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# EN ROUTE THROUGH EUROPE

## On the Western Balkan Route via Serbia

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Due to the armed conflict in Syria and Iraq, an unprecedented number of refugees moved through the Balkans and Central Europe to reach Western Europe during the summer and autumn of 2015. The refugee flow has continued in 2016. As of May 2016, the United Nations High Commissioner for Refugees (UNHCR) estimated that Serbian law enforcement agencies had officially registered over 650,000 people during this wave of migration, even though official registration of refugees in Serbia only started in late September 2015.<sup>1</sup> This case study provides a brief overview of the Western Balkan route and then delves deeper into the particular situation of children on the move in Serbia, with an emphasis on the period of expedited travel in 2015 and early 2016.

# 3

### THE WESTERN BALKAN ROUTE: TEMPORARILY LEGALIZED “FAST TRANSIT”

The organization of recent migration flows through the Balkan countries has been unique and deserves special attention from policy makers involved in migration issues, from border control agencies to service providers. For people on the move, the Western Balkan countries are seen as waystations to Western Europe. In 2015, the Western Balkan route generally started with a sea voyage to Greece, then switched to overland travel through Greece, the former Yugoslav Republic of Macedonia (henceforth fYRoM), and Serbia, at which point some went on to Hungary until that border closed, others through Croatia and Slovenia to Austria, with the majority of Syrian refugees seeking to reach Germany.<sup>2</sup>

#### Before the Crisis

Migration is not a new phenomenon in the Balkan region. Because of its geographical position and its recent history of political crises and wars, the region has long been affected by large-scale movements of people, and has to a considerable extent exhausted its capacity

to deal with migration effectively.<sup>3</sup> In Serbia, the large number of internally displaced persons from Kosovo (still more than 200,000 in June 2016), the close-to-30,000 refugees from the earlier conflict in the 1990s, and the so-called “returnees,” refugees who migrated to Western Europe during the 1990s or later during the Kosovo crises and were, in many cases, forcibly returned, have put enormous pressure on Serbian authorities.<sup>4</sup> While still focused on long-term solutions for their own migrant population, Serbia and other Balkan countries began receiving a constant increase of migrants from Northern Africa and the Middle East – mostly in transit.

Before 2015, the majority of migrants were male and most unaccompanied minors were adolescent boys. Families who chose the Balkan route before the 2015 crisis were mainly lower income and were usually unable to finance their journey to the European Union (EU) easily. Traveling with the help of traffickers and smugglers, they would unwillingly stay in Serbia longer than intended – usually from six to nine months – as the prospects to earn money and fund the rest of their journey were very limited.

### **Gathering Crisis and Individual Country Responses**

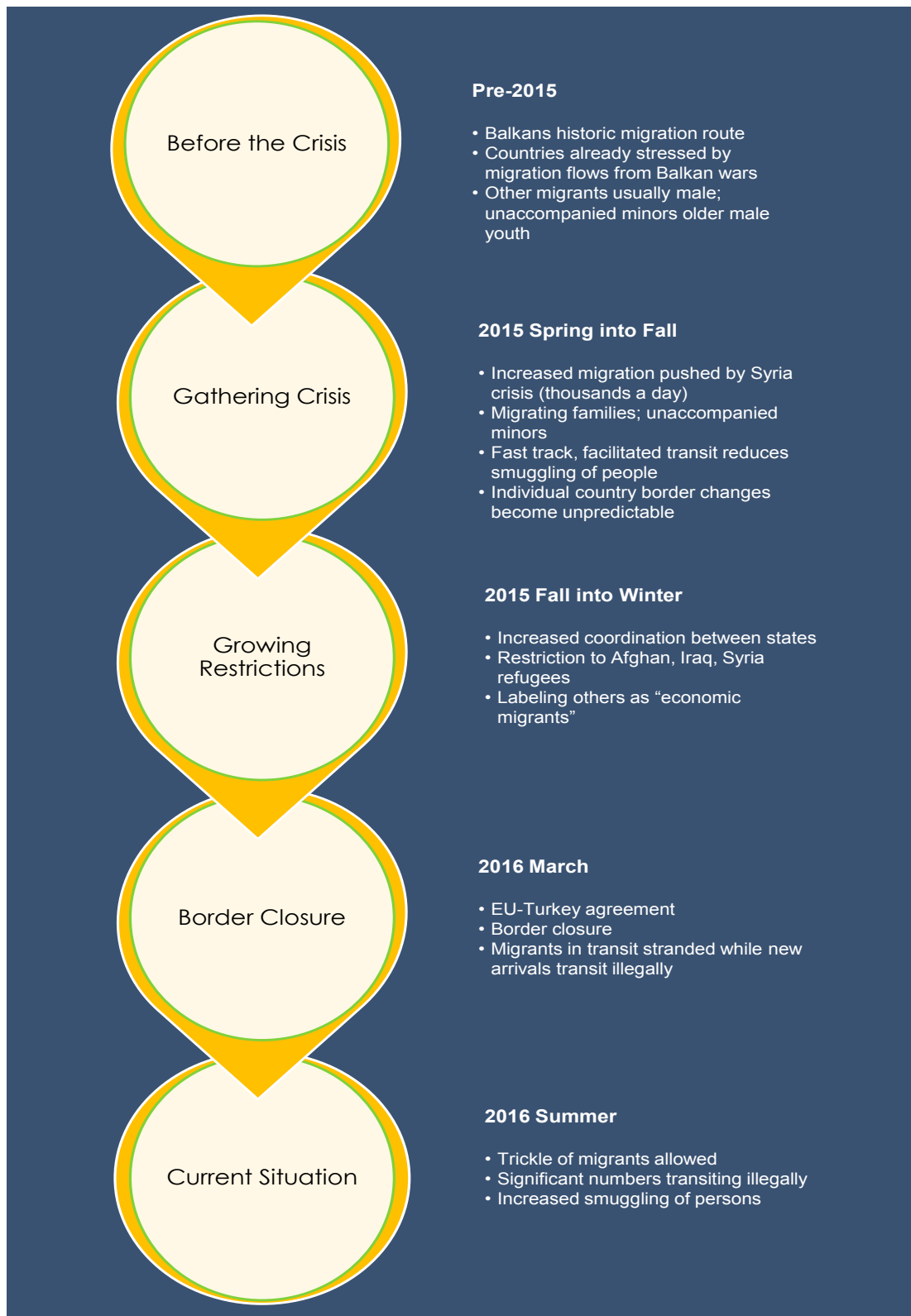
The European migrant crisis of 2015-16 has changed these parameters dramatically. In the first part of 2015, many more migrants began to take the Western Balkan route, with many of them fleeing the war in Syria. The profile of migrants has changed. This movement includes whole families, even villages; single men and women; boys and girls; pregnant and lactating women; babies and the elderly, and unaccompanied or separated children – all with different specific needs, of-

ten sick or injured, left without documents or money after being robbed on the way.

One of the key characteristics of this crisis has been a constant increase in the number of children, including unaccompanied minors, among the migrating population. Children have generally been traveling with one or both of their parents, mainly within their ethnic group, usually accompanied by relatives, family friends, and neighbors. Unaccompanied minors mainly gathered together in a peer group, alone or accompanied by one or two adults. They rarely started the journey from their homes with a precise plan of their destination country. In most cases, they met the group they were traveling with on the way and then continued the journey together, relying on each other’s support to reach Europe. During the journey, some children became separated from their parents for many reasons: by accident due to poor crowd control mechanism, due to a family agreement to make it easier to travel to Europe, due to an unfavorable set of circumstances, or due to the arrangement of field service support.<sup>5</sup>

In this phase, many countries on the route focused their efforts on facilitating fast transit of refugees through their territory, investing significant efforts and resources in strengthening border management. In June 2015, the fYRoM changed its asylum law to allow individuals to travel through the country for 72 hours: before that, entry had been illegal. Countries provided public transportation to help transiting migrants, in some cases at no charge—Croatia offered free train service from Northern Serbia across its country.<sup>6</sup>

As countries became increasingly overwhelmed, they began to try to block the flow. Routes as well as state procedures and bor-



**Case Figure 3.1 Phases of Migration Crisis in Western Balkans**

der policies constantly changed, rendering the movement of refugees unstructured and uncertain. Adjoining countries on the route took individual unilateral action, setting up fences and implementing strict border control checks. These measures have resulted in frequent changes in the direction of refugee flows, to new borders and countries. For example, in September 2015, the Hungarian government built a barbed-wire fence to close the border with Serbia, redirecting refugees to an alternative route through Croatia and Slovenia; a month later, Hungary closed its border with Croatia, forcing the entire flow to Slovenia.<sup>7</sup> The migration wave increased political tensions, sometimes resulting in complete border closure between countries.<sup>8</sup>

### Increasing Restriction

Meanwhile EU leaders worked to make various agreements. They began talking with Turkey about increased financial support for policing of refugees and other cooperative efforts.<sup>9</sup> In October 2015, the European Commission arranged a meeting for leaders of Western Balkan countries, including various EU agencies and UNHCR. The outcome of that meeting was a 17-point agreement which provided for greater cooperation among the countries along the route and created greater restrictions on migrant movements.<sup>10</sup>

Towards the end of 2015, a phased introduction of more-or-less coordinated state policies and measures began, aimed at denying entry to individuals without valid entry documents, primarily targeting migrants from countries outside of Syria, Iraq, and Afghanistan.<sup>11</sup> Most of the unilateral decisions and the measures taken have in effect temporarily suspended states' obligation to fulfil international and European human rights and

refugee protection standards. In late 2015 and early 2016, countries intensified restrictive measures, including the arbitrary decision-making based on nationalities so as to push back those labeled “economic migrants.” When Austria imposed a daily quota at its border of 3,200 refugees in February 2016, both Serbia and fYRoM immediately adjusted their own procedures to match. Later in February, both countries added an additional regulation, denying entry to Afghan nationals. Five days later Slovenia and Croatia imposed a quota of 580 refugees per day.

### Border Closure

The trend of restricting refugee movement climaxed with the deal between the European Union and Turkey, resulting in immediate border closure for refugees as of March 8, 2016.<sup>12</sup> The EU-Turkey agreement turns back migrants whose trip originates in Turkey; it includes a “one for one” principle (for each migrant returned to Turkey, the EU agrees to accept one Syrian refugee from Turkey).<sup>13</sup> This agreement, aimed at stopping the arrival of refugees and migrants into the European Union from Turkey, has undermined EU refugee protection and influenced state policies in countries with large numbers of people stranded at border-crossing points. As a consequence, the migration route previously in existence across Europe fragmented again in the spring of 2016. In contrast to the stated intentions of the EU-Turkey deal (to stop illegal migration), the deal has actually paved the way for trafficking and smuggling activities, and an increase in people's vulnerability to risks en route.

## CHILDREN IN TRANSIT THROUGH SERBIA: MISSED OPPORTUNITIES

To understand the position of migrants once they found themselves in Serbia, this case study focuses on the crisis at its peak: when the transit became fast-tracked, with an average of 7,000 arrivals registered on a daily basis. Though this phase was characterized by highly organized and structured transit, very limited resources were made available to capture those at high risk — in particular, children on the move. After the initial self-organized migrant movement during the summer of 2015, significant resources have been invested to set up a “one-stop” registration system to provide digital data registration of refugees. But, again, very little was invested in providing shelter, food, or medical support to those in need. The tide of refugees and migrants transiting through Serbia placed onerous pressure on fragile national child protection instruments, which collapsed under the surge of children.

As mentioned earlier, children are an increasing proportion of refugees in the 2015-16 crisis. In Serbia, the percentage of children grew from 27 percent of refugees and migrants in September 2015 to 35 percent in December 2015<sup>14</sup> to more than 42 percent of the April 2016 monthly number of refugees registered in Serbia.<sup>15</sup> Children on the move face a wide range of risks: from not being recognized as children (either explicitly or implicitly by restrictions and discrimination in exercising rights and accessing services) to the widespread and systematic violence, robbery, illegal detentions, and ill-treatment refugees face.

Minors traveling without adults are additionally vulnerable. As the Learning Review above notes in detail, children on the move face specific risks due to the lack of family emotional support, but also as a result of heightened risks of discrimination in access to water, shelter, or food; injuries; ordeals during the journey; infectious diseases; and gender-based violence. One positive note in the crisis is that because of its magnitude, authorities along the Western Balkan route at different points in time have legalized transit travel and provided some support for speedy transit, reducing traditional protection risks for children on the move, such as traveling illegally and relying solely on support of smugglers and traffickers.

Unlike other countries in the region, where law enforcement and border control take the lead in managing migration-related services, in Serbia responsibility for coordination and management of registration/reception centers rests with a social welfare ministry: the Ministry of Labor, Employment, Veteran, and Social Policy. This choice sends the message that the refugees are, first and foremost, people in need. Despite this positive stance, and despite the fact that those responsible for managing the migration crisis were primarily protection — rather than law enforcement — agents, the national child protection system as a whole failed to implement its obligations under the UN Convention on the Rights of the Child during this massive migration wave.<sup>16</sup> This case study suggests that the reasons for failure go beyond a simple lack of capacity in the system to serve such large numbers of refugees.<sup>17</sup> Rather, the system lacked the child-specific focus necessary to adequately address the specific needs of children on the move in this



refugee wave. Also, the multi-country nature of the migration flows (with children transiting through several countries within a few weeks) required a coordinated multi-national approach that transcended discrete national protection systems. In what follows, the case study identifies both positive and negative lessons for immediate implementation, as well as some conceptual misinterpretations that require further rethinking. To understand how the protection of refugee children was influenced by the concentration on facilitating rapid transit, it is helpful to identify typical movement scenarios in the Balkan route and the protection challenges to which they gave rise.

### **A typical journey during peak migration**

Refugee informants report that the most difficult part of the journey was leaving their country of origin. They often spent months or even years living in fear, with bleak prospects and little hope, often displaced or separated from their family. The boat ride to the Greek islands, a calculated risk, comprised the greatest hazard on the journey. Once they reached the islands, the refugees took public ferries to mainland Greece and then buses to the town of Idomeni on the border with fYRoM. From Idomeni, refugees crossed over into fYRoM on foot. Once they entered fYRoM, they had to obtain registration papers at the Gevgelija temporary reception center using Greek registration papers. These documents allowed them to continue through fYRoM by train to reach Tabanovce temporary reception center on the border with Serbia.

On arrival at Tabanovce, refugees walked four kilometers through no man's land to Miratovac, a small village situated on the

Serbian side of the border.<sup>18</sup> Although a small distance, the conditions on the route, in particular during cold winter months, with no electricity or support, created great hardship, almost as difficult as the sea crossing. This walk was exhausting, especially for those with burdens to carry, mothers with babies, small children, and the elderly. And it was almost impossible for disabled people, particularly when the temperature dropped below -20°C. At Miratovac village, refugees were counted and transported by bus to Presevo, the temporary reception center in southern Serbia. Here refugees received (conditional upon the correct Greek and Macedonian documents) a 72-hour pass, also called the intention-to-seek-asylum paper, which gave them legal grounds to be present in Serbia and allowed them to leave the country within 72 hours, or stay and seek asylum in Serbia.

Once in Presevo, refugees could choose between buses (35 euros, with frequent departures and taking about 7 hours), or trains (cheaper at 15 euros, but departing only once a day and taking 11 hours). For the onward journey north, the ticket from Presevo was the last payment they would have to make as the train from Sid (the Serbian city bordering Croatia) and the rest of the route was free of charge, with public transportation provided by the governments of Croatia and Slovenia. Depending on whether they travelled by bus or train, refugees would arrive in Belgrade (if they were waiting for someone), at the Adasevci motel on the highway near Sid, or at the Sid temporary reception center. From Sid they would take the train to Croatia within 24 hours.

Serbia has an additional entry to the Balkan route, the border crossing at the Bulgarian border. Significantly fewer refugees chose

this route, with an average of 300 people daily, even at peak. Serious abuse by smugglers and national police has been frequently reported by refugees arriving to Serbia via the Bulgarian border. The route through Bulgaria allowed refugees to avoid the treacherous sea crossing from Turkey to Greece, but led them to travel by foot through cold mountains and forest. Their journey was usually much harder before they reached Serbia than those taking the fYRoM route; it also took more time for them to get to Belgrade.

Regardless of the route they took, refugees were desperate to continue their journey as fast as they could. Those forced to stay usually needed medical treatment, funds, or documents to continue the journey, or had decided to pause their travel in order to reunite with members of their family or group. Once on the train from Sid to Slavonski Brod temporary reception center in eastern Croatia, they could finish registration in both Croatia and Slovenia within just few hours and be on the doorstep of a desired destination country.

Although the EU-Turkey deal has reduced the number of migrants significantly and blocked those known to be en route, stranding them temporarily, movement has not completely stopped. Crossing the border has once again been made illegal for irregular migrants: most have been considered economic migrants rather than refugees or have been turned back to apply for asylum in Greece.<sup>19</sup> However, refugees are still arriving and transiting through the country, particularly through smuggling routes. The smuggling routes have remained operational throughout and

traffic on them intensified after the closure of the legal route.

### Missed opportunities

The protection scheme for children transiting through the Western Balkans is predefined by the national child protection systems in place. The United Nations (UN) Convention on the Rights of the Child (CRC), ratified by the Republic of Serbia, affirms children's right to protection and recognizes the state's ultimate responsibility to respect, protect, and fulfil this right. However, the experiences of child protection actors, including national stakeholders, international agencies, and nongovernmental organizations (NGOs), reveal tremendous challenges in using national instruments for child protection in this context.

Serbia has adopted a "systems approach" to child protection standards, with a promising trend towards sensitization and special attention for children affected by migrations.<sup>20</sup> Moreover, a decade of sustained child welfare reforms combined with recent Serbian experience with its own forced migrant population have produced a robust foundation for Serbian child protection approaches to migrant children.<sup>21</sup> The Ministry of Labor, Employment, Veteran, and Social Policy has acted proactively to develop tailor-made protocols and procedures for children affected by migration. In particular they had identified indicators to help frontline workers assess children's vulnerabilities. They also produced a handbook, *Instructions on Actions of Centres for Social Work*.<sup>22</sup> However, the crisis had abated somewhat before the handbook's protocols were adopted in late June 2016.



The highly organized, state-run migration route through the Balkan region — with registration in each country, organized safe traveling methods, free transportation, and information sharing mechanisms — had an impact on the traditionally well-developed trafficking and smuggling business in this region. For example, the Presovo train (at 15 euros) or bus (at 35 euros), with thousands of people traveling on it every day, might bring close to a quarter of a million euros a day! Money now went to the state and private companies that would, at other times, most likely have been paid to smugglers. Traditional trafficking modalities and smuggling schemes were significantly reduced, but they still continued, even during the legal transit period. Clearly they were underreported: with more than 1.3 million asylum seekers reaching Europe in the 2015–2016 migration wave,<sup>23</sup> Serbia reported only one case of human trafficking,<sup>24</sup> likely a significant underestimate given the well-established human trafficking system in the region.

Given the visibility and accessibility of the refugees during this crisis, it should have been easy for frontline workers, police, migration authorities, and social workers to identify and assist those in need. Yet reports from NGOs have shown that the state failed to use the national child protection matrix, leaving frontline workers powerless when faced with the protection cases identified and referred to them. For example, a February 2016 child protection evaluation found significant gaps in the care and services available to children in need, including inconsistencies in formal referral mechanisms, lack of child-safeguarding standards in place, lack of appropriate alternative care arrangements, and lack of access to schooling and psychosocial support.<sup>25</sup> Some of those interviewed for

this case study noted the hazards of referring children to the rigid national child protection system rather than simply allowing them to continue their trip on their own.<sup>26</sup> Although not in agreement about whether those children were at risk and whether child protection authorities should intervene or let them continue with their trip, all interviewees agreed that the national system does not cater well to the needs of children on the move.

### Protection of unaccompanied minors

The increased vulnerability generated by migration creates additional challenges in responding adequately to the protection and support needs of unaccompanied and separated children. Most of these children who pass through Serbia come from Afghanistan and Syria, with some from Iraq; smaller numbers also originate from Eritrea and Somalia. Children on the move through Serbia have been determined to proceed on to their final destinations as soon as possible and not to stay in Serbia.<sup>27</sup> For the majority, Germany and Sweden are the final destinations, but some youth want to go to Norway, Italy, Austria, and Belgium. While families with children move to the European Union to improve future prospects for their children, children traveling alone to Europe are often moving to improve future prospects for their family, with the hope of paving the way for the family's move via family reunification regulations in the European Union.<sup>28</sup> Serbia is neither an EU-member state nor a part of the Schengen zone (the area of free travel across national borders comprising the European Union). It is also not covered by the Dublin regulation (an EU law defining the country responsible for processing the claim of an asylum seeker, usually the country of first entry into the European Union). Thus Serbia can do little

to impact the legal status of children or advance their plan to enter the European Union, regardless of their country of origin. Consequently, children are either left to continue their trip independently or are stranded in the national child protection system with no action taken in regards to family reunification.

Article 12 of Serbian Family Law defines the assistance and protection necessary for unaccompanied minors and charges the network of centers for social work with performing this role. Serbia provides welfare services at the local level through more than 140 centers of social work.<sup>29</sup> In the area of social protection, centers for social work ensure the exercising of rights, the implementation of applicable provisions, and other activities.<sup>30</sup> When an unaccompanied child is identified, the relevant center for social work, with jurisdiction over the municipality where the child was found, is the key public authority to be immediately contacted. It is the agency empowered to make decisions concerning the child, including acting as the guardianship authority. A case manager is charged with ensuring protection and necessary assistance to the unaccompanied child.

Until 2015 legal guardians were hardly ever appointed for unaccompanied children. On the rare occasions when they were, the unaccompanied minor had usually long since traveled on beyond Serbia; as a result the majority of appointed legal guardians never met the children for which they were guardians. Even though Serbian regulations provide that only social workers can be legal guardians for unaccompanied minors, the complex and fast-moving situations of young migrants during the recent crises have put pressure on this system. In practice, and most unusually, the legal guardianship of unaccompanied minors travelling with a group of other migrants

has often been given to an older group member, without an appropriate assessment of the best interests of the child.<sup>31</sup> As a result of these delays and informal arrangements, in practice only rarely and in very sensitive cases would the local center for social work actually appoint a legal guardian and refer the child to the state child protection system.

Another aspect of the system's ineffectiveness is the limited accommodation options available for children in need of care. Although local guardians have the formal option of placing the child in a foster family, in practice fostering resources are very limited and families are not able to accommodate unaccompanied minors.<sup>32</sup> The other accommodation alternative is residential care for children, with a total capacity of twenty-two beds (two for girls).<sup>33</sup> The residential facility and most foster families are located far from the migrants' route through Serbia with entry/exit points in border regions. Because the municipalities on the border have small populations, their centers for social work have relatively few employees. The high influx of migrants, transiting in a very short period of time, generated protection challenges that exceeded realistic capacities. Overall, the centers for social work failed in their public duty to unaccompanied children: they proved unable to assess the risks, to ensure that actions taken were in the best interest of the child, or to appoint efficient and effective guardians.

## PROTECTION RISKS IN SERBIA AND THE CONVENTION ON THE RIGHTS OF THE CHILD

All of the items discussed above contributed to the national child protection structure’s failure to ensure implementation of basic CRC principles.<sup>34</sup> The following section uses a matrix of core child rights principles to capture key protection lessons arising from the unique Serbian child migration context. It focuses on the needs of the most vulnerable

children on the move, unaccompanied boys and girls.

### Age of a child

Article 1 of the Convention defines a “child” as a person below the age of 18, and the obligation of the state is to ensure protection for all children under 18. Serbia accepts this obligation and has incorporated it into domestic legislation. However, the failure to effectively assess age when doubts arose led to huge

**Case Table 3.1 Protection Risks for Children on the Move in Serbia Related to CRC Principles**

|                                      |  |
|--------------------------------------|--|
| Age of Child                         | Misregistration of younger children as 18                                |
|                                      | Insufficient process for recording age                                   |
|                                      | Some measures had unforeseen effects                                     |
|                                      | Unaccompanied boys under 18 treated as adults                            |
| Right to Non-Discrimination          | Acceptance of migrants from only certain nationalities is discriminatory |
|                                      | Particularly affected Afghan boys  |
|                                      | Selected aid to families is discriminatory                               |
| Best Interests of the Child          | Legal complexities and international aspects obstacles to best interests |
|                                      | National policies of legal guardianship not effective                    |
|                                      | Best interests conflict with child protection policy                     |
| Child as Rights Holder               | Migrating children often more mature                                     |
|                                      | Children want voice in process   |
|                                      | Independent guardian needed  |
| Right to life, survival, development | Children supported by adults on journey, even smugglers                  |
|                                      | Informal networks important  |
|                                      | Children often see protection authorities as barriers to journey         |

discrepancies between the official statistics for asylum seeking children passing through Serbia - 172,965 for 2015 – and the far larger confirmed number of children who reached Western Europe, according to field reports. Clearly the procedure for registering children was defective.<sup>35</sup> The only mechanism used to assess children’s age was taking a statement from any accompanying adult. Local NGOs reported cases of widespread misregistration of minors as adults, even when they were only 13 or 14 years old.<sup>36</sup> A worrying number of unaccompanied children received registration papers with a birth date of January 1, 1998—purporting to show that they had already turned 18 at the time of travel. While it is true that in some countries unaccompanied minors have been reluctant to claim they were under 18 (e.g. Italy) to avoid being sent back to their country of origin, those transiting through Serbia were generally aware that there would be no consequences for them if they claimed to be under 18. The local border police took on the responsibility of registering unaccompanied minors from mid-October 2015 and seemed to have reinforced the practice of children claiming to be 18: according to official Serbian statistics, the number of unaccompanied minors dropped significantly in October and November despite the scale of refugees crossing at that time. Minors were regularly accused by Croatian border officials of deliberately falsifying their papers as the age in the documents clearly contradicted the children’s physical appearance; this discrepancy resulted in many of these children being refused entry into Croatia.

These circumstances partly explain the ongoing controversies about official numbers of registered unaccompanied minors. While the European Asylum Support Office (EASO) and

Eurostat report that 88,245 unaccompanied minors applied for asylum in the 28 EU member states in 2015, Serbia only registered 10,642 unaccompanied minors in 2015, a figure similar to that provided by neighboring countries.<sup>37</sup>

Even when age was not an issue, some well-intentioned measures targeting children generated negative consequences. Priority fast-tracking queues for women and children, intended to afford them enhanced protection, in fact sometimes led to accidental family separations, and the traumatic consequences flowing from them. On the other hand, the fast track procedure was not made available to all children - unaccompanied boys under 18 were often treated as military-age adults and tracked with single men and thus, de-prioritized for any services available, including food, clothes, and shelter.

### Right to non-discrimination

A child’s migration status directly affects his or her ability to exercise rights and is pertinent to Article 2 of the CRC and *the right to non-discrimination*. The state is responsible for ensuring the rights of all children within its jurisdiction – including refugee, migrant, and asylum-seeking children, regardless of their or their parents’ citizenship or migrant status. The unilateral policy measures that the states along the route introduced during 2015–16 have particularly affected unaccompanied minors. The decision to accept migrants only from Syria, Iraq, and Afghanistan (excluding all others), followed by the later restrictions refusing Afghan refugees, affected a majority of unaccompanied minors; of the select group of unaccompanied minors who applied for asylum in the European Union in 2015, more than half were from Afghanistan.<sup>38</sup>

Unaccompanied minors are not only affected by discriminatory measures introduced by states, but also by humanitarian interventions that restrict aid to adults and thus fail to help unaccompanied children. For example, cash vouchers introduced by humanitarian agencies were meant to allow stranded refugees to continue their trip, but did not cover unaccompanied children under 18.<sup>39</sup> This selective approach to aid exposed particularly vulnerable constituencies to enhanced risks of abuse and exploitation.

### The best interests of the child

The principle mandating consideration of *the best interests of the child* has been particularly controversial over the past several months in Serbia, not only because of its critical importance for children on the move but also because of the complexity involved in implementing it. The principle requires a comprehensive but rapid analysis of the situation and circumstances of the child, including the child's perspective — an analysis complicated by limited resources, language barriers, and lack of means to verify information. The international nature of migration is not well addressed by national child protection authorities, whose capacities to make and act on informed decisions are limited to their own jurisdiction. In addition to the practical challenges just noted, there are frequently legal complexities that prevent child protection authorities from acting in the child's best interests and from providing the support children need.<sup>40</sup>

This observation is exemplified by the common situation in which it is in the best interests of unaccompanied children to allow them to continue their journey, even though national regulations prohibit children from

traveling without a legal guardian. Even when there is an adult traveling with a child who could properly be appointed as a guardian (such as a relative or neighbor), a center for social work cannot officially endorse this appointment because Serbian law excludes non-nationals from acting as guardians. These challenges surfaced during the winter 2015 debates about the social protection system and its suitability for migrant children; some suggested that the Commissariat for Refugees and Migrants would be a more appropriate custodian of migrant children's protective needs than the centers for social work. These debates resulted in some policy revision, including a new Draft Asylum Law which stipulates placement of children over 16 in asylum centers.

### The child as a rights holder

Article 12, which recognizes *the child as a rights holder* and agent in decision-making relevant to his or her interests, is directly linked to the best interests principle. Preconditions for exercising the right to participate are access to information and an effective channel for the child to be heard. In the case of unaccompanied minors, the concept of the child's evolving capacities should be carefully observed in the context of this crisis. Children who undertake such a long journey often have had to rely on themselves to act and behave in a much more mature manner than their actual age would warrant.

Consultations conducted with children have shown that children trust decisions made by their parents, but often consider decisions by the authorities or professionals as not being in their best interests.<sup>41</sup> They believe their best interests were not taken into account primarily because in the decision-making process,



they did not have the opportunity to express their view of the best solution for them.

In the case of Serbia, social workers serve as the key actors in decision-making processes. The modern cornerstone and key protection instrument for unaccompanied minors is rooted in the concept of the legal guardian, which is mandated to social workers in Serbia. Olga Byrne, in her analyses of proven models of support for children on the move, finds the existing Serbian legal structure inappropriate. The appointment of professionals from the residential care institute or the local center for social work is not suitable for these children due to conflicts of interest. She instead advocates the concept of an independent guardian in a position to make an impartial assessment and decisions.<sup>42</sup> A recent report from the EU Fundamental Rights Agency warns: “Children deprived of guardianship are particularly susceptible to being trafficked.”<sup>43</sup> The current migrant situation and rise in unaccompanied minors has exacerbated this situation, which local frontline workers in Serbia have confirmed.<sup>44</sup> Byrne advises exploring the Slovenian practice of appointing guardians from NGOs.<sup>45</sup> This practice has proven to be more advantageous than the model where guardianship has been granted exclusively to government agencies because it allowed for greater flexibility and better impact on children. The need for alternatives to the existing model is also explored in the analyses of implementation of the UN guide on alternative care for children in the West Balkans (including Serbia), where Nevenka Žegarac investigates a model of a national guardian institute for cases of unaccompanied minors.<sup>46</sup>

## Right to life, survival, and development

Article 6 represents one of the fundamental principles since it guarantees every child *the right to life, survival, and development*. It implies not only physical survival, but their right to develop their full capacity; it is one of the most sensitive when it comes to children on the move. Most of these children have left their home searching for safety, better living standards, and personal welfare. Being on the way to a better life, even if the final destination is unknown, brings relief. However, being on the move often entails a range of life-threatening experiences — in particular for those traveling through illegal channels. On this mission they often take on an adult role, supporting their siblings or themselves if left unaccompanied.

Save the Children research has established that, whether accompanied or unaccompanied, a child is usually strongly supported by some adult through the journey. Parents or family members are highly involved in migration planning and protection for a child. An assessment of unaccompanied minors in November 2015 confirmed this. When consulted on their support networks while being on the move, children named the role of local communities, ethnic or peer groups, and even smugglers as crucial for their safe journey.<sup>47</sup> Children may see protection authorities as a barrier for their movement, forcing them to seek even more hidden (and dangerous) routes. That is why it is critical to work on improving the protective role of these individuals rather than considering them only as risk factors. As Mike Dottridge described in his example of Western African children migrating from rural to urban areas in search of work,<sup>48</sup> children on the move mainly rely on someone from their ethnic group or commu-



nity. While the role of these individuals has often been questioned as exploitative, Dottridge tells of a study that shows that they do play an important role in assisting children and keeping them safe. Supporting children in transit requires a focus on building on and strengthening their resiliencies and existing survival strategies.

## LESSONS LEARNED AND WAYS TO MOVE FORWARD

Both positive and negative lessons from this crisis confirm the need to consider carefully the role and responsibility of national child protection systems in responding to the situation of children in transit across borders. Serving the needs of people transiting through several countries within a few weeks requires a unified approach that cannot be derived only from national protection schemes. The responsibility of protecting children on the move, and in particular those separated from their families or traveling unaccompanied, must be shared among countries or mandated to an international or regional agency with the capability of ensuring safe passage for children on the move, including fast-tracking and family reunification. This paper calls for strong and integrated cross-country systems of identification, referral, and data management, including data on unaccompanied and separated children, that has to be put in place to ensure adequate and efficient protection which would allow access to individualized solutions for children rooted in their best interests. This is also not solely the responsibility of transiting countries, but also countries of origin and, even more importantly, countries of destination.

At the national level, the responsibility of children on the move should rest with social

protection agencies and not migration agencies, particularly when it comes to separated or unaccompanied children. Strong linkages need to be made between migration agencies and those with the mandate to guarantee protection of children on the move. The current Serbian model of a decentralized child protection system where responsibility and assistance is the responsibility of the social workers from local municipalities has proven to be dysfunctional and inefficient for children in transit. The guardianship concept, a major element for protection of unaccompanied minors, needs to be reconsidered; alternatives, such as independent guardians, should be explored to better serve the protection of unaccompanied minors.

Last but not least, it is an obligation of all the actors to step outside of traditional thinking and ensure that the resiliencies and strengths that children gain through the journey are acknowledged. Protection platforms should build on those strengths instead of insisting on upholding conservative protection approaches, since those approaches may no longer be functional and sometimes may even have an adverse effect on the well-being of a child.

## ENDNOTES

1 United Nations High Commissioner for Refugees (UNHCR), “Daily Estimated Arrivals per Country - Flows through Western Balkans Route,” May 23, 2016, available at <http://data.unhcr.org/mediterranean/regional.php>. Note also that this figure does not capture those who have been transiting Serbia undetected, particularly before the September 2015 start of official registration.

2 REACH, “Migration trends and patterns of Syrian asylum seekers travelling to the EU,” Assessment Report, September 28, 2015.

3 This case study primarily explores the case of Serbia, although looking regionally is also important for understanding child protection implications for children on the move. Although this paper does not look at other countries in the region, other Western Balkan countries like Croatia and the former Yugoslav Republic of Macedonia (henceforth fYRoM) have inherited similar robust social protection system and have similar legislative and institutional solutions.

4 Serbian Commissariat for Refugees and Migrations (SCRM), Press statement issued on June 20 2016, available at <http://www.kirs.gov.rs/articles/navigate.php?type1=3&lang=SER&id=2551&date=0>.

5 Meeting notes from Serbia Child Protection Sub-Working Group, held on October 30, 2015.

6 Assessment Capacities Project (ACAPS), “The Balkan Migrant Crisis: An Introduction,” Geneva: January 2016, 2-3.

7 Fergal Keane, “Migrant crisis: Hungary’s closed border leaves many stranded,” BBC, September 15, 2015, <http://www.bbc.com/news/world-europe-34260071>.

8 In September 2015 tension escalated between Croatia and Serbia, reaching the lowest point in relations between the two countries since the end of the Balkan Wars, resulting in stoppage of movement for cargos and vehicles with Serbian license plates. A few weeks of tension followed with strongly worded mutual protest notes and blame for circumstances beyond individual country control. See Lyse Doucet, “Migrant Crisis: Croatia closes border crossing with Serbia,” BBC, September 18, 2015, <http://www.bbc.com/news/world-europe-34286432>.

9 See European Commission (EC), “EU-Turkey joint action plan” Fact Sheet (Brussels: EC, October 15, 2015).

10 See European Commission (EC), “Meeting on the Western Balkans Migration Route: Leaders Agree on 17-point plan of action,” Press Release (Brussels: EC, October 25, 2015) and “Leaders Agreement, Leaders’ Meeting on refugee flows along the Western Balkans Route,” October 25, 2015, [http://ec.europa.eu/news/2015/docs/leader\\_statement\\_final.pdf](http://ec.europa.eu/news/2015/docs/leader_statement_final.pdf).

11 On November 18, 2015 the fYRoM, Serbia, and Croatia only allowed refugees from Syria, Iraq, and Afghanistan to enter their territories. Soon after, fYRoM and Serbia denied entry to Afghans.

12 About the border closing, see Patrick Kingsley, “Balkan countries shut borders as attention turns to new refugee routes,” *The Guardian* online (March 9, 2016); for more about the agreement see European Union (EU), “EU-Turkey statement,” European Council: Press Release, March 18, 2016, <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>; see also Jacqueline Bhabha and Vasileia Digidiki, “The Mean Bargain: The EU/Turkey Refugee and Migrant Deal,” FXB Center for Health and Human Rights at Harvard University website, April 18, 2016.

13 EU, “EU-Turkey statement”; see also Bhabha and Digidiki, “The Mean Bargain.”

14 UNICEF, “Call for Action: Protecting of the rights of refugee and migrant children arriving in

Europe” (New York: UNICEF, 2016), 2, <http://www.childrightsmanifesto.eu/palermo-call-for-action-for-the-protection-of-the-rights-of-refugees-and-migrant-children-arriving-in-the-eu>.

15 UNHCR, “Serbia Inter-agency Operational Update: May 2016,” (with monthly figures for April), May 31, 2016, available at <http://data.unhcr.org/mediterranean/regional.php>.

16 UN General Assembly, Convention on the Rights of the Child (henceforth CRC), 1577 UNTS 3, November 20, 1989.

17 Unless otherwise noted, the data and conclusions in this report are based on the experience of its primary author Nevena Milutinovic; her firsthand experience of working several years in this area in Serbia includes the refugee response crises in 2015 and 2016.

18 The walk was initially eleven kilometers until October 2015 when the UNHCR and other agencies started providing buses for part of the route.

19 Restriction of movement of refugees has also affected humanitarian actors on the ground. Croatia imposed new regulation criminalizing attempts to assist refugees (the Draft Law on Foreigners). Also, Hungarian law prohibits offering rides — even for free — to people who have entered the country illegally.

20 Stephanie Delaney et al, *Understanding and applying a systems approach to child protection: a guide for program staff* (Geneva: Terre des Hommes, 2014), 15-16.

21 European Commission, “Commission Staff Working Document: Serbia 2015 Report,” May 2016, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2015/20151110\\_report\\_serbia.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf).

22 Ministry for Labor, Employment, Veteran, and Social Policy, *Instructions on Actions of Centres for Social Work and Residential Social Security Institutions in the Provision of Care and Accommodation to Unaccompanied Underage Migrants* (in Serbian), No. 110-00-00469/2015-14 (Belgrade: Ministry for Labor, July 10, 2015).

23 In 2015, EU+ countries (EU member states + Norway and Switzerland) recorded 1,349,638 asylum applications with only 5 percent of repeated applicants in 2015, see European Asylum Support Office, “Latest asylum trends – 2015 overview,” May 24, 2016, more at <https://www.easo.europa.eu/information-analysis/analysis-and-statistics/latest-asylum-trends>; also European Union Agency for Fundamental Rights (FRA), *Separated, asylum-seeking children in European Union Member States, Summary Report*, 2010, [http://fra.europa.eu/sites/default/files/fra\\_uploads/1693-SEPAC-summary-report\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1693-SEPAC-summary-report_EN.pdf)

24 FXB interview with Marijana Savic (Director, NGO Atina – Anti-trafficking Action) on May 3, 2016.

25 Gordana Ivkovic-Grujic, “Women and Children’s Protection Assessment Report: Serbia,” International Rescue Committee and Atina, February 2016, updated March 2016, [http://www.atina.org.rs/sites/default/files/Women%20and%20Children%E2%80%99s%20Protection%20Assessment%20Report%20Serbia%20IRC\\_Atina.pdf](http://www.atina.org.rs/sites/default/files/Women%20and%20Children%E2%80%99s%20Protection%20Assessment%20Report%20Serbia%20IRC_Atina.pdf)

26 FXB interviews conducted with Marijana Savic (Director, NGO Atina), Vladimir Sjekoca (Coordinator, Asylum Info Centre), and Marko Sijan (Program Coordinator, Centre for Youth Integration) in April and May 2016.

27 “Only 3 percent Considering Asylum in Serbia,” in UNHCR-IOM, *Protection assessment in Presevo*, March 2016.

28 Save the Children, “Rapid Assessment on Unaccompanied and Separated children in transit in Serbia,” (Belgrade: Save the Children, November 2015).

29 International Monetary Fund (IMF), *Serbia and Montenegro: Poverty Reduction Strategy Paper*

*and Progress Report*, IMF Country Report 06/141 (Washington, DC: IMF, April 2006), 36.

30 Article 41 of Serbian family law says: A child may be a beneficiary of rights or services if the family circumstances or other living circumstances have jeopardized the child's life, safety and development, that is, if evident that the child cannot achieve a level of development without the social welfare support.

31 FXB interview with Vladimir Sjekoca (Coordinator, Asylum Info Centre and former employee of Commissariat for Refugees) May 14, 2016.

32 FXB interview with Dobrila Grujic (Director of Centre for Family Placement, Ministry for Labor, Veteran, Employment and Social Policy, Republic of Serbia) May 18, 2016.

33 Placement in the existing "Vasa Stajic Institute" in Belgrade is controversial because the same building also houses a correction facility for children in conflict with law. The residential care section is separate and is not locked, but it lacks capacity in terms of staff and in availability of services. It lacks translators and does not have Wi-Fi, a survival element for unaccompanied minors.

34 All further references to the Convention or the CRC in this paper refer to this convention; the framing review offers further discussion of the Convention.

35 *Protector of Citizens Ombudsperson (Serbia), Regular Annual Report of the Protection of Citizens for 2015* (Belgrade: March 16, 2016), 56, <http://zastitnik.rs/attachments/article/1431/Annual%20Report%202015.pdf>

36 This is particularly the case on the border with Bulgaria, where the Ministry of Interior manages the registration center. Evidence is available in Protection Coordination Meeting Notes and it has been documented in local CSOs report, more information available at <http://www.praxis.org.rs/index.php/en/reports-documents/praxis-reports>

37 European figures, see Eurostat, "Asylum applicants considered to be unaccompanied minors - annual data including 2015," tps00194 in Main Tables for Asylum and Managed Migration, reached from <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/main-tables>; Serbian figures, see Protector of Citizens, *Annual Report 2015*, 56; "neighboring countries" is an estimate taking into consideration other possible landing areas for asylum seekers such as Italy—in any case the figure is much higher than the official Serbian registration seekers.

38 EASO, "Latest asylum trends – 2015 Overview," 2016, <https://www.easo.europa.eu/sites/default/files/public/LatestAsylumTrends20151.pdf>

39 The program was implemented by NGO Philanthropy; it prioritized families with children, the elderly and disabled people, so it did also exclude adults not in those categories.

40 Daniela Reale, *Away from Home: Protecting and Supporting Children on the Move* (London: Save the Children UK, 2008), 20.

41 Aleksandra Galonja, Tijana Moraca, Masa Avramovic, and Tommaso Diegoli, *Children on the move: Status and programmes of support and protection of children on the move in the Republic of Serbia* (Belgrade: Atina, 2013), 64.

42 Olga Byrne, *Identifikacija dokazanih modela podrške za decu u pokretu sa preporukama za adaptaciju i primenu u Srbiji* [Identification of Proven Models of Support for Children on the Move with Recommendations for Adaptation and Implementation in Serbia, available only in Serbian] Sarajevo: Save the Children, 2016, 44-45.

43 European Union Agency for Fundamental Rights, *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, 2014, 54.

44 FXB interview conducted with Weihui Wang (Protection Specialist, World Vision in Serbia) April 26, 2016.

45 Byrne, [Identification of Proven Models], 53.

46 Nevenka Žegarac, *The child's rights to quality care – review of the implementation of the United Nation guidelines for the alternative care of children in Western Balkan countries* (Belgrade: Save the Children, 2014), 102.

47 In an assessment conducted on unaccompanied minors transiting through Serbia and as reported by frontline workers, children are relying on support from smugglers and the connections made with them. These people are often reported as the first point children would approach if in trouble. Save the Children, "Rapid assessment: Unaccompanied and Separated Children"; see also Galonja, *Children on the move*, 64.

48 Mike Dottridge, *What Can You Do To Protect Children on the Move?* (Geneva: Terre des Hommes, November 2012).

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