodation of asylum seekers, which have been granted refugee status, granted additional or temporary protection in the center for accommodation of asylum seekers or other accommodation facility; accommodation and care of persons with special needs who seek asylum and who have been granted asylum; providing assistance in exercising the right to social protection, health care, etc.“ (www.vlada.cg.yu)
- **The Center for Asylum Seekers** is a special organizational unit of the Directorate for the Care of Refugees.

HUMAN AND CIVIL RIGHTS OF THE DOMICIENT POPULATION

The public and politicians are divided on the issue of migrants. Some sharply criticize the Government's policy in that area, while others call for humanism and the necessity to help those in need.

There is a fear on the part of the public that a larger influx of refugees and immigrants could lead to an increase in crimes such as theft, robbery and physical attacks. We feel that these are stereotypes and prejudices which, unfortunately, accompany the poor fleeing the devastation of war or the difficult economic situation in their countries.

A much bigger problem is that there is no dialogue in Montenegro about the consequences of the migrant crisis for its economy and security, and what its national interests are in that case.

We think that we should act soberly, humanely and in a way that will help to reduce the suffering and suffering of those people who are passing through Montenegro and to provide them with the best possible conditions while they are in Montenegro, of course within our capabilities.

ACCOMMODATION AND STAY OF IMMIGRANTS IN MONTENEGRO

Political asylum

The Law on Asylum was amended in January 2019 and is further in line with the legal achievements of the EU. The adoption of this law established an efficient and unique asylum system in which foreigners seeking international protection are guaranteed, as in EU countries, equal chances for success in the procedure, as well as guarantees for the same treatment.

„**The basic principles** incorporated in the Law on Asylum are as follows: prohibition of return and expulsion, non-discrimination, confidentiality and data protection, family unity, impunity for illegal entry or stay, protection of persons with special needs, gender-related provisions, respect legal order, legal protection, cooperation with UNHCR.“ (www.os.x-pdf.ru)

„**Refugee status** is granted to a foreigner if, on his / her application for asylum, it is established that the fear of persecution due to his / her race, religion, nationality, belonging to a certain social group or political opinion in the country of origin is justified and that he / she cannot or does not want to use the protection of the country of origin.“ (www.os.x-pdf.ru) Refugee status shall not be granted to an alien enjoying the protection or assistance of a United Nations body or agency, other than the UNHCR, and unless protection or assistance ceases, for any reason, and alien status has not been finally resolved, unless the application for asylum has not been completed (Article 36, paragraphs 1 - 3).

„**Supplementary (subsidiary) protection**, such as supplementary protection of refugees in accordance with human rights documents, is granted to an alien who does not meet the conditions for recognition of refugee status.“ (www.ecoi.net)

„**Temporary protection** is an urgent and exceptional measure that provides protection to foreigners in case of mass, sudden or expected arrival from a country where their life, security or freedom is endangered by general violence, external aggression, internal conflicts, mass violations of human rights. or other circumstances that seriously endanger life, security or freedom, and due to the mass arrival there is no possibility to conduct a procedure on individual requests for refugee status. Temporary protection **lasts for one year, but can be extended for six months, and for a maximum of one year.**“ (www.os.x-pdf.ru) A person who has been granted temporary protection has the right to apply for asylum during or after the period of temporary protection.(Article 62, paragraph 1).

Procedures for obtaining asylum protection in Montenegro

A. Applying for asylum

Formal request versus stated intent at the border

„Article 24 of the Law on Asylum clearly stipulates: “An alien may announce his intention to apply for asylum at a border crossing, after which he is allowed to enter Montenegro and provide accommodation. An asylum seeker is allowed to apply for asylum as soon as possible and to issue a certificate of application. The application for asylum is submitted to the Asylum Directorate, in writing or orally in the minutes, in the language that is in official use in Montenegro.” (www.ecoi.net) „If the asylum seeker does not know the language in official use, he may submit the application in the language of the country of origin or in a language he knows. It clearly follows from the above provisions that the **Law on Asylum recognizes the category of “expressed intention”**, and that **a person is an asylum seeker from the moment he expresses his intention** to seek protection of the state of Montenegro, and not from the moment he formally submits a request to the Ministry of Interior.” (www.ecoi.net)

The administration in charge of integrating persons under protection status, which is now under the supervision of the Ministry of the Interior, has been reorganized. „In July 2019, new integration measures were developed, including financial assistance, language and culture courses, school enrollment for children and employment, but so far the number of beneficiaries remains limited.” (www.ec.europa.eu)

„A draft list of safe countries of origin, aimed at speeding up the application process, was adopted in December 2019. It includes the Western Balkans region and Turkey.” (www.ec.europa.eu)

„Although the number of migrants who expressed their intention to seek asylum increased compared to 2018, the number of those who actually apply for asylum decreased in 2019. Only 1,921 asylum applications were registered, which is a decrease of 38% compared to 2018, **which reflects the increased mobility and tendency to leave the country even before applying for asylum.**” (www.ec.europa.eu)

B. The refugee status determination process

An official of the Asylum Directorate, the body responsible for handling the request, to which the alien addressed in order to apply for asylum, inform the asylum seeker of his rights and obligations.

The rights of the persons from the asylum system

„In addition to the right to an interpreter and the right to free legal aid, an asylum seeker has, inter alia, the right to:

- residence and freedom of movement;
- an identification document confirming the identity, legal status, right of residence and other rights prescribed by the law on asylum;
- free primary and secondary education in state-founded schools;
- health care, in accordance with special regulations;
- family unity;
- work within the Center or other facility for collective accommodation;
- social protection and humanitarian aid;
- freedom of religion;
- provided accommodation in the Center for Accommodation of Asylum Seekers or other facility for collective accommodation of the competent authority,
- that a person with special needs is provided with special accommodation and care.“ (www.os.x-pdf.ru)

„Despite the relatively small number of asylum seekers actually remaining in the system, the number of applications actually processed remains limited.“ (www.ec.europa.eu) Due to a pandemic caused by the Covid-19 virus, talks with asylum seekers were suspended in April and May 2020. „They resumed in June after the interview rooms were equipped with appropriate protective equipment.“ (www.ec.europa.eu)

„**The asylum center in Spuž**, with a capacity of 104 beds, is usually used for families and women, while the alternative center on Konik, with a capacity of 225 beds, is intended for single people. It is a privately owned facility that is rented to the competent asylum authorities at an **expensive commercial price**. 71% of asylum seekers have stayed in an alternative center, where, **despite recent improvements, the standards still do not match the standards of a full-fledged asylum center**.“ (www.ec.europa.eu)

Admission costs are paid in full from the budget of Montenegro, without exter-

nal support.

READMISSION OF ILLEGAL IMMIGRANTS WITH COUNTRIES OF ORIGIN OR LAST RESIDENCE

The return policy of foreigners residing illegally in Montenegro is based on ratified international readmission agreements and the Law on Foreigners. When a foreigner, who is staying illegally in Montenegro, cannot return on the basis of a readmission agreement, the return is made in accordance with the Law on Foreigners.

The Law on Foreigners stipulates that a foreigner who is staying illegally, ie who has been imposed a security measure of expulsion from the country, ie a protective measure of removal from the territory of Montenegro or whose stay in Montenegro has been canceled, must leave its territory immediately or within the time limit. . The police determine the deadline within which the foreigner is obliged to leave the territory of Montenegro, and if necessary, can determine the place of crossing the state border, as well as the obligation to report to the official at the border crossing. An appeal may be lodged against the decision with the Ministry of the Interior, within three days from the day of receipt of the decision, and the Ministry is obliged to decide on the appeal within eight days from the day of receipt of the appeal. The appeal does not delay the execution of the decision.

When deciding on the imposition of a protective measure of removal, the following are taken into account: duration of stay, personal, family, economic and other circumstances.

„A foreigner may not be forcibly removed to a state where his or her life or freedom would be endangered due to race, religion or nationality, belonging to a particular social group or political opinion, or where he or she may be subjected to torture, inhuman or degrading treatment or punishment.“ (www.myla.org.mk)

Readmission agreements with neighboring countries specify the obligation to accept persons in summary proceedings without formalities, with prior notice. In particular, these are matters that are within the competence of the Police Administration - Border Police Sector. The competent authorities of the Contracting Parties shall be obliged to accept a third-country national or a stateless person if that person is deprived of liberty in the territory of the other Contracting Party within seventy-two (72) hours after the illegal crossing of the state border. In this way, the return / acceptance procedure is simplified, because the citizenship status of the person is

not determined and there are no deadlines prescribed for the response in the regular readmission procedure (usually this deadline is 15 days).

„**EU-Montenegro readmission agreement** facilitates 15 readmission protocols for implementation signed with EU member states, including an implementation protocol signed with Greece in March 2019. Montenegro has 10 readmission agreements with non-EU countries, including all partners from Western Balkans and Turkey, and has completed negotiations with Georgia. Requests to start readmission negotiations have been sent to Pakistan, Iran, Iraq, Morocco and Algeria.“ (www.ec.europa.eu)

CONCLUSION

Illegal migrants used the area of the green border near the border crossings Bozaj and Sukobin on the border with the Republic of Albania to enter Montenegro, less often the border crossing Kula on the border with Kosovo and Metohija, while in most cases they illegally tried to leave Montenegro on the border with the Republic of Serbia and the Republic of Croatia. During 2020, the Montenegrin route was slightly relieved, at least in terms of numbers, by opening another route by which migrants enter Serbia and by the Covid Pandemic. On the other hand, we have an influx of Algerians and Moroccans who come from the same directions only from different starting positions, which indicates a very good organization of those who organize travel. On the way to Western Europe a large number of immigrants pass through Pljevlja, a border municipality on the North of Montenegro, which, due to its geographical position, naturally found itself on the migrant route. The municipality of Pljevlja is located on the border of Montenegro, Bosnia and Herzegovina and Serbia. Migrants, for crossing into BiH, mainly use the Metaljka border crossing.

In terms of legislation, Montenegro, by adopting the new **Law on Foreigners**, whose implementation began on March 3, 2018, significantly improved the framework in the area of regular and irregular migration, because the Law is harmonized with most EU directives in this area.

„**The Law provides** for the granting of refugee status or subsidiary protection status and thus establishes a system for providing protection to refugees.“ (www.state.gov)

The public and politicians are divided on the issue of migrants. Some sharply criticize the Government's policy in that area, while others call for humanism and the necessity to help those in need.

A much bigger problem is that there is no dialogue in Montenegro about the consequences of the migrant crisis for its economy and security, and what its national interests are in that case.

The Asylum Law was amended in January 2019 and further harmonized with the EU acquis. The adoption of this law established an efficient and unique asylum system in which foreigners seeking international protection are guaranteed, as in EU countries, equal chances for success in the procedure, as well as guarantees for the same treatment. **The Law on Asylum recognizes the category of “expressed intention”**, and that **a person is an asylum seeker from the moment he expresses his intention** to seek protection of the state of Montenegro, and not from the moment he formally submits a request to the Ministry of Interior. The shortcoming of the law is **to provide an effective remedy** in terms of examining applications for international protection.

ECRI notes with concern that asylum seekers whose asylum applications have been rejected do not have an **effective legal remedy** in court in accordance with Council Directive 2005/85 / EC, and it is recommended that the Montenegrin authorities take steps to ensure that asylum seekers can appeal against decisions on an asylum application before an independent and impartial tribunal, including the right to appeal.

Apart from this, the obvious problem is the following:

- providing **a sufficient number of translators**, especially for rare language groups
- serious improvements are needed in current **alternative housing systems**
- the right to free primary and secondary education (but not access to higher education) in schools founded by the state **raises the question of the capacity and possibilities for exercising this right**
- the right to work of asylum seekers and persons under temporary protection

because it is **related only to the performance of work within the “Center or other facility for collective accommodation”**

- The Law does not include the provisions related to the possibility of access to professional development, and access to employment, under Directive 2003/9 / EC.

Combating illegal migration is a significant challenge for the successful conduct of migration policy, and thus one of the priorities in future activities of competent authorities, which require more intensive cooperation and exchange of information, both nationally, regionally and internationally.

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