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The Role of Serbia in the European Migration Crisis – Historical, Normative and Institutional Aspects

Dear colleagues,

This *exposé* will encompass three divided but coherent issues. First, I will make a slight return to the historical perspective of migration processes *grasso modo*. The second part of the speech will be related to the normative framework in context of migrations with special overview on further harmonisation of the national legislation and capacity building. Finally, I will present the institutional design of the Republic of Serbia in migration matters.

Migration, or in Serbian language “seoba” is a phenomenon as old as the human kind. People moved from one place to another for various reasons, searching for a better life, happiness, running away from wars and conflicts, climate change and natural disasters. There are many historical examples showing the impact and significance of migration on civilization processes. *Exempli causa*, one of the main reasons for the disappearance of the Western Roman

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Empire is the increasing pressure from "barbarians" outside the Roman culture that contributed greatly to its collapse. The colonization of America and the creation of a "brand new world" is also a good example for migration that resulted in a brand new concept: nation state – a concept that was soon embraced by the entire world.

In Serbia, my native country, migrations were and still are actual phenomenon that exceed space and time components. For my people, migrations were always much more a practical question and a matter of survival than academic or scientific topic. The first great waves of exoduses in Serbian history took place in the 17th and the 18th century. Running from Turkish revenge for being involved in defending the "eastern gates of Europe", Serbs were forced to move into some parts of the Habsburg Empire. Two centuries later, during the First World War, entire military commands and soldiers, Government and King, along with common people, peasants and workers, crossed Albania and temporarily settled in Greece, just to come back to their homeland years later, in great military victory. The price for our freedom was enormous: we lost one third of our population that gave their lives for peace and freedom. At the same time, despite of a great demographic decrease, Serbia welcomed

Russian emigrants who were escaping from the Bolshevik regime. Having in collective memory all Serbian migrations and paths of suffering that we experienced, the positive and open attitude towards the “strangers” was always present in our culture. These “strangers” were representatives of Russian intelligence, and they, in return, greatly contributed to the reconstruction of Serbia after war damages. Also, these people gave their contribution to the development of the country in many different areas, such as law (Solovyov, Taranovsky, Ostrogorsky), medicine, architecture, engineering and others.

The list of Serbian migration-tragedy events is very long, and I could talk about it for a long time, but I just want to mention the last Serbian exodus that took place in the 1990s. In total, more than 600 000 people were forced to move from Croatia, Bosnia and Herzegovina and the Southern Serbian autonomous province of Kosovo because of wars. Most of these people were embraced in Serbia, and they have never been discriminated by any means, or considered less valuable citizens of our country. This number is very similar to the number of migrants that nowadays affect the whole of Europe.

In this perspective, I would like to raise the question: If Serbia, as a small and not so rich state, had capacities to embrace this amount of people, why does the multicultural, open-minded and much wealthier Europe hesitate to do the same? We should not forget that now “old” European nations were also uninvited guests on European soil. Dear colleagues, since we are all law practitioners and as such followers of goddess Justitia, we should not allow particularistic and nationalistic interests of ethnicity, religion and colour of the skin to prevail the concept of human solidarity, justice and equality of every man.

The role of Serbia in the actual migrant crisis events is guided by the principles that I have just mentioned. As a responsible state and society, Serbia took actions in order to provide the migrants decent conditions and treatment. Bearing in mind that Serbia is rather a transit state than a destination country for these unfortunate human beings, we focused on the protection of human rights and humanitarian aid for the asylum-seekers and migrants. Special attention is paid to the prevention of human trafficking and exploitation as well as particular vulnerability on unaccompanied children. In this respect, I would like to underline the involvement and help received from civil society organisations such as Red Cross

and others. Also, I am using this opportunity to emphasize the attitude and behaviour of common people, citizens of the Republic of Serbia who helped in numerous individual actions. They were bringing packages of fresh water, their own clothes, food and other necessary items for the preservation of health and prevention of diseases. All in all, because of this humane treatment, Serbia is receiving praise and recognition by government officials, international organisations and intellectual elite from all over the globe.

Normative framework in context of migrations

Since the process of accession to the European Union is a priority for the Republic of Serbia, in the last several years the government has developed sectoral strategies and laws on its way towards harmonising the legislation of the Republic of Serbia with the *acquis*. The area of migration in Serbia is regulated by the Law on Foreigners, Law on State Border Protection, Law on Migration Management and Law on Employment of Foreigners. The strategies of the Republic of Serbia by which the migration policy is created include: Strategy for Combatting Illegal Migration in the Republic of Serbia for the period 2009-2014, Migration Management Strategy

for the Integrated Border Management in the Republic of Serbia and Strategy for the Reintegration of Returnees under the Readmission Agreement, together with the accompanying Action Plans.

The laws of the Republic of Serbia governing the area of migration are largely compliant with the Directives of the EU related to the area of legal and irregular migrations. The new Law on Employment of Foreigners provides a higher level of harmonisation with the Directive 2009/52/EC. The Law stipulates misdemeanour liability of employers who employ a foreigner contrary to the provisions of the Law, that is, a foreigner who has not been granted temporary stay or permanent residency (irregular migrant). The law on Employment of Foreigners prescribes inspection supervision of the fulfilment of the conditions of employment of foreigners which is performed by the Labour Inspectorate. Moreover, in addition to fines, a protective measure of prohibition of conducting business activities of such an employer for a certain period of time in case an irregular immigrant is employed is also prescribed. The law on Employment of Foreigners does not stipulate criminal liability of the employer in the case of employment of irregular migrants. The second stage of harmonization of national legislation with the EU legislation will tackle that.

Action Plan for Chapter 24 – Freedom, Justice and Security is going to continue with carrying out activities for gradual harmonising with the *acquis* and with the final result of full harmonisation with EU Directives. In the first phase, harmonisation with the relevant pieces of the *acquis* will be in the areas of: granting temporary residence to third-country nationals for the purpose of family reunification; granting permanent residence to third-country nationals; granting temporary residence to third-country nationals for the purposes of studies, pupil exchange, professional training or voluntary service, as well as scientific research; returning illegally staying foreigners - which defines illegal entry, transit and residence; strengthening of the penal framework to prevent facilitation of unauthorised entry, transit and residence; the residence permit issued to third-country nationals who are victims of trafficking in human beings or have been the subject of an action to facilitate illegal immigration and who cooperate with the competent authorities - these have been partially implemented in the national legislation. In the second phase, the Republic of Serbia shall conduct activities for the purpose of harmonising the national legislation provisions with those directives, provisions, regulating sanctions against employers of illegally staying foreigners; issuing of the Blue Card - a unique residence and work permit for third-country nationals; and granting

of a humanitarian residence permit for irregular migrants who are participants in a process before a state authority.

For the purpose of full harmonisation with the Directive 2002/90/EC what should be envisaged in the national legislation is exclusion of the element of acquisition of material gain from the criminal offence of facilitating illegal crossing of the state border and illegal transit, that is, an intention only to assist a person in illegal crossing or transit should be regarded as a basis for existence of this criminal offence.

Further harmonisation of the national legislation and capacity building

With a view of further harmonisation of the national legislation and the fact that the existing capacities will not be satisfactory after the adoption of new legal solutions, it is necessary to invest efforts into providing new accommodation facilities for this category of persons. On basis of the results of the assessments envisaged by Action Plan for Chapter 24, additional accommodation capacities will be provided, either through refurbishment of the existing facilities or building new ones.

Special attention should be paid to the accommodation of minors and other vulnerable groups and mechanisms for short-term boost of capacities should also be established in case of the inflow of numerous irregular migrants. Simultaneously, activities will be carried out so as to improve cooperation with all the stakeholders on international, national and local level, for the purpose of the implementation of existing Readmission Agreements with all the neighbouring countries and implementation of the Strategy on the Reintegration of Returnees on the basis of the Readmission Agreement with its accompanying Action Plan. The main activities foreseen by the Strategy aimed at the improvement of housing, economic empowerment and access to education are implemented by local self-governments and funded by the national budget.

The Readmission Agreement with the EU as well as eighteen Implementing Protocols are signed with the following twenty countries: Italy, Slovenia, France, Hungary, Great Britain, Austria, Malta, Slovakia, Germany, Romania, Bulgaria, Estonia, the Czech Republic, the Benelux Union, Cyprus, Greece, Sweden and Portugal.

Bilateral Readmission Agreements are signed with the following eleven countries: Bosnia and Herzegovina, Denmark, Canada, Norway, Croatia, Switzerland, Macedonia, Moldova,

Albania, Montenegro and the Russian Federation. Readmission Agreements are planned to be signed with Turkey and Ukraine as well. There is a plan to sign the Readmission Agreement Implementing Protocol between Serbia and the European Community on persons staying illegally within the Kingdom of Spain, and within the Republic of Portugal. In this sense, Serbia is dedicated to adherence to agreements signed with the EU when concluding its bilateral agreements with third parties. Taking into account that Croatia is an EU Member State, a Protocol will be concluded between the Republic of Serbia and the Republic of Croatia for the implementation of the Readmission agreement with the EC.

Serbia recognises the need to complete the network of bilateral readmission agreements with neighbouring countries and that these need to be compatible with EU readmission agreements with third countries.

Institutional framework in context of migration

The area of migration management in the Republic of Serbia is multi-sectoral by its nature and, consequently, the competences in this area are divided among several state authorities. The

institutional framework in the area of migration monitoring in Serbia consists of all the relevant institutions involved in the migration system on the basis of laws, normative acts and strategies. These are primarily: the Ministry of Interior, the Commissariat for Refugees and Migration, the Ministry of Foreign Affairs, the Ministry of Justice, and the Ministry of Labour, Employment, Veteran and Social Policy of the Republic of Serbia. Furthermore, civil society and international organisations are also the stakeholders involved in the area on migration management.

The Commissariat for Refugees and Migration of the Republic of Serbia as the central authority (focal point) in the area of migration management has established a system for collecting data and information on migration flows and preparing national migration profile. The system should be further developed and improved in order to have statistics aligned with requirements of Regulation 862/2007/EC. In that sense the Commissariat for Refugees and Migration, within its competences, shall monitor the implementation of harmonised legislation in the area of migrations. The Annual Migration Profile of Serbia is developed in line with the international standards. According to the Law on Migration Management, local migration councils have been established in 128

local government units and these are composed of representatives of various institutions on the local level relevant for the realization of the rights of migrants, with the goal to coordinate activities of local administration, police administration, employment service, school administration, local trustee, health centre, a centre for social work, the Red Cross and civil society organisations. The establishment of local councils as multi-sectoral bodies has created basis for constant cooperation of the Republic and local authorities. On the path of the Republic of Serbia towards fulfilment of European standards, the coordination between the Commissariat for Refugees and Migration, the Ministry of Interior and other administrative bodies, in particular at the local level, needs to be further developed.

The Republic of Serbia will keep on delivering trainings, providing funds for purchase of appropriate equipment and developing the existing infrastructure, for the purpose of the implementation of harmonised legislation and as an answer to the problem of irregular migration. The existing capacities of 144 persons at the Reception Centre for Foreigners currently satisfy accommodation needs of irregular migrants, bearing in mind that people willing to seek asylum are sent to one of the existing Asylum

Centres, and those accommodated at the Reception Centre stay there until their return.

Within the existing Reception Centre for Foreigners, it is necessary to provide separate rooms for families, as well as accommodation for vulnerable groups. For the purpose of accommodating irregular migrants in the Reception Centre for Foreigners in Padinska Skela, especially bearing in mind the needs of minors and other vulnerable groups, refurbishing of 2 rooms for accommodation of mothers with children (8 persons) was finished in June 2015.

Conclusion

We should not forget that Europe played an important role in defending the founding principles of human rights, affirming that all human beings are rights holders and that all human rights are equal and interdependent. The European Union and its Member States have saved the lives of many men, women and children trying to cross the Mediterranean Sea. Some European States, however, have chosen to ignore the plight of desperate migrants and asylum-seekers leading to flagrant violations of their human rights. In light of this, we urge all European states to take and share responsibility for their

role in addressing this urgent challenge, through a collective and well-coordinated process.

Our obligation to the preservation of civilisation achievements is even bigger now than it was two and a half centuries ago when the Founding Fathers in the American Declaration of Independence pleaded: “We hold these truths to be sacred and undeniable; that all men are created equal and independent, that from that equal creation they derive rights inherent and inalienable, among which are the preservation of life, and liberty, and the pursuit of happiness.”