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# Serbian migration policy concerning irregular migration and asylum in the context of the EU integration process[*]

**Abstract:** In this paper I would like to present Serbian migration policy concerning irregular migration and asylum in the context of the attempts of the Serbian state to become a member of the European Union. I would describe the history of the asylum system prior and after the implementation of the independent asylum system in Serbia in 2008. My presentation of the Serbian migration policy would be channelled by the analysis of some particular political issues, such as the externalization of the EU borders' control, as well as some relevant elements of the European integration process, like visa liberalization. The second, more culturally specific dimension of the issue would be accessed through the demonstration of both legislative and public conceptualizations of the irregular migrants, asylum seekers and refugees in Serbia.

**Key words:** asylum system, asylum seekers, refugees, externalization of the EU borders' control, visa liberalization, Serbia

The year 2008 could be considered as a threshold of the Serbian migration policy: the new law on asylum came in force and the dialogues about visa liberalization for the Western Balkans countries began (about visa liberalization see Kacarska 2012). These marked two important directions for both national and transnational migration practice, one leading to freer movement of the Serbian nationals and the second one imposing a new type of migration control of third country (neither EU nor Serbian) nationals passing through Serbian territory. The axis of this presentation would comprise the notions of asylum, asylum seekers and refugees, since the irregular migration would be viewed only in relation to asylum. This would make all the other forms of

irregular migration redundant and thus enable focusing on specific population and aspects of Serbian migration policy. The presentation would be delivered in the following order: first I will outline legislative and political context in which the transformation of the notions of refugees and asylum could be traced, than I will specify the phenomena of visa liberalization and externalization of the EU borders control when the geopolitical context would be given prominence, and in the end I will give an account of the existing conceptualizations of the irregular migrants, asylum seekers and refugees in Serbia.

## The development of legal definitions of *asylum*, *refugee* and *irregular migrants* in Serbia

Asylum is a form of international protection granted to people fleeing persecution or other considerable harm in their own country.[1] As an instrument of protection, it has a long history. "The concept of asylum has been in existence for at least 3,500 years and is found, in one form or another, in the texts and traditions of many different ancient societies... *From early times, asylum had both political and humanitarian dimensions*. The ancient practice of granting internal sanctuary – often on a temporary rather than permanent basis – in holy places reflected respect for the deity and the Church, while the grant of asylum by kings, republics and free cities was a manifestation of sovereignty. As the power of the monarchy grew, the right to grant asylum increasingly became the prerogative of the state and the inviolability of internal asylum in holy places declined correspondingly" (UNHCR 1993, Box 2.1., italics by author). At the beginning of the XX century, international community began to deal with the problem of refugees and to take over the responsibility for protection and help of the refugees from the national institutions. Thus the League of Nations accepted a model of international action for helping the refugees what resulted in the adoption of several relevant international agreements (UNHCR 2007; see also UNHCR 2004, article 1A). The Second World War gave the prominence to the instrument of asylum: the right to seek refuge became a fundamental human right specified in the article 14 of the UN 1948 Universal Declaration of Human Rights.[2] Moreover, it demonstrated the urgent need for some new, wide-ranging international instances in order to overcome the problems of *ad hoc* inaugurated agreements and unspecialized institutions dealing with the refugees (UNHCR 2007). Therefore the Geneva Convention on the Protection of Refugees had been approved on the special

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[1]   http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm accessed 27th of May 2014.

[2] http://www.un.org/en/documents/udhr accessed 27th of May 2014.

UN Conference in 1951 (UNHCR 2004). Together with the 1967 Protocol Relating to the Status of Refugees (New York Protocol), it represents the basic document which regulates the status of refugees (Ibid.). The documents define who and under which circumstances could be considered a refugee, set out the rights of individuals who are granted asylum, and specify the responsibilities of the states which grant the asylum. Thus, a refugee is "a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (UNHCR 2004, A1 and A2). Thereafter, in 1950 the UNHCR was formed as a special UN agency mandated to "[...] lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide… It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country. It also has a mandate to help stateless people".[3] The UNHCR Statute surpasses some of the historical and geographical boundaries of the Convention, which originally relates to the events which occurred before 1951 and in Europe.[4] *The mandate of this agency is being exercised at the request of a state's government or the UN itself.* In the later case, the people who are granted asylum are usually referred to as *mandate refugees*: "Persons who are recognized as refugees by UNHCR acting under the authority of its Statute and relevant UN General Assembly resolutions. Mandate status is especially significant in States that are not parties to the 1951 Convention or its 1967 Protocol".[5]

Yugoslavia has signed both the 1951 Convention as well as the 1967 Protocol but it has never brought a special law that would define asylum procedure. On several occasions, and namely after Soviet intervention in Hungary in 1956 as well as after the assassination of Chilean president Allende in 1973, the Yugoslav Government made *ad hoc* decisions to grant asylum to seekers from Hungary and Chile. In the article 202 of the 1974 Constitution of SFRY,[6] as well as in the article 50 of 1990 Constitution of SFRY, it is stated that for the persons supporting democratic ideas and movements, social and

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[3] http://www.unhcr.org/pages/49c3646c2.html accessed 27th of May 2014.

[4] http://www.unhcr.org/3b66c39e1.html accessed 27th of May 2014.

[5] http://www.icmc.net/glossary/term/307 . accessed 27th of May 2014. See also UNHCR 2007, E 16 (page 5).

[6] http://mojustav.rs/wp-content/uploads/2013/04/Ustav-SFRJ-iz-1974.pdf accessed 27th of May 2014.

national liberation, freedom and rights of human personality or for freedom of scientific or artistic creation, the asylum right would be granted (Jelacic 2013).[7] But there have been no laws that would specify the concrete asylum procedure. In 1976 Yugoslavia made gentlemen's agreement (an agreement which does not have a written form) with UNHCR: UNHCR was to conduct asylum procedure on Yugoslav territory and to decide who according to the Convention and the Protocol could get the status of refugee. The condition was that the refugees did not reside in Yugoslavia after their status had been decided, but to be replaced to safe third countries, and usually USA, Canada and Australia. In 1980 Yugoslavia brought the Law about sojourn and movement of foreigners which established the distinction between the asylum and refugee.[8] While the *asylum* was reserved for "foreigners who had been prosecuted for his support of democratic ideas and movements, social and national liberation, freedom and rights of human personality or for freedom of scientific or artistic creation," the refugee was the one who "left the country whose nationality he holds or in which he has permanent residence in order to avoid prosecution due to his progressive political strivings or his national, racial or religious affiliation," (translation from Serbian by the author). The underlying idea was that a state had the sovereign right to chose to whom it would grant asylum, while the status of refugees was considered to conform to the internationally agreed standards. Nevertheless, UNHCR conducted the asylum procedure according to the Geneva Convention and the New York Protocol from 1978, when the UNHCR office was opened in Belgrade, until 2008, when Serbia inaugurated its independent asylum system. The seekers, who came legally to Yugoslavia, just went to the UNHCR office in Belgrade or on the Belgrade Airport and filled in the form for application. UNHCR organized their stay near Belgrade until the procedure was over and the person left Yugoslavia. Those who came illegally but wanted to apply for asylum had to serve short sentence for illegal border crossing in the jail before being transferred to the Centre for Foreign Nationals in Padinska skela, where UNHCR representatives came, took them over from the police and moved them to rented accommodation in Belgrade until the procedure was over and the seekers left Yugoslavia either to a safe third country if the refugee status had been granted, or to the country of origin if the refugee status had been denied. All those who were granted refugee status were thus mandate refugees, even though Yugoslavia ratified the 1951 Convention and the 1967 Protocol.

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[7] http://mojustav.rs/wp-content/uploads/2013/04/Ustav-iz-1990.pdf accessed 27th of May 2014.

[8] http://www.informer.co.rs/docs/zakon-o-kretanju-i-boravku-stranaca.pdf accessed 27th of May 2014.

There have been several refugee flaws (all the information received from UNHCR Serbia). In the end of 70's and the beginning of 80's the people from Czechoslovakia comprised the majority of the asylum seekers. In the end of 80's thousands of Rumanians came fleeing from Ceausescu regime. In the very beginning of the 90's the majority of the asylum seekers came from Albania. When Yugoslavia began to disintegrate, a new national law about refugees coming from ex Yugoslav republics was adopted in 1992.[9] These were so called *national refugees*, people coming to the country perceived as a home country and usually from the "across-border" Diaspora, while the people who asked for asylum under UNHCR mandate, were seeking for *international protection*. This law did not have much in common with the 1951 Convention. It focused on predominantly humanitarian support to the people and defined refugees as people from former SFRY (Krstic 2012).

The Constitutional Charter of the State Union of Serbia and Montenegro from 2003, in order to come in line with the prerequisites for the process leading to the eventual ratification of the Stabilization and Association Process agreement, and precisely it articles 82 and 83 concernig asylum and illegal migration,[10] brought in some changes in the national legislature. The article 38 of the 2003 Constitutional Charter states that everyone who is prosecuted on the basis of his or her race, religion, nationality, political opinion or membership to some social group, would be granted asylum in the State Union.[11] Moreover, the admission of the State Union of Serbia and Montenegro to the Council of Europe in 2003, which marked the beginning of the EU integration process of the Serbian state, brought the issue of the Law on asylum forward. The State Union was to adopt it in one year's time. However, only a so called Outline law on asylum of the State Union of Serbia and Montenegro was made in 2005, which was to serve as a basis for separate asylum laws to be brought in the constitutive republics, that is, in Serbia and Montenegro, in one year time (compare Jelacic 2013).[12] Nevertheless, the State Union dissolved, so these directives stayed unrealized (see Petronijevic 2006). The Constitution of the Republic of Serbia from 2006 in the article 57 anticipates the right on refuge and stipulates that the law should regulate it (Jelacic 2013).[13] Further-

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[9] http://www.surdulica.org/Surdulica/Uploads/Site/Zakon17.pdf accessed 27th of May 2014.

[10] http://www.pks.rs/SADRZAJ/Files/SSP%20ssp_prevod_sa_anexima.pdf accessed 27th of May 2014.

[11] http://www.tuzilastvorz.org.rs/html_trz/PROPISI/povelja_o_ljud_i_manj_pravima_i_gradj_slobodama_cir.pdf accessed 27th of May 2014.

[12] http://www.unhcr.rs/media/Zakon%20o%20azilu%20Srbije%20i%20Crne%20Gore.pdf accessed 27th of May 2014.

[13] http://www.parlament.gov.rs/upload/documents/Ustav_Srbije_pdf.pdf accessed 27th of May 2014.

more, in the article 16 it is stressed that generally accepted international norms and standards are legally bounding for Serbia, and thus the 1951 Convention and 1967 Protocol as well as the other regional and universal international conventions concerning human rights (for the list of concrete acts concerning asylum see Ibid., 226).

Despite the general consent of the Serbian governments that the asylum procedure and migration management was something that should be formulated in the respective laws, nothing happened until these came in focus of the Serbian short-term migration policy: the Serbian government was offered a viewable and certain visa liberalization with the EU states if the law on asylum had been adopted and realized. In order to enhance the dialogues, on 19th July 2007, the Serbian Government made a working group for coordination of the activities leading to visa liberalization, such as the identification of the priorities and preparation of the action plan for the relevant institutions (Grupa 484, 2008). Accordingly, the Law on asylum was adopted in 2007 with the postponed beginning of the application: the period of six months was left to allow the allocated institutions to organize in order to accomplish their respective roles in the asylum procedure. It came in force on 1st of April 2008 and this marks the beginning of the independent Serbian asylum system – Serbia, and not UNHCR due to its mandate, became the agent to process the asylum claims and grant the asylum (for the description of asylum practice in Serbia from 2008 see Stojic Mitrovic 2014). Furthermore, the existing Law about movement and sojourn of foreigners was altered into the Alien law in 2008, and it came in force on 1st of April 2009.[14] The previously existing distinction of the asylum and refugee was abolished and now these concepts represented two phases of the same process: as it is used in the EU *acquis* about migration, "an asylum-seeker is someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated."[15] Since the roadmaps on visa liberalization (see below) dictate the migration management, in 2009 the Strategy on Migration Management was brought.[16] It eventually resulted in the adoption of the Law on Migration Management in 2012. It defines basic concepts and principles, specifies the organs and their respective roles, and regulates the central data basis in the field of migration management.[17]

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[14] http://www.mup.gov.rs/cms/resursi.nsf/zakon%20o%20strancima.pdf accessed 27th of May 2014.

[15] http://www.unhcr.org/pages/49c3646c137.html accessed 27th of May 2014.

[16] http://www.kirs.gov.rs/articles/migo.php?type1=59&lang=SER&date=0 accessed 27th of May 2014.

[17] http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2012/3118-12Lat.pdf accessed 27th of May 2014.

The goal of the asylum procedure is to examine whether a person qualifies for the refugee status and thus for the international protection or not. The main problem is perceived to lay in the so called *mixed migrations: refugees and the asylum seekers travel alongside with the so called economic migrants, and they use the same routes and ways of border-crossing, which may be considered as irregular in the majority of cases*.[18] While in the field it is very difficult to distinguish among these categories, since the same persons can obtain and give up (or lose) the status of an asylum seeker in different countries or in different periods of time, UNCHR and European laws insist on this distinction. According to UNCHR, "migrants are fundamentally different from refugees and, thus, are treated very differently under international law. Migrants, especially economic migrants, choose to move in order to improve their lives. Refugees are forced to flee to save their lives or preserve their freedom."[19] The interconnectedness of the categories of the irregular migrants and the asylum seekers does not lie only in the realm of migration practice, where the people classified by laws and organizations into categories of the asylum seekers, prospective refugees and the economic migrants travel together. Those statuses are legally and chronologically connected. As an asylum seeker may or may not turn out to be recognized as a refugee, an irregular migrant can legalize his presence in a country by asking for asylum and thus becoming an asylum seeker. An asylum seeker can end up as a refugee and thus confirm and prolong his or her legal stay in a country if the asylum application was accepted. On the other hand, if the asylum is denied, he or she faces deportation and thus is treated as an irregular migrant caught residing illegally in a country.

While the asylum, refugees and the asylum seekers are defined positively, the irregular migrants are usually defined negatively: they are those who do not hold valid permits for entering and/or staying in a state. More or less, the legal definition of the irregular migrants ends here. Albeit, it is worth mentioning that the 1980 Law about Movement and Sojourn of Foreigners, even though specifying the conditions about forbidding access or denying stay to foreigners in its articles 25 and 34, does not offer any specific category related to what we now call the irregular migration. The beginning of the Stabilization and Association Process for Serbia was marked by the adoption of the term 'illegal migration' in bilateral communication with the EU. In 2007 Law on Confirmation of the Convention about Police Cooperation in SE Europe the phrase 'illegal migration' is used.[20] The states that ratified the Convention, the

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[18] http://www.unhcr.org/pages/4a1d406060.html accessed 27th of May 2014.

[19] http://www.unhcr.org/pages/4a16aac66.html accessed 27th of May 2014.

[20] http://www.mup.gov.rs/cms/resursi.nsf/Zakon%20o%20potvrdjivanju%20Konvencije%20o%20policijskoj%20saradnji%20u%20jugoistocnoj%20Evropi.doc accessed 27th of May 2014.

State Union of Serbia and Montenegro (later Serbia), Bosnia and Herzegovi-
na, Moldova, Romania, Macedonia and Albania, oblige to share intelligence
information about routes and means of transport used to cross the border, and
forms of organizations of the smugglers. However, the 2008 Asylum law and
the 2009 Alien law do not recognize specific category depicting some 'irregu-
lar' or 'illegal' migrants or migrations. The 2008 Law on Protection of the
Borders of the State uses the term 'illegal migrations'.[21] Nevertheless, in the
Strategy for Combating Illegal Migration in the Republic of Serbia for the
Period 2009-2014 accepted by the Serbian Government on 26th March 2009,
the only terms found are the 'illegal migration' and 'illegal migrants'.[22] In the
Annex I of this Strategy, the definitions of illegal migration and illegal
migrants are given. *The illegal migration is thus every movement of the inha-
bitants of one state to another, which is not undertaken according to laws
which are in force in the countries of origin and departure, as well as the
sojourn in a particular state which is in breach of the valid legal acts of that
state. The illegal migrant is a foreign national, who illegally entered/went out
the other state (the entrance beyond official border-crossing points, entrance
with falsified or otherwise irregular travel document) in order to sojourn or
permanently reside; also the persons who entered the countries legally, but
who didn't leave the country after they legal residence had ended.* This Stra-
tegy introduces a category of *potential illegal migrant – a person denied the
entrance to the territory of a particular state as well as the person who got
negative decision on visa application.* This Strategy explicitly states that the
problem of illegal migration has for extended period of time been present in
the relations between Serbia and the EU and that this was among the main
reasons that the FRY was put to the negative list of the EU visa regime in the
beginning of the 90's (Strategija 2009, 2). Later in 2009 in the Strategy for
Migration Management the term 'illegal' migration/migrants is combined as
an equivalent with the term 'irregular' migration/migrants.[23] However, the
2012 Law on Migration Management recognizes only the term 'illegal'.

After the legislative and political context is outlined, I would turn to two
regional issues which bear major consequences on the migration practice in Ser-
bia. One is already mentioned visa liberalization and the second one is the exter-
nalization of the EU borders' control. Thus my point of presentation will move
from predominantly local, Serbian, to the regional, that is, European one.

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[21]   http://www.mup.gov.rs/cms/resursi.nsf/Zakon%20o%20zastiti%20drzavne%20
granice.doc accessed 27th of May 2014.

[22]   http://www.srbija.gov.rs/extfile/sr/107128/strategija_protiv_ilegalnih_migraci-
ja0077_cyr.zip accessed 27th of May 2014.

[23]   http://www.kirs.gov.rs/docs/strategija_upravljanje_migracijama.pdf   accessed
27th of May 2014.

## The influence of visa liberalization process on Serbian migration policy

Visa liberalization for the Western Balkan states Macedonia, Serbia, Montenegro, Albania and Bosnia and Herzegovina represented an attempt to remove these countries from the so called Scengen black list, which specified the third countries whose nationals had to possess visas in order to cross the external EU borders (national borders of the EU member states that also serve as the outer borders of the EU), and to put them on the so called white Schengen list (Kacarska 2012).[24] The Schengen area which is constituted by 26 European countries that have abolished passport or any other type of border control within their common borders, which are also called the internal borders of the EU. This area functions as a single country in relation to the international travel and has a common visa policy.[25] The roadmaps for visa liberalization defined the prerequisites specified by the European Commission were formally accepted in 2008 while the visa liberalization itself took place in 2009. The visa liberalization roadmaps were almost identical for the Western Balkan states, but they took into account the specific situation in each country, in terms of existing legislation and practice. The conditions ranged from purely technical matters, such as the issuance of machine-readable passports with a gradual introduction of biometric data (including fingerprints), to the adoption and implementation of a raft of laws and international conventions, to very broad matters such as progress in the fight against organized crime, corruption and illegal migration.[26] More precisely, these roadmaps contained specific benchmarks structured in four blocks: document security, illegal migration, public order and security, and external relations and fundamental rights linked to the movement of persons, (Kacarska 2012, 2). The second block, "Illegal migration including readmission" was divided in four parts: 1) "Border management", where Serbia should adopt and implement legislation governing the movement of persons at the external borders, as well as law on the organization of the border authorities and their functions in accordance with the Serbian National Integrated Border Management Strategy adopted in January 2006; take necessary budgetary and other admini-

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[24] The Council Regulation (EC) No 539/2001 defining so called Black and White Schengen lists (Annex I and Annex II respectively) could be accessed on http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001R0539. Further information about the EU visa policy could be find on http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm all accessed 27th of May 2014.

[25] http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index_en.htm accessed 27th of May 2014.

[26] http://www.esiweb.org/index.php?lang=en&id=352 accessed 27th of May 2014.

strative measures ensuring efficient infrastructure, equipments, IT technology at the external borders; establish training programs and adopt ethical codes on anti-corruption targeting the border guards, customs and other officials involved in the border management; conclude a working arrangement with FRONTEX. 2) "Carriers' responsibility", where Serbia should adopt and implement legislation on carriers' responsibility defining sanctions. 3) "Asylum policy", where Serbia should adopt and implement legislation in the area of asylum in line with international standards (1951 Geneva Convention with New York Protocol) and the EU legal framework and standards; provide adequate infrastructure and strengthen responsible bodies, in particular in the area of asylum procedures and reception of asylum seekers. 4) "Migration management", where Serbia should set up and start to apply a mechanism for the monitoring of migration flows, defining a regularly updated migration profile for Serbia, with data both on illegal and legal migration, and establishing bodies responsible for collection and analysis of data on migration stocks and flows; adopt and implement a National Returnee Reintegration Strategy, including sustainable financial and social support; define and apply methodology for inland detection and take measures improving the capacity to investigate cases of organized facilitated illegal migration; adopt and implement a law on the admission and stay of third country nationals, defining rights and obligations for the persons concerned (including family members of third country nationals); ensure effective expulsion of illegally residing third country nationals from its territory.[27]

The visa liberalization application was accompanied by an increase of the number of people holding a nationality of some Western Balkan's state and travelling to the EU member states claiming asylum; as the asylum recognition rate of this group is very low, they have been labeled as "false asylum seekers" (Kacarska 2012, 21).  However, there is one more point to be taken into consideration: when Serbia adopted the independent asylum system, it became internationally recognized as *a safe third country*, a country in which the rights of refugees could be granted. Nevertheless, it has not yet become widely recognized as *a safe country of origin*, even though it seems that more and more European countries are adapting to this view. This could be traced in the shortened duration of the asylum procedures for Serbian nationals in some EU states, like Austria, Netherlands, Denmark, Luxemburg and Belgium (but also in Switzerland).[28] As the threats of the resurrection of visa regime hangs above the countries of the Western Balkans if they do not manage to stop their nationals arri-

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[27] http://www.esiweb.org/pdf/White%20List%20Project%20Paper%20-%20Roadmap%20Serbia.pdf accessed 27th of May 2014.
[28] http://www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:472315-Stupio-na-snagu-mehanizam-za-uvodjenje-viza-Azilanti-postaju-ilegalci accessed 27th of May 2014.

ving to the EU member states and asking for asylum there, it appears that the prevention of the flaw of the 'false asylum seekers' was the most critical and maybe crucial measure in visa liberalization process, since the abolition of the visa liberalization is not even mentioned in cases of legally and humanely inadequate treatment of the asylum seekers looking for refuge in Serbia.[29]

## Serbia and the European policy of externalization of migration control

None the less, visa liberalization and the adoption of measures that preceded it, can be viewed from the perspective of the externalization of the EU borders' control. This term is used to describe the situation when the border control is done extra-teritorially, that is, neither on the border nor inside the country in question, but deep inside territories of the other countries, which may or may not be bordering the country in question (Stojic Mitrovic 2012). The externalization and extra-territorialisation policies are formulated and framed in the context of external relations with third countries and in the scope of the European Neighborhood Policy (Guild et al. 2008, 14). The instruments employed for imposing external migration control are manifold. Usually, the country to be absorbed into extra-territorial EU migration control policy is offered some benefits in return – eventually becoming a member of the EU, economic help, special economic partnership in some particular domain, help in the development of the administration, reform of the legal system, visa liberalization, etc. The intervention of the EU organs inside the other states can be achieved indirectly, through implementation of the EU legislative standards that treat movement of goods and people, ratification of the readmission agreements, help to achieve visa liberalization prerequisites, financial or expert support for building infrastructure for carrying out migration control, or more directly, through physical reinforcement of the borders of the non EU states or even control procedure undertaken by the EU institutions inside the other country's territory (the concrete measures can be seen in Lavenex 1998; see also Lavenex 1999). What makes this possible and legitimate is that in the common migration policy of the EU, migration itself is presented as a problem of security (Huysmans 2000, 752). Consequently, the safe internal space of the EU is protected through restrictive migration control, which is done outside, in the *buffer zone* (Collinson, 1996).

Serbia, as well as the countries through which the migrants go before they arrive here, can be considered as a part of this large buffer zone surrounding

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[29] http://balkans.aljazeera.net/vijesti/bogovada-azilanti-i-dalje-zive-u-sumi accessed 27th of May 2014.

the internal EU. It is very interesting that concrete stage within EU integration process of the country in question seam not to bear too much significance on its 'buffer zone treatment'. For example, even though Greece is a part of the EU (since 1981) and a part of the Schengen area (since 2000), the maritime borders between Greece and Italy are protected as if they had been the external EU borders (see Stojic Mitrovic 2012). This confirms that the notion of *the internal EU* does not equal the EU or the Schengen area. Nevertheless, different stages in the EU integration process do bear significance on the migration practice in each state. For example, Serbia has not yet ratified so called Dublin III regulation, which stipulates which country is responsible for conducting asylum procedure in the EU;[30] neither has it shared the asylum seekers' and irregular migrant's fingerprints within EURODAC,[31] nor its intelligence data within EUROSUR system.[32] The consequence which this leaves on the asylum practice in Serbia is that the asylum claim filed in Serbia does not implicate that a person cannot file asylum claim in some other country (which Dublin regulation and EURODAC system aim to disable). Furthermore, FRONTEX activities concerning Serbia are predominantly oriented toward control of movement of Serbian nationals within/towards the EU and not towards third countries' nationals.[33] Although, this situation is amenable to changes since Serbia officially began accession talks on 21st Jan. 2014, which pulled it one step closer to the EU membership.[34] The integration into these migration management and control systems is presented as a goal of Serbian migration policy (KIRS 2012). Current developments concerning the formulation of the new Serbian Law on asylum show that some new instruments could be implemented, such as the establishment of the detention centres for migrants, that is, accommodation centres in which the movement of the inhabitants is highly restricted. This further confirms that overall geopolitical situation seam to stand out as the major factor of influence on migration management in Serbia.

## Conclusions

However, the influence of geopolitical situation goes further beyond a state's internal migration policy and practice. It influences the conceptualizations

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[30]     http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF accessed 27th of May 2014.

[31]      http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33081_en.htm accessed 27th of May 2014.

[32] http://frontex.europa.eu/intelligence/eurosur accessed 27th of May 2014.

[33] http://frontex.europa.eu/search-results?q=serbia accessed 27th of May 2014.

[34] http://www.seio.gov.rs/srbija-i-eu/istorijat.115.html accessed 27th of May 2014.

related to the people who migrate. Thus in the period of SFRY, 'asylum' and 'refugees' have been strictly divided categories. 'Asylum' related to political and 'refugees' to humanitarian notions. 'Asylum' was national and 'refugees' international responsibility. Asylum was a kind of a reward for support of the ideas propagated by SFRY and refuge was a humane, but politically unattractive due to its possible implications, that is, confrontation with the countries of origin of the refuges or their allies. 'Irregular migrants' did not even exist as a special category. During FRY period, all these categories retreated in face of 'national refugees' arriving in large numbers. The dominant perspective was humanitarian and nationalistic: the refugees were not "real" foreigners, they spoke the same language, were born in the same country, had similar behavioural patterns, even had relatives in FRY, they also had almost the same legal rights as the FRY citizens and since 1997 could obtain citizenship very easily.[35] Today the situation is rather complicated, since all the legal terms seam to fall into multiplex relations in public sphere. To put it more linguistically, some aspects of the terms were given prominence and thus became the representatives of the whole category. 'National refugees' absorbed (international) 'refugees' which have led to the state that it seems almost impossible to associate a refugee status to a foreigner. The notion of 'refugee' is equated with 'national refugee'. The consequence of this, that a foreigner could not easily be perceived as a refugee, is further aggregated with the notion of '"false" asylum seekers' of Serbian nationality. '"False" asylum seekers' are equated with those who abuse the EU asylum systems and thus threat visa liberalization progress (Djordjevic 2013, 23). The faultiness of asylum seekers of Serbian nationality is stacked on foreign asylum seekers that seek refuge in Serbia. The motives of asylum claims, that still wear pertaining remnants of primarily political asylum claims, are perceived as an abuse of Serbian asylum system and even Serbian hospitality. This goes hand in hand with non functioning Serbian asylum system in which less than 1 out of 1000 asylum claims resulted in granted refugee status (Bobic 2013). The equation or at least inconsistent delineation of 'irregular migrants', 'asylum seekers' and '"false" asylum seekers' of Serbian nationality in public appeals of Serbian state officials, led toward even bigger confusion.[36] The result is unfavourable and progressively criminalizing mash up of notions related to migrants, which, as the

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[35]    http://eudo-citizenship.eu/NationalDB/docs/MON%20zakon%20o%20jugoslo-venskom%20drzavljanstvu%20preciscen%202001.pdf accessed 27th of May 2014.

[36]    http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1525426/Put+la%C5%BEnih+azilanata+vodi+preko+Srbije.html,,

http://www.blic.rs/Vesti/Drustvo/416097/Veljovic-Smanjenje-broja-laznih-azila-nata-prioritet  http://www.nezavisne.com/novosti/ex-yu/Da-li-Srbiji-prijeti-suspenzija-bezviznog-rezima-223602.html all accessed 27th of May 2014.

events from autumn 2013 show, can lead even to physical aggression directed toward them (for social conflicts related to migration issues see Stojic Mitrovic 2014).[37]

The aim of this text was to point out the political background of legal and administrative categories used to depict people passing through Serbia, seeking refuge or just transiting, and to remind that this can have real consequences on the lives of people in question. These categories, as all other signs, are not made to reflect some reality, but to organize it. The motives for enforcing one kind of organization above some other can be found in different realms. The major impact on categories concerning asylum, refuge and irregular migration can be traced in geopolitical balancing of the Serbian/Yugoslav state. Sometimes they were Solomon's solution of troublesome position in-between dually divided world and sometimes explicitly demanded from the external political subjects. The Serbian migration policy thus demonstrates its responsiveness to geopolitical influences in progressively securitizing world.

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[37]    http://www.vesti-online.com/Vesti/Hronika/363564/Gore-barake-za-azilante-kod-Obrenovca accessed 27th of May 2014.

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*Politike migracija neregularnih migranata i tražitelja azila u Srbiji
u kontekstu procesa evropskih integracija*

U ovom radu želim da predstavim srpske migracione politike koje se tiču ilegalnih migranata i tražitelja azila u kontekstu pokušaja srpske države da postane članica Evropske Unije.Opisaću istoriju sistema azila pre implementacije nezavisnog sistema azila u Srbiji 2008.godine. Moje predstavljanje srpske migracione politike bilo bi kanalisano analizom određenih političkih problema poput eksternalizacije granične kontrole granica EU, kao i nekih relevantnih elemenata procesa evropskih integracija, kao što je liberalizacija viznog režima. Drugoj, više kulturno specifičnoj dimenziji problema pristupiću kroz demonstraciju legislative i javne konceptualizacije ilegalnih migranata, tražitelja azila i izbeglica u Srbiji.

*Ključne reči*: sistem azila, tražitelji azila, izbeglice, eksternalizacija kontrole granica EU, liberalizacija viznog režima, Srbija

*Politique d'immigration serbe touchant à l'immigration irrégulière et l'asile
dans le contexte du processus d'intégration EU*

Dans cet article je voudrais présenter la politique d'immigration serbe concernant l'immigration irrégulière et l'asile dans le contexte des tentatives de l'état serbe de devenir membre de l'Union européenne. Je voudrais décrire l'histoire du système d'asile avant et après l'application du système indépendant d'asile en Serbie en 2008. Ma présentation de la politique d'immigration serbe s'effectuera par l'analyse de certaines questions politiques particulières, comme l'externalisation du contrôle des frontières de l'UE, aussi bien que de certains éléments relevant du processus des intégrations européennes, telle la libéralisation des visas. La seconde dimension, plus culturellement spécifique de la question, se fera à travers la démonstration des conceptualisations aussi bien législative que publique des immigrés irréguliers, demandeurs d'asile et réfugiés en Serbie.

*Mots clés*: système d'asile, demandeurs d'asile, réfugiés, externalisation du contrôle des frontières de l'UE, libéralisation des visas, Serbie