

**What is (not) written in the Non-paper for Chapters
23 and 24 regarding Serbian progress in EU
accession?**

January - June 2020

klikAktiv

center for development of social policies

What is a Non-paper?

Serbian Ministry of European Integration published on its website the new „Non-paper on the state of play regarding Chapters 23 and 24 for Serbia“ for the first 6 months of 2020. The Non-paper is document issued every six months by the European Commission in which it informs Member States on the Serbian progress in Chapters 23 and 24 of EU integration. Chapter 23 „Judiciary and Fundamental Rights“ and Chapter 24 “Justice, Freedom and Security“ are considered to be the most relevant chapters in EU accession procedure which is why the European Commission pays special attention to the Serbian progress in these chapters. Traditionally, these two chapters are the first ones to be open and last ones to be closed so the EU expects from the EU Candidate Countries constant progress and improvements in the areas covered by these chapters.

One of the main topics within the Chapter 24 is the question of migration, border control and asylum system. Therefore, this chapter of the Non-paper starts with the sentence that *“the Western Balkan route for migrants appears to be firmly established and migrant smuggling networks remain very active as evidenced by reports of increased entries and exits as well as shorter stays of migrants in the reception centers”*.

Complete text of the Non-paper on the state of play regarding chapters 23 and 24 for Serbia from June 2020 can be found on the website of the Serbian Ministry of European Integration, under the Section “Documents/EU documents” on the following link:https://www.mei.gov.rs/upload/documents/eu_dokumenta/Non_paper_Ch_23_24_June_2020.pdf

Summary

The Non-paper provides analysis of the situation in Serbia in the area of migration, border management and asylum system, which does not correspond to the actual situation on the ground nor does it tell-all. Also, some parts of the Non-paper and data provided are not clear nor precise. That’s why KlikAktiv, as an active actor on the ground, provides this analysis of what has been said in the Non-paper and compares it with the actual situation on the ground and situation in migration, border management and asylum system in Serbia. In this document we focused only on the parts of the Non-paper that we find as most troubling ones within the areas of migration and asylum.

For the large part the Non-papers focuses on the “protection” of borders. Increase number of *“interceptions”* at the Serbian border are being noted and praised. Still, according to the EU, Serbia needs to improve its *“efforts to combat smuggling”* mostly through the agreement with Frontex. Despite the fact that agreement between Serbia and Frontex is still not on power, as it has to be ratified by the Serbian Parliament, we learn that the *“joint preparations for the*

operationalisation of this agreement are ongoing". We used this opportunity to analyse more on this agreement and just how harmful it will be for all actors.

European Commission also reflects on the readmission agreement between EU and Serbia and informs us that in 2019 total of 5.270 people have been returned from EU Member States back to Serbia. It assesses that readmission of third country nationals is "*successful*" but it is unclear just how many out of these 5.270 people are non-Serbian nationals. An initiative to sign readmission agreements with countries whom which most asylum seekers come from, such as Iraq, Afghanistan and Pakistan, is also mentioned as something that should be finalised as soon as possible.

Further more, Non-paper concludes that refugee children have access to education as well as that "*Serbia provides a considerable amount of health services to migrants through the public health system*". Our work in the field shows different picture so we numbered examples that prove otherwise.

Non-paper reflects much less to the asylum system than it does to the border management and migrations. It states that Serbia should improve its legislation when it comes to access to asylum but it doesn't explain why what kind of directions. But it provides statistics that in 2019 total of 12.930 individuals expressed an intention to seek asylum and were registered as asylum seekers. Out of that number only 174 of them have lodged an asylum application. This means that only 1,35% of people who have been registered actually had access to asylum procedure and were able to seek international protection. It is clear that this has to change and we provided an oversight how does it happen that such small number of people is registered and even smaller number has access to asylum procedure.

Also, we learn that the Ministry of Interior now uses the single biometric database to identify and register asylum seekers and that "*preparations for connecting to the EU asylum fingerprint database (Eurodac) are in their initial phase.*"

This documents provides in-depth analysis of what is being said in the *Non-paper on the state of play regarding chapters 23 and 24 for Serbia June 2020* and it compares it with the situation on the ground. KlikAktiv is an organisation that provides free legal and social support to people on the move and asylum seekers in Serbia so we are directly familiar with downsides of the current practise and policies in Serbia. We are present on the filed in Belgrade but also in the border area on the north and west (border with Bosnia and Herzegovina, Croatia, Hungary and Romania).

MIGRATION AND BORDER MANAGEMENT

1. Interceptions at the Serbian borders

Non-paper states that *in 2019 total of 4,990 individuals were intercepted at the border which is a significant increase compared to 3,648 individuals who were intercepted at the border in 2018.* This information is given in a very general manner and what is not being said is from which countries were these individuals and if they were at the Serbian border needing international protection because they are escaping war and persecution. It is highly questionable if these 4,990 individuals had access to asylum procedure in Serbia and if “interception” was actually an illegal push-back to the territory of Macedonia/Bulgaria. These doubts come from increased number of testimonies collected from people on the move who have been complaining on the push-backs from the Serbian territory. After the state of emergency in Serbia was revoked in May 2020 testimonies on the push-backs by Serbian police have increased. KlikAktiv’s team interviewed people who claimed to be beaten by the Serbian police, their belongings (mobile phones and money) were stolen and police even released dogs on them. According to their testimonies majority of these push-backs happened on the Serbian-Macedonian border, near the city Presevo.

2. Agreement with Frontex

Furthermore, European Commission considers that *efforts to combat smuggling need to be strengthened, especially through the status agreement with the EU for the deployment of the European Border and Coast Guard Agency (Frontex)*¹. Frontex is an EU agency authorised to assist Member States with implementing the operational aspects of external border management through joint operations and rapid border interventions, risk analysis, information exchange, relations with third countries and the return of returnees. In simple words, Frontex is EU agency paid to protect EU external borders and to “significantly step up the effective and sustainable return of irregular migrants²”. The purpose of the agreement between Serbia and Frontex is to allow Frontex team members to guard external EU borders through their presence on the territory of Serbia. This agreement was signed in 2019 and it gives executive powers to Frontex team members, such as the immunity from the criminal and civil jurisdiction of the Republic of Serbia. The agreement between Serbia and Frontex was already ratified by the EU and it now awaits to be ratified by the Serbian parliament. KlikAktiv wants to point out that over the past years there has been significant number of cases of the violent push-backs conducted by the

¹ Text of the Status Agreement between the European Union and the Republic of Serbia on actions carried out by the European Border and Coast Guard Agency (Frontex) in the Republic of Serbia is available here: <https://data.consilium.europa.eu/doc/document/ST-15579-2018-REV-1/en/pdf>

² This quote is from Regulation (EU) 2019/1896 of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 of 13 November 2019. This wording of the Regulation where people are referred to as “irregular” shows that people who are trying to reach EU in search for safety are not seen as human beings but instead they are referred to as things with irregularities that should be returned.

Frontex team all around EU external borders. Does it mean that such actions will become “normal” on the Serbian territory as well? KlikAktiv expresses great concern for security of all people on the Serbian territory, not only of the people on the move but also of the local population, since Serbian authorities have approved Frontex’s operations on its territory by allowing Frontex’s team members to carry guns on its territory but excludes them from any criminal and civil jurisdiction of its courts. Therefore, we ask – who will protect people from the potential excessive force of Frontex’s team or from the potential criminal acts?

However, despite the fact that agreement between Serbia and Frontex is still not ratified by the Serbian parliament and therefore is still not on power, the Non-paper states that the joint preparations for the operationalisation of this agreement are ongoing. It states that “*international border cooperation was further strengthened and joint patrols are operating along the borders with Montenegro, Bulgaria, North Macedonia, Hungary, Bosnia and Herzegovina and Romania, while the joint patrols with Croatia is still pending.*” Does this mean that Frontex team is already present in Serbia within these joint border controls? When it comes to Frontex employment in Serbia we also want to point out that having in mind the geographical terrain, especially the mountain areas towards the south and plains towards the north it is highly likely that Frontex team will be more focused and successful in “protecting” the Serbian north border and EU borders which will result with refugees being stuck in Serbia without effective access to asylum and protection. It is needless to say that this agreement is highly harmful as it will only contribute to externalisation of EU borders, enforcement of Fortress Europe and continuous violent push-backs of refugees from the EU territory. On the other hand, Serbia will act as a buffer to the European Union by “protecting” it from refugees and forcing them to stay on the Serbian territory where their basic human rights are not protected.

3. Readmissions and forced deportations

In the Non-paper European Commission also reflects on the EU – Serbia readmission agreement from 2007 by stating that “*its implementation is satisfactory*”. Also, EU states that “*Serbia continues to improve the implementation of the third country national provision*”. We should probably clarify that EU-Serbia readmission agreement defines readmission of Serbian nationals, EU Member State nationals and third country nationals. This agreement defines third-country national as any person who holds a nationality other than that of Serbia or one of the Member States. This agreement defines an obligation for Serbia to readmit upon request by a Member State all third-country nationals or stateless persons who do not, or who no longer, fulfil the legal conditions to reside on the territory of the Member State provided that it is proved, or may be validly assumed that such persons illegally and directly entered the territory of the Member States after having stayed on, or transited through, the territory of Serbia. Important factor in the readmission agreement is that Serbian authorities (Ministry of Interior) have to approve such readmission request from the Member State in order for a person to be sent back to Serbia legally.

Until now, EU institutions criticised the effectiveness of the readmission agreement when it comes to readmission of third country nationals. In the “Commission staff working document - Serbia 2019 Report” European Commission stated that *“readmission of third country nationals has been unsatisfactory. Serbia repeatedly disrespected this obligation under the EU Readmission Agreement.”*³

European Commission also shares information that *“8,375 persons were ordered to leave in 2019 and 7,295 in 2018. 5,270 were returned following an order to leave in 2019 (a return rate of 63%) and 5,895 in 2018 (80%).”* The data is not completely clear as it not does specify if these numbers refer both to the Serbian nationals and third country nationals or only to one of these two groups.

Eighter way, we want to reflect on the part where EU considers that readmission of third country nationals is satisfactory. The problem is that these readmission cases are not visible on the ground. KlikAktiv collects testimonies of illegal push-backs from the EU borders and it has collected only three cases of legal readmission of third country nationals from EU Member States back to Serbia. One case of legal readmission was in 2019 when two Afghani men were readmitted from Hungary. Second case was in August 2020 when three Syrian man and one Syrian child were readmitted from Romania. And third case is also from August 2020 when Afghani man was readmitted from Croatia after he was intercepted on the border. Besides these cases, KlikAktiv collected dozens of cases of illegal push-backs, where it is clear that readmission agreement was not considered, since refugees were deported on the “green border”, without any documents and official procedure. So where are the other thousand(s) third county nationals who have been supposedly readmitted back to Serbia legally?

Regarding the topic of readmission, the Non-paper also says that *“negotiations to sign readmission agreements with Ukraine, Azerbaijan, Turkey, Georgia, Belarus and Argentina are ongoing. As initiatives to conclude readmission agreements with Afghanistan, Pakistan, Algeria, Morocco, Iran and Iraq that were launched in 2017 remained unanswered by the respective state authorities, they were relaunched in 2019.”* In the Non-paper is also stated that Serbian Ministry of Interior has *forcibly deported 46 individuals back to their countries of origin in 2019* but that *“the lack of enforceable bilateral readmission agreements with third countries is a serious obstacle for Serbia to manage returns effectively”*. Non-paper only provides an information that Serbia relaunched initiative to sign readmission agreements with most common countries of origin but it doesn’t provide any more details on the status of these readmission negotiations. What we know so far is that in the Government’s official plan for year 2020 is projected that these agreements will be signed and adopted by the end of this year. KlikAktiv has already pointed out the danger of such agreements, especially having in mind the changes in Serbian legislation, which now proclaim rapid deportation procedures without the proper procedural guarantees. These agreements will only further discourage refugees from getting protection from

³ Commission staff working document - Serbia 2019 Report, page 40, available here: https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/Serbia_2019_Report.pdf

Serbian authorities and will set them even further into the hands of smugglers and human traffickers.

4. Social protection and essential needs

When it comes to social protection and fulfilling essential needs of people on the move European Commission concludes that *“while faced with increased mixed migratory movements and a large number of arrivals, Serbia continued to make substantial efforts to meet the essential needs of migrants passing through or remaining on its territory”*. It is not quite clear how did the European Commission made such conclusion when only few paragraphs before it states that *“following the declaration of the state of emergency, migrants, refugees and asylum seekers were prohibited from leaving the reception facilities in order to avoid uncontrolled movements within the country. The number of persons reached 9 000 in April 2020, and two new temporary facilities had to be opened while some facilities were at 325% of their capacity.”* If refugees were under the complete lock down, with their right to movement completely embolished, in overcrowded camps during the period of pandemic how could that be assessed as “substantial efforts to meet the essential needs of migrants”? EU states itself that some camps were operating at the 325% of their capacity meaning that there was just one bed on three people. How does that meet essential needs of human beings?

5. Education for children

In the area of social protection EU states that *“children receive education through their inclusion in the national schooling system. Serbia provides a considerable amount of health services to migrants through the public health system.”* None of this is entirely true.

First of all, not all refugee children in Serbia have access to national schooling system. This usually depends on the location of camp, proximity of school and support by NGOs and local actors. And in those places where children do go to school, education they receive is questionable. In most cases there is no interpreter provided to children nor do they have additional Serbian lessons. Refugee children usually go in the nearest schools, with local children, which is a good practise of integration. It is important for children to have interaction with other children, to have daily routine outside of camp and build their social skills. However, school should also provide education to children, meaning they should gain knowledge in all school subjects. However, language barrier (in Serbian schools all classes are held in Serbian language) makes this very difficult so refugee children are behind their class mates in all subject that require fluent knowledge of language, such as geography, history, science, etc.

Also, EU does not reflect on the access to education in the period during the state of emergency and until the end of school year. Serbia declared state of emergency on 15th March due to the pandemic of Covid19 virus and from that day all schools were closed and switched to online

learning. Classes were broadcasted on the national television in specific time of the day, depending on the grade. Children had to listen to classes on TV and then do their homework and send it to their teacher online (usually via email or Viber groups). This model was used until the end of school year in June. However, refugee children did not have access to education in this period. As it was mentioned, some camps were extremely overcrowded, meaning that there was not enough beds nor food for everyone. In these circumstances it is not very likely that children could have the possibility to follow classes on TV or send their homework online.

6. Health care for people on the move

When it comes to health care, European Commission states that “considerable amount” of health services was provided to people on the move. Again not true. First of all, we want to point out that according to the Serbian legislation people on the move, who are not registered as asylum seekers and therefore are not in the official asylum procedure, don’t have right to health care.⁴ They are only entitled to urgent medical care with a very limited scope. Also, very often they don’t even have access to urgent medical care.

During KlikAktiv’s field visits on different sites in Serbia (Belgrade and north borders) in the period from June to present day we met significant number of people in need of a medical services that was not provided to them. Some of the cases included 12-year unaccompanied boy with a broken leg who stayed in the train station in Sombor (he was sleeping and living in abandoned train wagons) for days without medical assistance. He broke his leg while he was jumping from the fence at the Hungarian border. Hungarian police took him to hospital where doctors put cast on his leg. After that he was pushed-back to the Serbian territory. Only after the several urgencies by KlikAktiv did the social worker from local Center for social welfare went to the spot and referred him to medical treatment. Few weeks later, on the same spot, we met Afghani man with both of his feet broken in the same way. He did not get any medical care in Serbia.

On two different occasions we met two men from Afghanistan in a squat in Subotica, both with mental health problems. One was diagnosed with depression and the other man with anxiety. Both of them had access to doctor and proper therapy in Greece but they were deprived of it in Serbia.

Situation is not any better for the people living in the camps, if they are not in asylum procedure. An elderly woman in a family camp, with a severe form of diabetes was deprived of her therapy and regular check-ups by a specialist. Another Afghani boy was also deprived of medical care twice. First time he was severely beaten by the Croatian police so much that he couldn’t walk properly (he was afraid that his hip and shoulder are broken). Second time he was again beaten by the Croatian police when he tried to cross border. This time Croatian police beat him in the

⁴ Article 236 of the Law on Health Protection (“Official Gazette RS” No 25/2019)

head until he passed out and his friends carried him back to the camp. Despite the fact that he had an open wound on his head, which is definitely and urgent medical case, he was not taken to the hospital. On both occasions he had access just to the camp doctor⁵ who gave him a couple of pain killers. Another Afghani man was in a car accident in which his leg was broken on multiple places. He was taken to hospital where he had surgery after which he was released and accommodated in the camp. However, he never had a follow-up with doctor nor did he ad physical therapy, despite the fact that he could not walk properly since he suffered too much pain when he leans to the broken leg.

In addition, there are dozens of people with less severe medical problems such as cold, flue, body lice, scabies, infected wounds, bug bites, bruises and cuts that did not had any access to health care in Serbia.

ASYLUM SYSTEM IN SERBIA

The chapter of the Non-paper that shows Serbian progress in asylum starts with the following sentence: *“Serbia’s normative, institutional and strategic framework to ensure the protection of persons is almost entirely in place, and being implemented effectively.”*

Further on, European Commission states that *“Serbia needs to further adapt its legislation on asylum and temporary protection as regards effective ‘access to the procedure’ (Art. 36 of the Law on Asylum and Temporary Protection), ‘appeal bodies’ (Art. 21), ‘rights and obligations of applicants/persons under international protection’ (Art. 48-73), ‘free legal aid’ (Art. 56), and ‘safe third country procedure’ (Art. 45).”* European Commission does not provide more details on the necessary legislation changes in these areas. We completely agree with this conclusion, changes in the Serbian legislation are mandatory.

1. Difficult access to asylum procedure

European Commission also looks back at the statistic for the previous two years. It is stated that in 2019 total of 12.930 individuals expressed an intention to seek asylum and were registered as asylum seekers. Out of that number only 174 of them have lodged an asylum application. This means that only 1,35% of people who have been registered actually had access to asylum procedure and were able to seek international protection. It is clear that access to asylum is not effective and that this needs to change, both through the legislation changes and in practise.

⁵ In almost all camps one room is designated as a doctor’s office where general practitioner conducts check ups. This office is not equipped as a proper medical office, it doesn’t have tools nor necessary equipment for diagnosis and further analysis. People are almost never referred to a local hospital for specialist but instead all health conditions are treated with few basic medicines such as pain killers or vitamins.

We want to clarify that the number of 12.950 people refers only to the number of people who have been registered as asylum seekers. These are just the people who went to police station and expressed their intention to seek asylum. This is not a total number of people who have been in Serbia during 2019, both in illegal squats and in camps. This is the big problem that KlikAktiv has been point out for months now. The real number of total people on move who were in Serbia during 2019 is much, much, much higher. There are couple of joint reasons why such a small number of people is registered. One of the reason is because police stations across Serbia are refusing to register people. Police station in Belgrade, for example, very often refuses to register people with excuse that they don't have enough staff at the moment, or they tell them to come back next day (and they tell them the same next day) and sometimes they just send them away without any explanation. Second reason is the fact that people don't have information how the asylum procedure works nor that they even have to be registered by the police in order to access asylum in Serbia. This is because the Commissariat for Refugees and Migration (CRM)⁶ provides false information to people, they don't refer people to the police station for registration and allow them to stay in camps without registration. Also, CRM issues the so called "camp cards" which are basically laminated peaces of paper with identification information and picture of individual but these cards doesn't have any legal power. They are printed on the basic black&white printer, issued without official stamp and are not official document. But people on the move believe that this card is official document and that they gave done their part in securing place in the camp and in the official asylum system. European Commission also concludes that *"overall, access to and provision of information regarding the asylum procedure needs to be improved."*

2. Serbia is preparing to connect to the Eurodac database

Probably the most interesting part of the Non-paper is following: *"There is a single biometric database used by the police for identifying and registering asylum seekers. An electronic database with personal information of asylum seekers is managed by the Asylum Office. Plans have been made to improve the interconnection of these databases in order to speed up the process of verification of identities. Preparations for connecting to the EU asylum fingerprint database (Eurodac) are in their initial phase."*

This part is so interesting because this is one of the rare occasions that plans for Serbia to join Dublin system is mentioned. These plans are somehow kept quite lowkey. There were no open discussions in the Member States if the Serbia is ready to sign Dublin Regulation before it joins EU and if this would really be in the best interest of asylum seekers. Also, these plans are kept lowkey in Serbia as well, professionals from the area of asylum and migration were not consulted but, as we can see, that will not prevent the Government's plans to sign Dublin Regulation and use the Eurodac database.

⁶ Commissariat for Refugees and Migration (CRM) is state institution in charge of running the camps in Serbia

Another thing that we should point out is that the wording of this paragraph is not precise. From what it is stated it could be concluded that Serbian Ministry of Interior would connect existing database with all of its data to Eurodac database in some point in the future. We should state that Serbian law specifically proclaims that all data on asylum seekers are confidential and could not be shared with third persons. This means that, according to the Serbian legislation, Serbian government is not allowed to share existing data from its databases to Member States, at least not until it changes its national legislation which would include sharing personal information of asylum seekers with EU Member States.

KlikAktiv - Center for Development of Social Policies

www.klikaktiv.org

info@klikaktiv.org