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LIST OF ABBREVIATIONS

APC	Asylum Protection Centre
BCHR	Belgrade Centre for Human Rights
BIA	Best Interest Assessment
BID	Best Interest Determination
BIP	Best Interest Procedure
CPWG	Child Protection Working Group
CRC	Children's Rights Committee
CRPC	Crisis Response and Protection Centre
CSW	Centre for Social Work
CRM	Commissariat for Refugees and Migration of the Republic of Serbia
EASO	European Asylum Support Office
ECRE	European Council for Refugees and Exiles
EU	European Union
GRETA	Group of Experts on Trafficking in Human Beings
HCIT	Humanitarian Centre for Integration and Tolerance
IOM	International Organization for Migration
LA	Law on Asylum
LATP	Law on Asylum and Temporary Protection
MLEVSA	Ministry of Labour, Employment, Veteran and Social Affairs
NGO	Non-governmental Organization

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1. Introduction

In recent years, Europe has experienced an increase in the proportion of unaccompanied and separated asylum-seeking children arriving in need of international protection. This rising need is not only characterized as a trend requiring rights-based solutions for key destination countries in Western Europe, but also involves all countries that find themselves along the route of children's journeys to safety and stability. Serbia is linked to European asylum and migration by way of its placement on the Balkan Route, having logged a total number of 820,000 international migrants up until mid 2019.¹ While many refugees and migrants successfully journey across borders, some remain in transit on the territory of Serbia for a period of time before attempting to cross again, whereas occasionally a few apply for asylum and are successfully granted the request in Serbia.

In the four years ranging from 2015-2018, the Ministry of Interior had received 17,653 expressed intentions to seek asylum from unaccompanied children.² While the peak in 2015 is incomparable to the volume of arrivals currently, the needs of refugees, asylum seekers and migrants have grown to require more than just immediate humanitarian assistance. Providing adequate protection and services to this susceptible group of has been a key issue on the agenda for migration and refugee policy, and has resulted in changes on regional levels such as the European Union and the Council of Europe. In understanding a greater call to action, The Republic of Serbia has worked to expand the rights for asylum seekers within its national legislation and increasingly recognizes the vulnerabilities of various groups on the move through the adoption of a new Law of Asylum and Temporary Protection that entered into force on June 3rd, 2018.³ Such changes that accompanied the new asylum law can be deemed positive within the legal realm for asylum seekers, as it has

¹ IOM GMDAC, *Migration Data Portal* [website], 2020, https://migrationdataportal.org/?t=2019&i=stock_abs_&cm49=688, (accessed 4 July 2020).

² BCHR, 'Unaccompanied and Separated Children in Serbia', *BCHR Human Rights Reports*, 2017, p. 16, <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Unaccompanied-and-Separated-Children-in-Serbia.pdf>, (accessed 10 February 2020).

³ Law on Asylum and Temporary Protection (LATP), Official Gazette Serbia, no. 24/2018.

worked to further align the national framework with international standards. When compared to the previous Asylum Act, the new law is more favorable due to the inclusion of the best interests of the child principle, making progressive impacts within the realm of legal child rights protection.⁴ Thus it is evident to recognize any benefits that have arisen for unaccompanied children since the LATP and the incorporation of best interest consideration within the asylum procedure.

Given the transformations in the legal realm of asylum law in Serbia, it is crucial to assess how and if it has impacted the treatment and rights of vulnerable groups in practice. Legal and policy changes are important, but it is required that capacities and resources are available to put what is on paper into reality, for best interest determinations and decisions can only be made if they are accordingly incorporated in all child systems of care and protection. Available literature and resources often describe inadequacies within the system of protection and care for unaccompanied children, and it is important to investigate where these obstacles are rooted and what can positively influence or improve the given circumstances. Inconsistent enforcement of the existing legislation impedes on the exercise of both the right to asylum, as well as other individual child and refugee rights. Thus, this thesis seeks to explore what best interests of the child – the spirit of children’s rights - can mean within the context of Serbia as a transit country for unaccompanied children by looking at the current state of care offered for them. By conducting a thorough review of literature, and an analysis of interviews conducted with relevant actors working with asylum seeking unaccompanied children, structural problems will be identified for the implementation practices of existing national and international law. Key areas of identification, registration, guardianship, accommodation, and access to education will be focused on. Therefore, the main question guiding this research will be: *how has the best interests of the child been implemented in practice throughout the system of care for*

⁴ BCHR, ‘Right to Asylum in the Republic of Serbia 2018’, *BCHR Human Rights Reports*, 2018, p. 9-10, <http://azil.rs/en/wp-content/uploads/2019/02/Right-to-Asylum-2018.pdf>, (accessed 9 February 2020).

unaccompanied children since the introduction of the new LATP, and what challenges still exist for the incorporation of this principle?

For the purposes of this thesis the term ‘refugee’ will be used to refer to asylum seekers and other foreigners in need of international protection located at a given time on the territory of Serbia. The use of this term will be independent of whether the indicated group has actually applied for asylum in the country. Additionally, the term ‘unaccompanied children’ will address refugee children (individuals under the age of 18) ‘who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.’⁵ While the research for this thesis has been focused on the former, the term unaccompanied children may also include separated children, defined as having ‘been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.’⁶

1.2 Methodology

The methodology implemented in this research is a mixed method approach. Utilizing such an approach was the best way to ensure the scope of information and conclusions included in this work are as comprehensive as possible. Secondary literature, primary sources, and field reports were consulted to address the wide-ranging issues concerning unaccompanied children since the adoption of the Law of Asylum and Temporary Protection in Serbia. Desk research was a vital component for reviewing the important legal and social scientific theoretical frameworks for children’s rights. Included are main legal documents such as the Convention on the Rights of the Child, and relevant General Comments number 6 and 14, relating in particular the best interests principle, and treatment of unaccompanied children. Other relevant international and regional sources consulted are the 1951 Convention

⁵ CRC, General Comment No. 6, ‘Treatment of unaccompanied and separated children outside their country of origin’, 2005, CRC/GC/2005/6, p.6.

⁶ Ibid.

Relating to the Status of Refugees, Inter-Agency Guiding Principles on Unaccompanied and Separated Children, and the UNHCR Guidelines on Determining the Best Interest of the child. An overview of national legislature is also considered, dealing with the LATP, Family Law, the Law on Social Protection, and the Laws on Education. Legal databases, relevant statistical sources, media, local NGO field reports, UNHCR and UNICEF country publications were consulted to gain further contextual and practical information.

In addition to the sources analyzed throughout desk research, field research in the form of qualitative interviewing was applied. The field research conducted was initiated for a study exploring the treatment and social position of unaccompanied children in Serbia, and was organized by two partnered non-profit organizations located in Belgrade, Serbia called “Public Policy Research Centre” and “Asylum Protection Centre”. I was able to participate in the interview process during my role as research intern at the Public Policy Research Centre. It is thanks to this work and the permission granted to me to use the transcribed interviews that I am able to include them in this thesis.

Participants in the interviews included various institutional representatives from the government, as well as staff from local and international non-governmental organizations whose work involves unaccompanied children in Serbia. A total of 11 interviews were conducted through a semi-structured method. Names of the respondents have been kept unidentified as per the original confidentiality terms upon which the interviews were established. As qualitative interviews are by nature flexible, conversations were steered towards a general direction, but did not strictly follow the premade questionnaire. Rather, topics of conversation and questions were adapted in the moment to further explore, clarify, and discuss different subjects or issues that arose from the individual interviewed during the process. Questions were also adapted to suit the particular context, experience, and attitude of the participant.

Since the interviews already took place for a different purpose, the sampling method in the case of this thesis is a convenience sample of already available interview data. However, the sampling methods implemented initially for the interviews was targeted selection and snowball sampling. Targeted selection of key local institutions and relevant civil society organizations present and active in the field was used to find individuals who were willing to discuss and provide insights from experiences for the subject at hand. The snowball method helped further select participants for the interviews by asking key informants to refer and recommend other potential interviewees.

The data analysis of the interviews is based on a thematic analysis approach where similar concepts, themes, and trends from conversations are organized and grouped together to provide more meaningful and thematic conclusions. The insights from interviews add an important and unique voice to the contents presented within the thesis, incorporating practical experiences, opinions, and obstacles for relevant actors in the field. These are examined to gather insights and perspectives into practical challenges faced for the protection of unaccompanied children in Serbia.

1.3 Limitations

As this research deals with an issue that pertains to children -a vulnerable group- it is important to highlight their absence in participation of the field research. The non-inclusion of unaccompanied refugee children can be explained not by a lack of consideration, but due to the nature of their difficult accessibility and ethical considerations. In order to include them, a certain standard of diligence and resources is required. Primarily, the coordination with and permission from asylum centers and temporary guardians would have been complicated within the timeframe of the study, and budgetary limits did not provide adequate resources to for example hire an interpreter necessary for the interview process. Without a proper system to guarantee informed consent and permission both from the representatives and the children themselves, the option to interview them was eliminated

Therefore, while participation of the unaccompanied children themselves would have added an invaluable dimension to this work, it was not possible due to the strain of capacity, time, and resources. This aspect is thus a noted limit to the research.

2. Serbian Context

2.1 The Rise of a Transit Zone

While most migrants and refugees travelling to Europe do so by sea, there is still a significant proportion that seeks to reach their destinations in Europe by land. The ‘Balkan Route’ has served as one of the main land routes through which refugees have journeyed. In Serbia alone it was reported by UNHCR that in 2019 the mean average of migrants and refugees present in Serbia monthly was around 4,000.⁷ The Western Balkans -and particularly Serbia that finds itself located in the centre of the route- have played a role as a transit zone most notably since the ‘Migrant Crisis’ in 2015 that arose from growing insecurity and conflict in Syria, Iraq, and Afghanistan.⁸ The Bulgarian and mostly Northern Macedonian borders are used to pass into and through Serbia to ultimately reach Western Europe.⁹ In 2019 the UNHCR recorded a total of 20,800 of new arrivals had come through North Macedonia.¹⁰

The Balkan Route carries with it a level of complexity connected to politics and history that has played –and continues to play- a part in its relationship with countries of Former Yugoslavia and the European Union (ex. externalized border control). This is also what influenced the four phases that the route underwent: clandestine Balkan Route, open Balkan

⁷ UNHCR, *Serbia Update*, Serbia, 2020 <https://data2.unhcr.org/en/documents/details/73432>, (accessed 15 April 2020).

⁸ V. Jović, ‘Working with traumatized refugees on the Balkan route’, *International Journal of Applied Psychoanalytic Studies*, vol. 15, no. 3, 2018, pp. 187–201. Available from: CRKN Wiley Online Library, (accessed 10 May 2020).

⁹ Jović, p. 188.

¹⁰ UNHCR, *Operational Data Portal Western Balkans*, [website], 2020, <https://data2.unhcr.org/en/dataviz/103?sv=41&geo=0>, (accessed 5 July 2020).

Route, official Balkan Corridor, and closed Balkan Route.¹¹ Upon the formal closing of the Balkan Route in 2016 after the establishment of the EU-Turkey deal the number of arrivals significantly dropped, however the route has remained relevant as the second most travelled pathway next to the Eastern Mediterranean Route.¹²

The Republic of Serbia is largely characterized as a transit country. Author Pavle Kilibarda has explored the role of transit countries under refugee law in the context of the Western Balkans as a key migratory route. Initially, he demonstrates that the concept of a transit country is usually defined as “a country that refugees and migrants pass through along the way to their preferred country of asylum – it may be located anywhere between the country of origin and the country of destination.”¹³ However, he mentions that no transit country can be labeled exclusively so, as there is always a selection of refugees who will choose to apply for asylum in a transit country.¹⁴ For that reason he chooses to elaborate the definition, proposing that:

A transit country is a country in which, in a given moment, a large majority of refugees and migrants otherwise interested in seeking and receiving international protection refrain from doing so or do so without genuinely intending to stay there; where they do not remain for a significant span of time; and which they eventually attempt to leave in an irregular manner.¹⁵

Transit countries often are categorized as such because of an underdeveloped or deficient asylum system.¹⁶ While Serbia and the Balkans may have the important legislative

¹¹ N. El-Shaarawi, and M. Razsa, ‘Movements upon movements: Refugee and activist struggles to open the Balkan route to Europe’, *History and anthropology*, vol. 30, no.1, 2018, pp. 93-94. Available from: Taylor & Francis CRKN Social Sciences and Humanities, (accessed 20 June 2020).

¹² K. Jovanovic., Balkans Migration and Displacement Hub Data and Trend Analysis: Regional overview (April-June 2019), *Save the Children’s Resource Centre*, 2019, https://resourcecentre.savethechildren.net/node/15997/pdf/refugees_and_migrants_balkans_regional_overview_q2_2019_sc_bmdh_data.pdf, (accessed 2 July 2020).
FRONTEX., *Migratory Map*, [website], 2020, <https://frontex.europa.eu/along-eu-borders/migratory-map/>, (accessed 3 August 2020).

¹³ P. Kilibarda, ‘Obligations of transit countries under refugee law: A Western Balkans case study’, *International review of the Red Cross*, vol. 99, no. 904, 2017, p.215. Available from: CRKN Cambridge University Press Journals, (accessed 22 April 2020).

¹⁴ Ibid, p. 215.

¹⁵ Ibid, p. 216.

¹⁶ Ibid, pp. 217-218.

mechanisms to an adequate degree, they are yet to materialize due to poor human and financial resources. However, the state of Serbia -as with any transit country- is not engrained in stone. Authors like Kilibarda foresee long-term asylum sector reform on the horizon for the Western Balkans that is to inevitably accompany the required EU accession procedures.¹⁷

Data from past years reflect the classification of Serbia as a transit country. In general terms, since the formation of the asylum procedure in 2008 the total of granted applications have amounted to 72 refugee status decisions and 92 subsidiary protection decisions.¹⁸ Most recently in 2019 the total number of intentions to apply for asylum reached 12, 937, a 54% increase from 2018 where 8,436 intentions to apply were registered. However, out of these recorded intentions to apply, only 252 (3%) applications were submitted in the asylum procedure, a decrease from the 327 applications in 2018. In 2019, 17 cases obtained refugee status and 18 were approved for subsidiary protection statuses throughout the year.¹⁹ The demographic of recorded refugees that entered in the same period and passed through Serbia were majority from Afghanistan (3,847/30%), Pakistan (2,766/21%), Syria (1,976/15%) and Iraq (1,560/12%).²⁰ These statistics reflect the number that expressed intention to seek asylum.

The demographic of unaccompanied children in Serbia is comprised of 95% males aged 14 to 17.²¹ By April of 2019, the rate of completely lodged asylum applications by unaccompanied children was at 19 out of the 227 who had formally expressed intention to

¹⁷ Ibid, p. 238.

¹⁸ BCHR, *Right to Asylum in the Republic of Serbia 2019*, Belgrade, BCHR, 2020, p. 16.

¹⁹ BCHR, 2020, p.19.

²⁰ BCHR, 2020, p.14.

²¹ CRPC and HCIT, 'Between Closed Borders 2018: Joint agency paper on refugees and migrants in Serbia 2018', *CRPC Publications*, 2019, p. 30, <http://www.crpc.rs/dokument/Between%20Closed%20Borders%202018%20WEB.pdf>, (accessed 10 January 2020).; K. Jovanovic, and J. Besedic, 'Struggling to Survive: Unaccompanied and separated children on the Balkans route', *Save the Children's Resource Centre*, 2020, https://resourcecentre.savethechildren.net/node/16944/pdf/struggling_to_survive_uasc_travelling_the_western_balkans_route_0.pdf, (accessed 29 June 2020).

seek asylum.²² By the same time only 2 unaccompanied children had been given asylum status.²³ The amount of registered intentions by unaccompanied children in 2019 reached 823, making up 6% of the total number of people intending to apply for asylum, and 28% of all children.²⁴ Conversely, this number arguably does not accurately represent the presence of unaccompanied children in Serbia, as the UNHCR has reported that they identified over 3,000 on the territory. Alternatively, 1,358 were recorded to have received temporary guardians through the guardianship program from IDEAS Centre for Research and Social Development.²⁵ As of December 2019, 465 unaccompanied children were in the country, making up 49% of all 947 children present at the time. This was also noted to be a 7% increase when compared to the same period in 2018.²⁶ The discrepancy among these numbers from different agencies demonstrates an existing difficulty of identifying and formally recording data of this vulnerable group of children. Officially reported data and statistics do not accurately represent the scope of refugees in the country, especially unaccompanied children, and tend to underrepresent the reality due to a variety of interconnected and complex factors during identification and registration processes.

‘Children on the move’ is a concept used internationally to unite and address the population of children who have left their country of origin, whether in the presence of an adult, parent or relative, or alone. As defined by Save the Children: ‘The term includes children who migrate (e.g. to pursue better life opportunities, to escape exploitative or abusive situations at home, to look for protection, education or work), children displaced by conflict or natural disasters, children who live and work on the streets, children victims of human trafficking,

²² APC, ‘Call to form a center for migrant children’, *Asylum Protection Centre*, [website], 7 June 2019, <http://www.apc-cza.org/en/8-vesti/1614-call-to-form-a-center-for-migrant-children.html>, (accessed 1 August 2020).

²³ Ibid.

²⁴ BCHR, 2020, p.13.

²⁵ BCHR, and ECRE, ‘Country Report: Serbia 2019 Update’, *AIDA Country Reports*, 2020, p. 49, <https://www.asylumineurope.org/reports/country/serbia>, (accessed 20 May 2020).

²⁶ UNHCR, UNICEF, and IOM, ‘Refugee and Migrant Children in Europe Accompanied, Unaccompanied and Separated: Overview of Trends January to December 2019’, *UNICEF Refugee and migrant children in Europe Resources*, 2020, <https://www.unicef.org/eca/media/12671/file>, (accessed 4 July 2020).

etc.’²⁷ Despite the many motivations and reasons that influence the movement of children voluntarily or involuntarily, they are all equally joint in their vulnerability and exposure to risk and danger. They face high risks of poverty, exploitation, social exclusion, and violence to varying degrees, and in different contexts.²⁸ UNHCR’s Executive Committee has recognized that child-specific forms of persecution may include but are not limited to: ‘under-age recruitment, child trafficking and female genital mutilation, family and domestic violence, forced or underage marriage, bonded or hazardous child labour, forced labour, forced prostitution and child pornography.’²⁹

Save the Children highlights the ‘denial or lack of stimulating childhoods spaces to and violations of child rights’³⁰ to be an influential characteristic of a childhood experienced by a child on the move. Due to the crucial role the period of childhood plays in development, the impact of movement through insecure environments amplifies the need to ensure that children’s rights are not violated in any respect, and to go beyond monitoring the experiences of vulnerable unaccompanied children to ensure that countries actively implement protection and services for children to heal and flourish in.³¹

Smuggling networks have thrived within the Western Balkans since formal closure of the Balkan Route, preying on situations of vulnerability and misinformation.³² This has also contributed to the abuse of unaccompanied children and the inaccurate identification

²⁷ A. Galonja, M. Avramovic, and T. Diegoli, ‘Children on the Move: Status and programmes of support and protection of children on the move in the Republic of Serbia’, *Save the Children’s Resource Centre*, 2013, p.11, <https://resourcecentre.savethechildren.net/node/7404/pdf/children-on-the-move-final1.pdf>, (accessed 19 May 2020).

²⁸ Bhabha, K., *Child Migration and Human Rights in a Global Age*, US, Princeton University Press, 2014, p. 245. Available from: COVID-19 Free Access eBooks, (accessed 10 May 2020).

²⁹ UNHCR, ‘Guidelines on International Protection: Child Asylum Claims’ under Articles 1(A) 2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, UN doc HCR/GIP/09/08, (22 December 2009) p. 9.

³⁰ M. Avramović, and N. Stamenković, ‘Boxes of Wonder: Creation of the program with children on the move’, *Save the Children’s Resource Centre*, 2018, p.21, https://resourcecentre.savethechildren.net/node/13265/pdf/boxes_of_wonder_creation_of_the_program_with_children_on_the_move.pdf, (accessed 10 June 2020).

³¹ Ibid, pp. 21-22

³² CRPC, ‘Game People: Irregular migration and risks’, *CRPC Publications*, 2019, p. 7, <https://www.crpc.rs/dokument/Game%20People.pdf>, (accessed 20 February 2020).

because they appear to be in the presence of an adult or group. Irregular border crossings are colloquially termed as ‘the game’ and refer to the attempt to cross country borders without identification.³³ Serbia borders with desirable EU entry points such as Hungary and Croatia, making it a popular hotspot for border crossings and subsequently illegal pushbacks.³⁴ Unaccompanied children often participate in the ‘game’ and when unsuccessful this results in often-negative encounters with guards and law enforcement, and can be very exhausting.³⁵ Trafficking is a child-specific form of persecution that Serbia as a State has worked to improve its response to, addressing the vulnerability of large numbers of refugees to sex trafficking and forced labour within Serbia.³⁶ There is still insufficient action in meeting the minimum standards for the elimination of trafficking, and greater attention needs to be placed on identifying victims of trafficking specifically amongst groups of unaccompanied children.³⁷ However more survivors have been identified in the past years than before, and greater efforts have been placed towards the distribution of guidance for indicators, and for prosecutors and judges. In 2019, 15 children were identified as potential victims of trafficking in human beings, with two obtaining official status as victims of trafficking.³⁸

While recognizing that children on the move are already in need of additional support because of their status as persons in situations of vulnerability, the context of transit countries can further exacerbate the disparity in services and systems needed to fulfill the needs of children on the move. Save the Children has noted that discrimination is often present in transit countries, with such attitudes reflected in the asylum system amongst

³³ Ibid, p.6.

³⁴ Jović, pp. 188-189.

³⁵ CRPC and HCIT, ‘Between Closed Borders 2018: Joint agency paper on refugees and migrants in Serbia 2018’, *CRPC Publications*, 2019, pp. 44-50, <http://www.crpc.rs/dokument/Between%20Closed%20Borders%202018%20WEB.pdf>, (accessed 10 January 2020).

³⁶ GRETA(2017)37.

³⁷ GRETA(2017)37, para. 102

³⁸ BCHR and ECRE, p.49.

public authorities or local communities.³⁹ While children on the move are undeniably vulnerable, such an understanding and categorization of vulnerability must not be used to the detriment of the child. A balanced must exist between conceptualizing children through a lens that sees them as at risk, against the ever-growing resilience and wide ranging capacities possessed by children.⁴⁰ This complexity serves as an example to the type of conceptual approaches to support and protection children ought to receive.⁴¹

2.2 Conceptualizing Identity and Status

It is crucial to acknowledge that unaccompanied children have a complex intersection of identities, which uniquely intensify the experiences and challenges they face. As discussed, there are specific forms of vulnerability that exist for children such as trafficking, child marriage, and exploitation. In addition to this, author Crock elaborates on the idea that by way of being refugees, children will undergo severe stress, dangers, and insecurity. However, inevitable refugee experiences compounded with childhood adds another level of unique perilous circumstances. Occurrences such as the ‘separation from family; prolonged periods in immigration detention; and of failure to secure adequate housing and nutrition’⁴² are additional layers to the child refugee experience. Unaccompanied children may not share the same ethnic or cultural origins, but they are united in their difficult experiences during life on the move experiencing ‘alienage, separation from caregivers, and some form of irregular status contribute to a common experience of marginalization and psychological insecurity’⁴³

Necessary as a precursor to analyzing legal frameworks and regulations, is a brief recognition of the sociological concepts that shape the understanding of our world, society and the interaction with refugee children. The rise of the human plight for identity and

³⁹ Avramović and Stamenković, p. 25.

⁴⁰ M. Avramović, and N. Stamenković, pg 23.

⁴¹ Ibid, pp. 23-25.

⁴² Crock p. 226

⁴³ J. Bhabha, *Child Migration and Human Rights in a Global Age*, US, Princeton University Press, 2014, p.243. Available from: COVID-19 Free Access eBooks, (accessed 10 May 2020).

belonging arose in part from what Bauman attributes as the artificial creation of a 'national identity'.⁴⁴ This 'constructed convention'⁴⁵ shifted the division of power into the hands of the State to 'define, classify, segregate and select'.⁴⁶ Bauman further qualifies that the threat of exclusion fuels the desire for belonging through a 'tightening and policing of the boundary between "us" and "them"'.⁴⁷ Such processes promote a perception of 'the other', a concept present amongst all societies and one that manifests itself on various scales and layers, and is dependent on structures and relations amid groups in society. For this reason, otherness –much like identity and belonging- is not a static concept, rather it is dynamic and fluid, and alters its exclusionary nature contingent of what is present at a given moment. These ideas are relevant for refugees, as aspects of their intersecting identities often are not viewed as palatable to the destination countries within which they seek refuge. As for many refugees, but particularly for children, movement among and between borders throughout different stages of their journey is a precarious process tied up in vulnerabilities presented in the physical world and also theoretical. As Bhabha describes, children on the move walk the line simultaneously between 'perceptions of vulnerability ("poor and innocent children") and otherness ("not *really* like *our* children")'.⁴⁸ The concept of status and its unwavering internal dichotomies is difficult to navigate. Typical categorization of regular or irregular, documented or undocumented, legal and illegal is not a fixed state of being, rather the same individual can fall under different statuses at varying points in time.⁴⁹

Ridding ourselves of strict binary thinking is crucial. As it complicates rather than simplifies, and reinforces attitudes that uphold the status quo of privileged statuses and

⁴⁴ Bauman, Z., *Identity*, Cambridge, Polity Press, 2004, p.21.

⁴⁵ Bauman, p. 23.

⁴⁶ Ibid, p.21.

⁴⁷ Ibid.

⁴⁸ Bhabha p.13.

⁴⁹ Ibid. pp. 242-243.

alienated statuses. A frame of mind that has no place in a world that is to be lead by human rights principles and philosophies.

3. Legal Analysis:

3. 1 International Law

International law has played an essential role in the pursuit of further recognition and advancement of children's rights. Legally binding instruments such as the UN Convention on the Rights of the Child (the Convention), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (1951 Refugee Convention), along with a series of accompanying guidelines and protocols have fortified frameworks and systems of protection for vulnerable unaccompanied refugee children.⁵⁰ This section will outline the significant binding and non-binding documents that set standards and lead the efforts towards the fulfillment of children's rights and needs.

3.1.1 Geneva Convention

As the majority of unaccompanied children in the context of this thesis are refugees or asylum seekers, it is necessary to outline the international law upon which their status and rights are originated. The 1951 Refugee Convention is the fundamental normative framework from which the basis for understanding definitions and rights of refugees is derived from.⁵¹ In being the core international treaty for refugee protection, it serves as a comprehensive and universal tool outlining the basic minimum standards to which State

⁵⁰ J. Allsopp, and E. Chase, 'Best interests, durable solutions and belonging: policy discourses shaping the futures of unaccompanied migrant and refugee minors coming of age in Europe', *Journal of Ethnic and Migration Studies: Special Issue: Undocumented & Unaccompanied: Children of Migration in the European Union and the United States*, vol. 45, no. 2, 2019, p. 296. Available from: Taylor & Francis CRKN Social Science and Humanities, (accessed 25 May 2020).

⁵¹ Kilibarda, p. 220.

parties must adhere.⁵² Under the 1951 Refugee Convention, a refugee is defined as an individual who: “has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him— or herself of the protection of that country, or to return there, for fear of persecution”.⁵³ Anyone who meets the definition is granted protection under the Refugee Convention,⁵⁴ with the key principles of non-discrimination, non-penalization, and non-refoulement guiding the treatment and protection towards refugees.⁵⁵ It is important to note that “formal determination of status is declaratory, rather than constitutive”⁵⁶ meaning that regardless of the status or (lack of) recognition formally given by a State, it does not take away the status of “refugee” under international law and the substantive rights granted in that respect.⁵⁷ Additionally, as explained by Rebecca Stern, the term *persecution* is a central characteristic of the Refugee Convention, and is best understood alongside the concept of *human rights violation*, which in her explanation is where human rights law and refugee law become mutually inclusive, for ‘in order to identify what constitutes persecution one must understand both the content of a certain right and what would be a grave breach of that right.’⁵⁸

⁵² Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137; Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267

⁵³ <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

⁵⁴ Benfer, E. A. ‘In the Best Interests of the Child? An International Human Rights Analysis of the Treatment of Unaccompanied Minors in Australia and the United States’, *Indiana international & comparative law review*, vol.14, no. 3, 2004, pp. 729–770. Available from: HeinOnline Law Journal Library, (accessed 4 April 2020).

⁵⁵ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137; Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267

⁵⁶ Kilibarda, p. 221.

⁵⁷ Ibid, p. 220.

⁵⁸ R. T. Stern, ‘Unaccompanied and Separated Asylum Seeking Minors: Implementing a Rights-based Approach in the Asylum Process’, in *Child-friendly Justice: A Quarter of a Century of the un Convention on the Rights of the Child*, Brill, Nijhoff, 2010, p. 45 Available From: Brill Online Books, (accessed 6 April 2020).

While the international refugee law is to be applied to all regardless of age, children are not explicitly mentioned in the 1951 Refugee Convention. This is important because children do not experience harm or persecution in the same way adults do, mainly because the development and vulnerability of children influences how children understand and experience harms they are exposed to.⁵⁹ For this reason various organizations and institutions have produced additional protocols or guidelines to safeguard the inclusion of children in national refugee and asylum seeking processes and systems.⁶⁰ For example, as acting ‘guardian’ of the 1951 Refugee Convention and the 1967 Protocol the UNHCR has played a key role in recognizing the dependency of children and ensuring that their work, guidelines, and policies pay particular attention to children as active subjects to which rights and protection is granted to.⁶¹ This began with the 1988 UNHCR Guidelines on Refugee Children (revised in 1994 as the Guidelines on Protection and Care)⁶², followed by the 1997 UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, the 2008 UNHCR Guidelines Determining the Best Interest of the Child, and the 2009 Guidelines on Child Asylum Claims.⁶³ It is through these documents that further harmonization of efforts have been achieved, and the adoption of age and gender sensitive approaches have been mainstreamed to highlight forms of child specific persecution in relation to the 1951 Refugee Convention.⁶⁴

3.1.2 United Nations Convention on the Rights of the Child

The first Declaration of the Rights of the Child adopted in 1924 by the League of Nations marked the beginning of international recognition for the status of children as rights

⁵⁹ HCR/GIP/09/08, p. 9.

⁶⁰ Stern, p. 246.

⁶¹ Ibid, p.246-247; Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137; Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267

⁶² <https://www.unhcr.org/protection/children/3b84c6c67/refugee-children-guidelines-protection-care.html>

⁶³ Stern, p. 246-247

⁶⁴ <https://www.unhcr.org/protection/children/50f6d4746/unhcrs-executive-committee-conclusion-children-risk.html>

holders.⁶⁵ This awareness was grown in 1989 with the adoption of the International Convention on the Rights of the Child (the Convention), which has been celebrated as ‘the most rapidly and widely ratified international treaty’.⁶⁶ Serbia became party to the Convention on 12 March 2001, thereby legally binding itself to the contents of the treaty.⁶⁷ With the addition of a child centered treaty amongst the collection of crucial international human rights agreements, the treatment of children worldwide has shifted and ignited the necessary reevaluation of children as active agents and the duty of the state beyond parental care.⁶⁸ The convention identifies children as a group with specific needs and tailored rights approaches ‘by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth’.⁶⁹ A central requirement in the Convention is that *all* children are to be treated as rights bearers, regardless of status.⁷⁰ The treaty may thus apply universally ‘to all children, at all times, wherever they may be’.⁷¹ The rights enshrined in the treaty can be divided into three main categories: survival and development rights, protection rights, and participation rights.⁷² The Convention is further characterized by four general principles that are understood to make up the core of the Convention. These four principles are: non-discrimination (Article 2), the best interests of child (Article 3), the right to survival and development (Article 6), and the views of the child (Article 12).

⁶⁵ Benfer, p. 732

⁶⁶ Ibid, p. 733

⁶⁷ OHCHR, ‘Ratification Status for Serbia’, *Treaty Body Database*, [website], n.d., https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=154&Lang=EN, (accessed 5 July 2020).

⁶⁸ J. K. Dalrymple, ‘Seeking asylum alone: using the best interests of the child principle to protect unaccompanied minors’, *Boston College Third World law journal*, vol. 26, no. 1, 2006, pp. 131–168. Available from: HeinOnline Law Journal Library, (accessed 6 May 2020).

⁶⁹ Convention on the Rights of the Child (CRC), (adopted 20 November 1989, entered into force 2 September 1990), 1577 UNTS 3, p. 1.

⁷⁰ CRC, Article 2(1).

⁷¹ Crock, C. E., ‘Justice for the Migrant Child: The Protective Force of the Convention on the Rights of the Child’, in *Child-friendly Justice: A Quarter of a Century of the UN Convention on the Rights of the Child*, Brill, Nijhoff, 2010, pp. 223. Available From: Brill Online Books, (accessed 6 April 2020).

⁷² M. D. Ruck, et al., ‘The United Nations Convention on the Rights of the Child: Its Relevance for Adolescents’, *Journal of Research on Adolescence*, vol. 26, no. 1, 2016, pp. 16–29. Available from: CRKN Wiley Online Library, (accessed 10 June 2020).

Working actively as an extension of the Convention is the UN Committee on the Rights of the Child. As a treaty body, the Committee is responsible for supervising the implementation of the treaty into national legislation and systems, and providing reports that outline recommendations for State parties by highlighting violations, and assessing individual complaints.⁷³ The Committee also works to create General Comments that explain how to interpret certain rights and thematic issues in more detail. Therefore the general comments additionally serve as authoritative political and moral instruments that bind States to the contents.⁷⁴ The following subsections will briefly cover the most relevant General Comments and other applicable guidelines in relation to unaccompanied children.

3.1.3 General Comment No. 6

In 2005 the UN Committee on the Rights of the Child published *General Comment No. 6 on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*. The objectives explain the need to bring attention to the rising prevalence of children in situations of vulnerability, and the increased risks unaccompanied children face in experiencing rights infringement and child-specific human rights violations.⁷⁵ The general comment also seeks to address protection gaps that greatly impact unaccompanied children by further establishing guidelines and standards that build upon the Convention to better aid States in implementing and abiding by the Convention.⁷⁶

Key details defined by the Committee highlight that children are to be primarily treated as children, that their status -or lack of status- is not to impede upon their reception of rights as

⁷³ OHCHR, Committee on the Rights of the Child, [website], 2020, <https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx>, (accessed 4 July 2020).

⁷⁴ M. Kalverboer, et al., 'The Best Interests of the Child in Cases of Migration', *The International Journal of Children's Rights*, vol. 25, no.1, 2017, p. 119. Available from: HeinOnline Law Journal Library, (accessed 4 April 2020).

⁷⁵ Committee on the Rights of the Child, General Comment No. 6, 'Treatment of unaccompanied and separated children outside their country of origin', 2005, CRC/GC/2005/6.

⁷⁶ Ibid, para 3.

children.⁷⁷ It further stipulates the importance of respecting ‘the best interest of the child as primary consideration’⁷⁸ and links specific provisions with the fulfillment of this principle. Initial assessment measures are necessitated to include immediate specialized and prioritized identification of unaccompanied or separated children. The assessment must include all elements of a dignified and child friendly approach, and the benefit of the doubt must be awarded in cases of uncertainty.⁷⁹ Child friendly assessments of each individual child’s identity is required, considering their nationality, culture, language, ethnicity, vulnerabilities and needs. Furthermore, the Committee states that ‘Prompt registration by means of an initial interview conducted in an age-appropriate and gender-sensitive manner, in a language the child understands, by professionally qualified persons to collect biodata and social history to ascertain the identity of the child’.⁸⁰

Simultaneously, guardians are to be appointed as soon as a child is identified as unaccompanied or separated, and the guardian must accompany the child in all relevant matters to safeguard the interests and overall needs relevant to their wellbeing.⁸¹ Legal representatives should be assigned equally as promptly for relevant asylum cases.⁸² Due to the specific and sensitive nature of working with a vulnerable group such as unaccompanied children, the Committee calls for relevant professional training of all individuals in contact with children throughout the child care system and asylum system. It is important that all those in contact with children, especially guardians, possess the appropriate attitude, skills and knowledge to perform their duties to ‘ensure that the interests of the child are safeguarded and that the child’s legal, social, health, psychological, material and educational needs are appropriately covered’⁸³ Furthermore, an

⁷⁷ Ibid, para 12.

⁷⁸ Ibid, para. 19.

⁷⁹ Ibid, para. 31(i).

⁸⁰ Ibid, para. 31(ii).

⁸¹ Ibid, para 33.

⁸² Ibid, para. 21.

⁸³ Ibid, para 33.

essential rule is that effective guardianship is to be informed by the child's participation⁸⁴, and the guardian is to undergo regular review processes to ensure suitability for the job.⁸⁵

The general comment additionally expands on the rights of unaccompanied children to appropriate care and accommodation arrangements as per Articles 20 and 22 of the Convention. It is the obligation of the State to provide accommodation and to ensure that children are not deprived of liberty, are kept united with siblings, are under regular supervision by qualified individuals, minimally undergo transfers of housing, and always have their opinions taken into consideration.⁸⁶ Living spaces for unaccompanied children should maintain 'a standard of standard of living adequate for their physical, mental, spiritual and moral development...States shall provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.'⁸⁷

Specific to the case of refugee and asylum seeking children it is expected that States respect the non-refoulement obligation to the highest standard as outlined in Article 33 of the 1951 Refugee Convention and Article 3 of the United Nations Convention Against Torture.⁸⁸ This means that States are not to return anyone, or in this case a child, 'to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child'.⁸⁹ Thus, risk assessments must consider gender and age specific impacts, and return can only be arranged if deemed in the best interests of the child.⁹⁰

The right to education is to be guaranteed for all children on any given State's territory regardless of status, and be equal and accessible for all ages, abilities and genders.⁹¹ The

⁸⁴ Ibid, para. 25.

⁸⁵ Ibid, para. 35.

⁸⁶ Ibid, para. 40.

⁸⁷ Ibid, para. 44.

⁸⁸ Ibid, para. 26.

⁸⁹ Ibid, para. 27.

⁹⁰ Ibid, para. 84.

⁹¹ Ibid, para. 41.

Committee mandates that ‘unaccompanied or separated children are provided with school certificates or other documentation indicating their level of education, in particular in preparation of relocation, resettlement or return.’⁹², as it is crucial for the development and maintaining some form of consistency as well as formal documentation. Additionally the right to healthcare and highest standards of treatment is also defined to be provided to the same degree as with the State’s national children.⁹³ Due to their specific experiences shaped by their physical form as unaccompanied children in the context of the various driving factors that impact their movement, they are to be addressed with sensitivity, consideration, and care for the violence and traumas they have most likely endured.⁹⁴ Such standards are crucial for the right to life, survival and development.

The final important elaboration deals with the procedural safeguards and support measures derived from Article 3(3). Measures urged in cases of unaccompanied children by the Committee include free and accessible legal representation, priority status for all applications submitted on behalf of unaccompanied or separated children, access to qualified officials and interpreters throughout the application process, and an individualized approach that concludes decisions on a case-by case basis specific to the unique needs of the child.⁹⁵

3.1.4 General Comment Number 14

The best interest of the child principle is woven into every aspect of the treaty, it binds each article as an individual element to create the uniting spirit of the Convention. While key in nature, it is equally complex due to its interconnectedness with other provisions. For this reason the concept of the best interest of the child underwent criticism due to its broadness

⁹² Ibid, para. 42.

⁹³ Ibid, para. 46.

⁹⁴ Ibid, para. 47.

⁹⁵ Ibid, para. 68-73.

as a term and lack of specificity for practical application.⁹⁶ Thus, the 2013 *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration* is dedicated to expanding on Article 3(1) of the Convention, “the right to have his/her best interests taken as a primary consideration”.⁹⁷ The objective serves to further explain the processes and requirements for the assessment and determination of a child’s best interest, and importantly never prescribes definitive actions of what would be the best interest as there is no one size fits all ‘answer’.⁹⁸

As mentioned, the best interest of the child contains multiple dimensions, and as described by the Committee, ‘the best interests of the child is a dynamic concept that encompasses various issues which are continuously evolving.’⁹⁹ It is a substantive right, a legal principle, and a rule of procedure.¹⁰⁰ This means that in addition to the best interest as a right to be taken into primary consideration, it is also open to many interpretations (although the best one should always be selected), and is also a process that requires certain steps of assessment and justification that occur with every decision to evaluate the positive and negative impacts of decisions made in relation to, and for a child.¹⁰¹ The Committee has stressed that the evaluation of the best interests must be done in all matters relating to children, and in a way that takes into account the unique and specific circumstances of the child.¹⁰² Case by case analyses ensures that decisions are made appropriately and accurately for each individual child at hand. This also ensures that the central characteristics of flexibility and adaptability are preserved.¹⁰³ Significantly, the Committee acknowledges the possibility of a circumstance where harmonization or compromise of various rights is not

⁹⁶ Van Os, et al., p. 60.

⁹⁷ CRC, Article 3(1).

⁹⁸ Committee on the Rights of the Child, General Comment No.14, ‘On the right of the child to have his or her best interests taken as a primary consideration’, 2013, CRC/C/GC/14.

⁹⁹ Ibid, para. 11.

¹⁰⁰ Ibid, para. 6.

¹⁰¹ Ibid.

¹⁰² Ibid, para. 33.

¹⁰³ Ibid, para. 32.

possible, but concludes that ‘a larger weight must be attached to what serves the child best’.¹⁰⁴

States are called upon to amend ‘domestic legislation and other sources of law so as to incorporate article 3, paragraph 1, and ensure that the requirement to consider the child's best interests is reflected and implemented in all national laws and regulations’¹⁰⁵ and to establish ‘mechanisms and procedures for complaints, remedy or redress in order to fully realize the right of the child to have his or her best interests appropriately integrated and consistently applied’¹⁰⁶. States must also work to equip all people working with children with the appropriate information and training, and ‘providing appropriate information to children in a language they can understand’.¹⁰⁷

While the Committee underlines the relationship with the other general principles of the Convention, there is a necessary underscoring of the important link with the principle dealing the right to be heard. The two work hand in hand to safeguard the active process of including the child’s voice in matters that concern them.¹⁰⁸ It is also elaborated that the weight of the child’s opinion varies, and must be granted in relation to their age, maturity, and experience.¹⁰⁹

3.1.5 Best Interest Procedure, Best Interest Assessment, and Best Interest Determination

Moving into the practical manifestation of assessing the child’s best interests, the Best Interest Procedure (BIP) is an overarching term that encompasses different approaches and actions to conclude what is in the best interest of a child. It works to set procedures and standards in place to counteract the protection risks unaccompanied children are vulnerable

¹⁰⁴ Ibid, para. 39.

¹⁰⁵ Ibid, para. 15(a).

¹⁰⁶ Ibid. para. 15(c).

¹⁰⁷ Ibid, para. 15(f-g).

¹⁰⁸ Ibid, para. 43.

¹⁰⁹ Ibid, para. 53.

to.¹¹⁰ Two central procedural components for the decision making process include the Best Interest Assessment (BIA) and the Best Interest Determination (BID). In addition, ‘identification, best interests assessment, action planning, implementation, follow up and case closure’¹¹¹ make up the 6 steps for BIP child protection. In General Comment No. 14 the Committee provides a non-exhaustive list of elements to be taken into consideration during assessments and determinations of the best interests. These are: the child’s identity, child’s views, parent or caregiver’s views, preservation of family environment, care protection and safety of the child, situation of vulnerability, child’s right to health, and access to education.¹¹² In its best expression as a procedure, the BIP takes on a multi-sectoral and multi-stakeholder approach. This means that children, local and national authorities, communities, national and international child protection organizations are included in the process. The protection and fulfillment of children’s rights is not possible without the fundamental elements of cooperation, partnership and coordination among the long list of actors that influence children’s wellbeing.¹¹³

The BIA is defined as: ‘evaluating and balancing all the elements necessary to make a decision in a specific situation for a specific individual child or group of children.’¹¹⁴ Simultaneously, a BIA is employed as a first step and an ongoing procedure that gathers information in regards to the specific circumstance the child is in and their individual characteristics such as their ‘age, sex, level of maturity, experience belonging to a minority group, having a physical, sensory or intellectual disability, as well as the social and cultural context’.¹¹⁵ While the Committee proposes elements to be considered, it equally stresses

¹¹⁰ UNHCR, ‘Guidelines on Assessing and Determining the Best Interests of the Child’, (November 2018), pp. 3-150.

¹¹¹ UNHCR, 2018, p. 9.

¹¹² CRC, CRC/C/GC/14, para. 52-79.

¹¹³ UNHCR, 2018, pp. 32-37.

¹¹⁴ J. Zermatten, ‘Best Interests of the Child’ in *Child-friendly justice: A quarter of a century of the UN convention on the Rights of the Child*, Brill, Nijhoff, 2015, p. 37. Available from: Brill Online Books, (accessed 2 May 2020).

¹¹⁵ CRC, CRC/C/GC/14, para. 48.

that any list should be ‘non-exhaustive and non-hierarchical’.¹¹⁶ BIAs are instigated in cases where immediate action and decisions need to be made, and can vary in name and form across different countries. However, they are always identified with ‘The key characteristics are that they are holistic and conducted by staff with relevant professional expertise.’¹¹⁷

The second component, the BID, can be summed up as ‘the formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best-interests assessment.’¹¹⁸ A best interest determination is used in asylum procedures for decision-making about big impacts concerning the child.¹¹⁹ In being open-ended in the potential elements that can be collected about a child, it promotes an individual and child specific approach to assessments. Typically, BIDs are necessary when deciding on a durable solution, such as decisions regarding integration, resettlement, voluntary repatriation, or family reunification.¹²⁰ Due to the weight associated with such decisions the BIA is a precursor upon which the BID build on, and is why ‘BIDs require in depth information accumulated in the course of the best interests process about the child, and involve higher degrees of scrutiny and independence.’¹²¹

3.2 National Framework on

3.2.1 Law on Asylum and Temporary Protection

Under Serbia’s constitution, the right to asylum is outlined in Article 57.¹²² The first Serbian general Law on Asylum (LA) entered into force in 2008.¹²³ In the year 2018

¹¹⁶ CRC, CRC/C/GC/14, para. 50.

¹¹⁷ UNICEF, ‘Safe and Sound: what states can do to ensure respect for the best interest of unaccompanied and separated children in Europe’, *Save the Children’s Resource Centre*, 2014, p.20, <https://resourcecentre.savethechildren.net/node/8571/pdf/5423da264.pdf>, (accessed 10 May 2020).

¹¹⁸ Zermatten, p.37

¹¹⁹ UNHCR, 2018, p. 9.

¹²⁰ Ibid, p.71.

¹²¹ UNICEF, 2014, p.20.

¹²² Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No 83/06. (entered into force on 30 September 2006).

Serbia adopted a new national Law on Asylum and Temporary Protection (LATP), which officially entered into force on June 3rd, 2018.¹²⁴ The new legislation has incorporated aspects previously missing in the old LA. In this following section, transformations and additions will be noted focusing on those that impact unaccompanied children and for that reason should not be taken as a holistic account of the new law.

As established previously by the LA, the asylum procedure is twofold. Asylum seekers must first express the intention to seek asylum through registering with authorities (typically police), and then may later enter the asylum procedure with the completion of an asylum application.¹²⁵ Upon expressing the intention to seek asylum inside the territory and at border crossings, the foreigner receives a registration certificate by an authorized MI police officer, and must then report to the assigned accommodation within 72 hours.¹²⁶ This is considered a first step and is how most asylum seekers regularize their stay and secure ‘basic rights such as accommodation, food, health care, psycho-social support’.¹²⁷ In the case that an individual wants to enter into the asylum procedure they must submit the application 15 days after registration.¹²⁸ Under the LATP, all asylum applicants have the rights to: residing and freedom of movement in the Republic of Serbia; material reception conditions; social assistance; healthcare; primary and secondary education; information and legal aid; freedom of religion; labour market access; and personal documents in accordance with Article 90 and 91 of this Law.¹²⁹

Previously in the LA, unaccompanied children and the relevant procedures in regard to them were only mentioned in Article 2 outlining the definition of the term, and Article 16

¹²³ Kilibarda, p. 216.

¹²⁴ LATP, Official Gazette Serbia, No. 24/2018.

¹²⁵ Kilibarda, p. 217.

¹²⁶ LATP, Article 35.

¹²⁷ BCHR and ECRE, p.28.

¹²⁸ LATP, Article 36.

¹²⁹ LATP, Article 48.

dealing with the principle of representation.¹³⁰ Necessary additions and expansions have been made in the LATP to strengthen definitions, duties towards children, and the rights of children and unaccompanied children specifically. For example, the most noteworthy inclusion accompanying the new law is that of the principle of the *best interest of the minor* as a central aspect for consideration within all areas regarding children and the implementation of this law.¹³¹ Assessment of the best interest is stated in the law to include ‘well-being, social development and background, the minor’s opinion, depending on his/her age and maturity, the principle of family unity, and the protection and safety of the minor’.¹³² It is also further specifically referenced within articles dealing with accommodation and guardianship procedures, ensuring that the best interest principle is further noted for these decisions made.¹³³ The explicit addition of the best interest principle is of great importance for children’s rights and also makes the clear link for the principle to be applied to refugee and asylum seeking youth, whereas previously this concept was only mentioned in the Family Law applied to nationals.¹³⁴

With respect to the definition unaccompanied children, it has been further expanded upon along with an added definition for separated children that is comparable to that which is stipulated in international law. Much clearer details have also been elaborated in Article 12 in regard to the guardian’s role in supporting unaccompanied children during their presence on Serbian soil. It is written that ‘an unaccompanied minor shall have a temporary guardian appointed by the guardianship authority, in accordance with law, immediately after it has been established that he/she is an unaccompanied minor and before the submission of his/her asylum application.’¹³⁵ This article carries an immediacy that the previous LA did

¹³⁰ Law on Asylum, Official Gazette of the Republic of Serbia, No. 109/2007.

¹³¹ LATP, Article 10.

¹³² Ibid.

¹³³ LATP, Article 12 and 73.

¹³⁴ BCHR, ‘Right to Asylum in the Republic of Serbia Periodic Report for January-June 2019’, *Azil.rs Reports*, 2019, p. 54, <http://azil.rs/en/wp-content/uploads/2019/08/Periodic-report-Right-to-Asylum-in-Serbia-January-June-2019.pdf>, (accessed 6 May 2020).

¹³⁵ LATP, Article 12.

not carry in its contents regarding guardians. Under the same article, guardians have the role of informing the UAM about their rights and the asylum procedure, and are also to be a compulsory element during the process of asylum, including submitting the prior intention to seek asylum and the asylum application itself, while also always being present for interviews and relevant proceedings.¹³⁶ Additionally, priority status as directed by the Convention has been included in this section addressing that all proceedings in relation to an unaccompanied child are to have priority status.¹³⁷

Article 17 has introduced the special procedural and reception guarantees. These are to be awarded to all vulnerable individuals and groups listed, within which unaccompanied children are cited.¹³⁸ The LATP states, ‘special procedural and reception guarantees shall serve to provide the appropriate assistance to the Applicant who, due to his/her personal circumstances, is not able to benefit from the rights and obligations under this Law without appropriate assistance.’¹³⁹ Furthermore, a time limit has also been placed, whereby decisions must be delivered 3 months after the date of the application. The conditions of potential extensions have equally been outlined.¹⁴⁰ Importantly, unaccompanied children are explicitly stated as an excluded group from any kind of accelerated procedures in the subsequent article.¹⁴¹ They are also not to have any asylum procedures or applications conducted at the border or in transit zones.¹⁴²

In Article 50, which outlines the material reception conditions, it is stated that in the process of assigning accommodation, the sex, age, status, and family unity is to be taken into account. Material reception conditions are to be provided by the Commissariat for Refugees and Migrants, which comprises of ‘housing accommodation, food, clothing, and

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ LATP, Article 17.

¹³⁹ Ibid.

¹⁴⁰ LATP, Article 39.

¹⁴¹ LATP, Article 40.

¹⁴² LATP, Article 41.

cash allowances for personal needs'.¹⁴³ Asylum Centers or other designated accommodation will be provided prior to the final decision of asylum applications, including up to one year for those whose applications and status in Serbia has been approved. The head of the Commissariat will likewise manage the operation of the Asylum Centre or other designated accommodation facilities. In the case that the conditions of the Asylum Centre or other designated accommodation does not fulfill the needs of the UAM or there is not enough space, alternative accommodation in a social welfare institution or foster family can be provided by the Commissariat through a decision from the relevant social welfare institution.¹⁴⁴ Otherwise, supervision and care will be granted in a social welfare institution.

3.2.2 Family Law

Despite recommendations published by the Committee, there is currently no legal document that encompasses children's rights in their totality.¹⁴⁵ Children's rights are sprinkled into various provisions within various national documents, but not in an extensive manner. Serbia's Family Law has established important provisions dealing with the rights and relations between parents, guardians, the State, and children.¹⁴⁶ It has substantially referenced the important of taking into consideration the best interests of the child in diverse sets of circumstances regarding childcare, primarily by outlining the obligation in Article 6 stating that 'everyone is under the obligation to act in the best interest of the child in all activities related to the child.'¹⁴⁷ In addition to this, the article outlines the obligation of the state to protect, respect and advance children's rights, and to 'protect the child from

¹⁴³ LATP, Article 50.

¹⁴⁴ LATP, Article 52.

¹⁴⁵ CRC, *Concluding observations on the combined second and third periodic reports of Serbia*, UN doc CRC/C/SRB/CO/2-3 (7 March 2017) para. 6-7, http://azil.rs/azil_novi/wp-content/uploads/2017/08/G1705257.pdf.

¹⁴⁶ A. Galonja, M. Avramovic, and T. Diegoli, 2013, p.50.

¹⁴⁷ Family Law, Official Gazette Serbia, 18/2005, 72/2011 and 6/2015, <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2005/18/7/reg>, (accessed 3 August 2020). (Translated by author of this paper).

neglect, from physical, sexual, and emotional abuse and from every form of exploitation.’ The responsibility is also given to the State to provide a child not under parental care with protection in a family environment whenever possible.

Best interests are to be taken account when involving courts, parents or guardians, adoption, and foster care. There is no clear provision explaining what would constitute an appropriate standard for best interests consideration or procedure. Additionally, the mention of foreign children is absent from the Family Law, however the fact that these laws exist for Serbian national children means that international law requires the Family Law to be applied to all children on the territory of Serbia regardless of status. All children without parental care are to be assigned a guardian¹⁴⁸ by the guardianship authority that also simultaneously allocates the accommodation of the child.¹⁴⁹ Guardians are required to be fit for the responsibility and have consented to the role.¹⁵⁰ If the child is at least 10 years of age they will be able to have a say in who takes on the role of guardian.¹⁵¹ Regular report submissions are required on a yearly basis from each guardian, as well as specific reports when requested, and a final report upon termination of guardianship.¹⁵² Contents of the reports are to ‘include data on personality of ward, on housing conditions, health, upbringing and education, as well as other issues relevant for ward’s personality’.¹⁵³ The role of guardianship authority is assigned to the Centre for Social Work to deal with of the protection of family, assistance to family and guardianship under Article 12.¹⁵⁴ Direct guardianship, whereby the guardianship authority takes the role of guardian is permitted under the condition that such a decision is in the best interests of the child.¹⁵⁵

¹⁴⁸ Family Law, Article 127.

¹⁴⁹ Ibid, Article 128.

¹⁵⁰ Ibid, Article 129

¹⁵¹ Ibid, Article 130

¹⁵² Ibid, Article 145

¹⁵³ Ibid.

¹⁵⁴ A. Galonja, M. Avramovic, and T. Diegoli, p. 48; Family Law, Article 12.

¹⁵⁵ Family Law, Article 131.

Prevalence of other international children's rights and principles are established within the Family Law. One of the most important, the right of the child to be heard and express their opinion, is protected in Article 67. The paragraphs state that children 'have the right to express their opinion and it will be given due attention in accordance with their level of age and maturity.'¹⁵⁶ They also have the right to information in order to form their opinions, and by the age of 10 a child can 'freely and directly express his/her opinion in every court and administrative proceedings where his/her rights are decided on.'¹⁵⁷ Court and administrative proceedings involving decisions for the child are thus required to acquire the child's opinion 'in co-operation with school psychologist or guardianship authority, family counseling service or other institution specialized for mediation in family relations, in the presence of person the child chooses himself/herself.'¹⁵⁸ Additionally, children are recognized the right to education 'in accordance with his/her abilities, wishes and inclinations'¹⁵⁹ and are provided with the right to decide upon their enrollment in secondary school upon turning 15 years old.¹⁶⁰ Article 62 delivers the essential consideration that 'a child has the right to be provided with the best living and health conditions for his/her proper and full development'.¹⁶¹

3.2.3 Law on Fundamentals of Education

National laws on education have worked to enshrine several important rights towards the accessibility and equality of education in Serbia. The right to education is present in the Serbian Constitution under Article 71¹⁶², and is further regulated by an accompanying set of laws such as: the Law on Foundations of Education System, the Law on Primary Education, the Law on Secondary Education, and the Law on Higher Education. Primary

¹⁵⁶ Ibid, Article 65(3).

¹⁵⁷ Ibid, Article 65(4).

¹⁵⁸ Ibid, 65(6).

¹⁵⁹ Ibid, Article 63(1).

¹⁶⁰ Ibid, Article 63(2).

¹⁶¹ Ibid, Article 62.

¹⁶² Constitution of the Republic of Serbia, Official Gazette Serbia, No. 98/2006.

and Secondary School are both free to attend, with the former being mandatory and the latter not.¹⁶³

The law on the fundamentals of Education states education is to be accessible and equal to all without discrimination on any basis.¹⁶⁴ Article 3 ensures that all people are to have the right to education, and explicitly references that foreign citizens, persons without citizenship, and asylum seekers shall be entitled to education under same conditions and in the same manner as envisaged for the citizens of the Republic of Serbia.¹⁶⁵ Exercising the right to education and inclusion should be done without compromising or endangering the other child or human rights.¹⁶⁶ Article 99 outlines again the prohibition of discrimination towards any group or individual with overt reference to nationality, migrant status, and displacement, while Article 110 deals with the prohibition of violence, abuse, and neglect.¹⁶⁷ This includes ‘physical, psychological, social, sexual, digital and any other violence, abuse and neglect of an employee, child, prohibition of conduct that insults reputation, honor or dignity is prohibited in the institution.’¹⁶⁸

3.2.4 Law on Social Protection

Law on Social Protection creates a framework for the right to social protection. It stipulates individuals may be granted social protection ‘when due to family and other life circumstances, the health, safety and development is endangered, i.e. if it is certain that without the support of the social protection system the individual cannot reach their optimal level of development’¹⁶⁹ with special emphasis on ‘if they are a foreign citizen or a stateless

¹⁶³ Law on Foundations of the Education system, Official Gazette Serbia, Article 4, No. 88/2017, 27/2018 - other law, 10/2019, 27/2018 –other law 6/2020. (translated by author of this paper).

¹⁶⁴ Law on Foundations of the Education system, Article 7(1).

¹⁶⁵ Ibid, Article 3.

¹⁶⁶ Ibid, Article 7(7).

¹⁶⁷ Ibid, Articles 99 and 110

¹⁶⁸ Ibid, Article 112.

¹⁶⁹ Law on Social Protection, Official Gazette Serbia, No. 24/2011, Article 41 (translated by author of this paper).

person, unaccompanied'.¹⁷⁰ Article 34 protects the right to information¹⁷¹, while Article 35 secures the right to participate in decision-making. 'The child has the right, in accordance with age and maturity, to participate and to freely express his/her opinion in all proceedings in which his/her rights are decided.'¹⁷² The consideration of the principle of the best interest of the user/individual in Article 26 necessitates 'respecting life cycle, gender, ethnic and cultural origin, language, religion, life habits, developmental needs and the need for additional support in daily functioning.'¹⁷³

Other relevant documents include 'Standards and competencies for the education of social workers'¹⁷⁴ and the 'Rulebook on the organization, norms and standards of work of centers for social work'¹⁷⁵ and the 'Instruction on the Procedures Regarding Accommodation of Unaccompanied children'.¹⁷⁶

3.3 Human Rights Based Approach

A human rights-based approach stems from the legal standards enshrined within core international human rights treaties. These treaties serve as the foundations that outline the obligations of *duty bearers* (States) to respect, protect, and fulfill the rights of *rights-holders* (individuals and groups).¹⁷⁷ The underpinnings set out by the treaties are legal and moral authorities that function to implement, monitor and evaluate the status of human

¹⁷⁰ Ibid, Article 41(8).

¹⁷¹ Ibid, Article 34.

¹⁷² Ibid, Article 35.

¹⁷³ Ibid, Article 26.

¹⁷⁴ Asocijacija CSR Srbije, 'Standardi i kompetencije za obrazovanje socijalnih radnika- dokumentent za rapspravu', *Dokumenta*, 2015, <http://www.asocijacijsr.org/dokumenta/send/4-ostalo/44-standardi-i-kompetencije-za-obrazovanje-socijalnih-radnika-dokumentent-za-rapspravu>, (accessed 2 August 2020).

¹⁷⁵ Pravilnik O Organizaciji, Normativima i Standardima Rada Centra za Socijalni Rad, "Sl. glasnik RS", br. 59/2008, 37/2010, 31/2011- dr. pravilnik 1/2012- dr. pravilnik 51/2019 i 12/2020.

¹⁷⁶ MLEVSA, 'Instrukciju o načinu postupanja centara za socijalni rad- organa starateljstva u realizaciji smeštaja maloletnih migranata/izbeglica bez pratnje', No. 011- 00-00682/2017-1 (10 October 2017), available in Serbian at: <https://bit.ly/2KILlIx>. (referenced as MLEVSA Instruction No. 011- 00-00682/2017-1. for the rest of the paper and translated by author).

¹⁷⁷ OHCHR, *Frequently Asked Question on a Human Rights-Based Approach to Development Cooperation*, UN doc HR/PUB/06/8, (December 2006), <https://www.ohchr.org/Documents/Publications/FAQen.pdf>.

rights across the globe.¹⁷⁸ However, while the approach is generally considered to be uniformly defined amongst the UN agencies through the UN Common Understanding, the rights based approach can slightly vary depending on the issue at hand. Therefore, as the topic of this thesis is focused on unaccompanied refugee children, the rights based approach will mainly be fueled by recognizing children as active subjects of rights and maintaining consistency with all the relevant international law.¹⁷⁹ A rights based approach is significant for unaccompanied children in that it allows for children to be ‘treated on an equal footing with an adult’¹⁸⁰, while also equally crucially recognizing the child's best interests, holistic wellbeing and dignity.¹⁸¹ Thereby, in amplifying the four main child rights principles previously mentioned, an effective application of a child rights-based evaluation can be made in relation to the current refugee and child protection system in Serbia.

4. Research Findings

The following section will delve into the results gathered throughout interviews and desk research. The information will follow a thematic analysis, first beginning with identification and registration, age assessment, followed by guardianship, accommodation, and subsequently education. While treated separately for organizational purposes, it will hopefully become evident that each topic plays into the other, and that in fact their intertwined relationships influence each theme's state.

4.1 Institutional Blindness and the Invisibility of Children: Challenges for Identification, Registration, and Age Assessment

As demonstrated in the above sections, legal standards and documents have established procedures to be carried out by State authorities upon the identification of an

¹⁷⁸ Stern, p. 245.

¹⁷⁹ Executive Committee of the High Commissioner's Programme, *Conclusion on Children at Risk No. 107 (LVIII) - 2007*, (5 October 2007), <https://www.unhcr.org/protection/children/50f6d4746/unhcrs-executive-committee-conclusion-children-risk.html>, (accessed 20 May 2020).

¹⁸⁰ Stern, p. 254.

¹⁸¹ CRC/C/GC/14, para. 5.

unaccompanied child. Paradoxically, identification is one of the most crucial segues to unaccompanied children's access to care and protection, yet identification of this group is also one of the largest obstacles for States. In an idyllic best practice scenario, when proper methods of identification are employed, the appropriate registration procedures may follow, serving as an entry point to both the asylum procedure and system of care. However, institutional and systemic blindness plays a major part in the failure to identify children in vulnerable circumstances, therefore creating a significant barrier for unaccompanied children to access social protection. Existing and continued discrepancies in statistics acquired by different governmental and non-governmental organizations exemplify the failure of the Serbian State to recognize the true extent of UAM presence in the country, and thereby a failure to address the needs of refugee children. UNHCR reported in the period from January 2019 to October 2019 3,064 unaccompanied children were identified on Serbian territory.¹⁸² However, only 640 were registered in this same period with intention to seek asylum, therefore it is just these children that are reflected in official government statistics.¹⁸³ Interestingly 1,907 unaccompanied children were accommodated in asylum and reception centres within that same timeframe.¹⁸⁴ Save the Children reported the number of identified UAMS every quarter throughout 2019, the total number from adding all the quarterly reports by the organization was 3,597 by the end of the year.¹⁸⁵

¹⁸² BCHR, 2020, p.99.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ I. Tasić, 'Refugees and Migrants at the Western Balkan Route: Regional Overview January-March 2019' *Save the Children's Resource Centre*, 2019, p.9, https://resourcecentre.savethechildren.net/node/15379/pdf/refugees_and_migrants_balkans_regional_overview_q1_2019_sc_bmdh_data.pdf, (accessed 10 August 2020); Jovanović, K., 'Refugees and Migrants at the Western Balkans Route Regional Overview, April – June 2019', *Save the Children's Resource Centre*, 2019, https://resourcecentre.savethechildren.net/node/15997/pdf/refugees_and_migrants_balkans_regional_overview_q2_2019_sc_bmdh_data.pdf, (accessed 5 May 2020), p.9; Jovanović, K., 'Refugees and Migrants at the Western Balkans Route Regional Overview, July-September 2019', *Save the Children's Resource Centre*, 2019, p. 9, https://resourcecentre.savethechildren.net/node/16647/pdf/refugees_and_migrants_balkans_regional_overview_q3_2019_sc_bmdh_data.pdf, (accessed 5 May 2020); Jovanović, K., 'Refugees and Migrants at the Western Balkans Route Regional Overview, October-December 2019', *Save the Children's Resource Centre*, 2019, p.9, https://resourcecentre.savethechildren.net/node/17348/pdf/refugees_and_migrants_balkans_regional_overview_q4_2019_sc_bmdh_data.pdf, (accessed 5 May 2020).

Such discrepancies in statistics indicate issues existing in the asylum system that enable situations for unaccompanied children to either slip under the radar remaining unregistered, or end up registered as either accompanied or alternatively to be registered as adults.

In the most recent report published by BCHR the case is made evident that competent and qualified staff is crucial to ensuring children are identified in the field, whether when making their claim to seek asylum or if encountered in refugee and migrant informal settlements.¹⁸⁶ APC reported on situations of unaccompanied children aged 12-17 living in abandoned factory buildings without access to water, food, or adequate shelter close to borders with Croatia, having attempted to cross without success. In the report, APC claimed to have alerted the relevant SWC, which had not taken any action in response to the situation.¹⁸⁷ Insufficient access and allocation of resources limit SWCs ability to provide enough field social workers that may perform direct identification activities, or to perform other mobile outreach activities such as arriving to the calls of different NGOs or state authorities needing the assistance of field social workers.¹⁸⁸ Field social workers are important because they are the ones initially responsible for assisting with the registration procedure and immediately reporting to the territorially relevant SWC, in order for the guardianship authority to assign a temporary guardian to the child in question.¹⁸⁹ This situation endangers the rights of unaccompanied children to receive information regarding their rights and options in a timely manner, and to have their physical needs met through safe accommodation and material conditions.

¹⁸⁶ BCHR, 2020, 100.

¹⁸⁷ APC, 'Underage migrants in the open without access to water and food', *Asylum Protection Centre*, [website], 12 October 2018, <http://www.apc-cza.org/en/8-vesti/1566-underage-migrants-in-the-open-without-access-to-water-and-food.html>, (accessed 1 August 2020); APC, 'An increasing number of migrants are trying to cross the Croatian border-among them a large number of underage boys', *Asylum Protection Centre*, [website], 18 September 2018, <http://www.apc-cza.org/en/8-vesti/1567-an-increasing-number-of-migrants-are-trying-to-cross-the-croatian-border-among-them-a-large-number-of-underage-boys.html>, (accessed 1 August 2020).

¹⁸⁸ BCHR, 2020, p.98.

¹⁸⁹ MLEVSA Instruction No. 011- 00-00682/2017-1; BHCR, 2018, pp. 54-56.

Throughout 2019, police departments registered the most intentions to seek asylum, with a total of 11,784 processed at relevant locations.¹⁹⁰ The second most used avenue for registrations occurred at border crossings, with 1,041 registered intentions for asylum declared.¹⁹¹ The Committee recorded in their most recent periodic report that presence of interpreters at the borders is limited, and that this influences communication for identification of unaccompanied children.¹⁹² In many cases where registration is completed, it occurs without the presence of a temporary guardian, contrary to standards outlined in the Convention and the LATP. In being the most utilized avenue for registration, police operations for identification and registration is imperative, requiring a systemic and proactive identification measures.

Registration certificates are important not only to account for the refugees arriving in Serbia, but are used for temporary regulation of legal status of these individuals as well as for accommodation purposes. In other words, the intention to seek asylum is often expressed by the foreigners who do not wish to seek asylum in Serbia, but rather want to legalize their stay pending departure.¹⁹³ Filing the intention to seek asylum is also the primary step to submitting an asylum application. Such an influx of paperwork places an excessive burden on the Asylum Office, making it very difficult for them as the competent body to deal with genuine asylum applications in a timely manner and negatively affecting genuine asylum seekers. Throughout 2019, the Asylum Office was staffed by 23 individuals, of which 13 hold positions as Asylum Officers. It has been observed that these employment numbers are not sufficient and pose challenges to the ability of the Asylum Office to adequately assess asylum applications.¹⁹⁴

¹⁹⁰ BCHR, 2020, p. 14.

¹⁹¹ Ibid.

¹⁹² CRC/C/SRB/CO/2-3, para. 56.

¹⁹³ BCHR, 2018, p. 11.

¹⁹⁴ Aida 2019 p.18

Official documents in Serbia are printed in the Cyrillic alphabet. This is no different when it comes to the issued documents that record expressed intentions for asylum.¹⁹⁵ The practice of using Cyrillic has been regarded as problematic, because it creates a barrier for refugees to understand information presented to them.¹⁹⁶ This becomes particularly troublesome for when it comes to accessing the asylum system and fulfilling procedural steps in a timely manner. In combining this aspect with reports that describe a failure by the hand of police officers to adequately disseminate information to foreigners on rights and obligations during registration, it can be deemed a violation of the right to information established in Article 56 of the LATP.¹⁹⁷

4.2 Age Assessment: to be or not to be?

Contrary to established procedures in many EU countries, there is no universalized age determination system in Serbia implemented to verify claims by individuals stating that they are minors. If there is no verifiable documentation accompanying the individual's claim, their declaration as a minor is addressed by giving them the benefit of the doubt, and they are registered and accommodated accordingly. This practice, while not ideal, is more favourable than some practices in the EU that use invasive medical age assessments, which are fairly controversial due to their margin of error and a failure to apply the benefit of the doubt principle.¹⁹⁸ While employing Serbia's method does not result in any children incorrectly and unfairly being denied their status or rights as children, the current procedure has presented a variety of issues in its own respect. The absence of an age assessment

¹⁹⁵ BCHR, 2018, p. 21.

¹⁹⁶ Ana and Vlade Divac Foundation, Arbeiter Samariter Bund Deutschland e.V. & Helsinki Committee for Human Rights of the Republic of Macedonia, 'Help on the Route: Annual Report for 2018, the rights of refugees, migrants, and asylum seekers in Serbia', *Divac Foundation Reports*, 2018, p. 12, https://www.divac.com/upload/document/annual_report_2018_-_the_rights_of_refugees.pdf (accessed 15 November 2019).

¹⁹⁷ LATP, Article 51; BCHR, 2020, p. 21.

¹⁹⁸ <https://www.easo.europa.eu/sites/default/files/easo-practical-guide-on-age-assesment-v3-2018.pdf>, (accessed on 10 August 2020).

procedure has created irregularities in statistics of registered UAMs, but more troublingly has led to the mixing of adults in spaces for children.¹⁹⁹

Their declarations are recognized as valid. Yes, basically then it's a double-edged knife because you have a person who clearly looks like an adult, that you can see that they are 30 years old, but they say they have 16 or 17 years. And then yes, it's a very big problem.²⁰⁰

It has been noted by NGO's that in practice it is not uncommon for adults to claim to be children, while children who truly qualify by being under 18 sometimes claim to be adults.²⁰¹ Adults who have been noted to misrepresent their age strategically declare themselves as children in order to be placed in the accommodation centre Krnjača, which is convenient due to its location as the only center in Belgrade.²⁰² They also make claims as children because they think their status will be improved, and that they will be awarded better treatment and privileges. Unaccompanied children on the other hand sometimes try to pass as adults in order to keep on their journey to the destination country, or to not be separated from their travel group.²⁰³ Children that are unaccompanied have also been known to go through registration as falsely accompanied by another member of the group they are travelling with, this is especially in cases with females who try to travel with other families or people who pretend to be with them to cross borders more effortlessly.²⁰⁴ Unaccompanied children also often have the general desire to remain unseen due to their fear that fingerprinting and formal registration will impede on movement and travel further into Europe.²⁰⁵

¹⁹⁹ BCHR, 2017, p. 133.

²⁰⁰ UNHCR, Interview, Belgrade, 10 December 2020. Current and subsequent quotations are all translation from the original in Serbian to English by the author of this paper.

²⁰¹ Ana and Vlade Divac Foundation, Arbeiter Samariter Bund Deutschland e.V. & Helsinki Committee for Human Rights of the Republic of Macedonia p. 15.

²⁰² CRPC and HCIT, p.17; Ana and Vlade Divac Foundation, Arbeiter Samariter Bund Deutschland e.V. & Helsinki Committee for Human Rights of the Republic of Macedonia, p.15.

²⁰³ Ana and Vlade Divac Foundation, Arbeiter Samariter Bund Deutschland e.V. & Helsinki Committee for Human Rights of the Republic of Macedonia, p.15.

²⁰⁴ Save the Children & IRC, p.5.

²⁰⁵ Ibid.

While these situations are not favourable, it is also not favourable to recommend the previously mentioned and highly disputed medical assessments as part of age determination procedures. Rather, the development of procedural guidelines along with further training of officials and social workers to identify children in a ‘humane and dignified system of age determination’²⁰⁶ should be developed and implemented. Age determination procedures can be connected to some of the irregularities concerning the data of UAM present or passing through the country. This is a failure of legislation ‘to prescribe how the age would be established, leaving it up to the competent authorities to arbitrarily ascertain the age of persons lacking personal documents from the country of origin’ is an important omission to note.²⁰⁷ GRETA has similarly noted this danger that a child’s claim as a minor may not be accepted or overlooked.²⁰⁸ All these factors contribute to the understated representation of unaccompanied children in official statistics.

4.3 Guardianship

As mentioned, guardians are a crucial and indisputable requirement for preserving and representing the rights and interests of the child throughout not only the asylum procedure, but within the entire social protection system. As a minimum standard, no child is to be without the protection of a guardian at any time.²⁰⁹ Initial assignment of a temporary guardian is instigated through the notification of a relevant SWC, which ideally happens immediately upon the identification of an unaccompanied child.²¹⁰ Typically, it is a state authority (border guard or police), NGO representative, or field social worker that alerts the SWC that acts as guardianship authority. Immediately upon receiving the information or direct knowledge of the existence of an unaccompanied child, the territorially competent

²⁰⁶ BCHR, 2017, p.21.

²⁰⁷ BCHR, 2018, p. 52.

²⁰⁸ COE, ‘Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings’, GRETA (2017)37, 2018, p. 30, <https://rm.coe.int/greta-2017-37-frg-srb-en/16807809fd>, (accessed 29 July 2020).

²⁰⁹ CRC/GC/2005/6, para, 33-38.

²¹⁰ MLEVSA Instruction No. 011- 00–00682/2017–1.

guardianship authority must appoint a temporary guardian for the minor by urgent procedure as outlined in the LATP and MLEVSA Instruction. Thereby the ‘first interview with the child for the purpose of a preliminary assessment of the manner of his/her urgent protection is conducted in the presence of a temporary guardian, a field social worker and an interpreter’²¹¹ is undertaken. Regardless of the level of immediacy that is integrated into this Instruction and LATP, the BCHR has noted in many of their reports that the appointment of temporary guardians in the Serbian system has been known to take weeks, and often happens after the unaccompanied child has already received a registration certificate and is being accommodated in an asylum or reception centre.²¹² This is evidently a violation of international standards and the national LATP that states ‘an unaccompanied minor shall have a temporary guardian appointed by the guardianship authority, in accordance with law, immediately after it has been established that he/she is an unaccompanied minor and, in any case, before the submission of his/her asylum application.’²¹³ Such delay impedes on the child’s right to have their best interest looked after in a timely manner. Delaying guardianship only further suspends processes for proper best interest assessments and decisions to take place, and deprives unaccompanied children of their right to be informed and their right to be heard, or as Bhabha states, ‘it neutralizes their legal entitlement to special treatment and effectively obliterates social acknowledgment of their rights.’²¹⁴ Some factors that influence poor response by guardians are the shortage of human capacity, excessive workloads, and insufficient means of transportation or logistic capacities.²¹⁵

In being the key mediator between a child and the law, the guardian is responsible for understanding the child’s needs and guiding them throughout the various levels of State

²¹¹ MLEVSA Instruction No. 011- 00-00682/2017-1.

²¹² BCHR, 2020, p. 101-102.

²¹³ LATP, Article 12.

²¹⁴ Bhabha, p. 259.

²¹⁵ BCHR, 2020, p. 102.

bureaucracy and ensuring that the child receives as much rights as is in the guardian's ability to do so.

I mean in the simplest terms we explain to them what asylum means, and to tell them about the possibility of staying in Serbia and applying for asylum. Then, still throughout the asylum procedure, the guardian is the same person who of course communicates with this child.²¹⁶

Security is the primary concern for guardians, so is safety. The other thing of course is health, taking care of the health of the child, then education. They are the ones who enroll children in school; if they are high school students they help them in choosing the school and choosing the profession. Then health includes mental health, they take them to a psychologist, to a psychiatrist as needed. Very often a psychiatrist will not even accept a child without a guardian. Then the same thing that is very important is the approach to the asylum procedure because the guardian is the first person that will explain to the child what asylum is.²¹⁷

These statements are positive in that they showcase recognition of the responsibility guardians have as one of the primary points of information sharing, and access to importance services and evaluations. Case managers and guardians further elaborated on some of their key roles, and in particular the elements that they record in best interest assessments, and how they consider the best interests in their reports submitted upon request of the Asylum Office.

What we assess is whether the minor has adapted, what is his best interest. I mean, I know a child left his country of origin because his whole family was killed because, I don't know, the Taliban wanted to kill him. It's normal that I think it's not in his interest to return to the country of origin. If he has adequately adapted here, enrolled in school, motivated, wants to continue school, to improve his work, I think it is safe for him to stay here, that his interest is to be here where he has already adapted, made contacts, a network. So, in that sense, I declare myself in that finding.²¹⁸

I write a report, which contains somewhere, their basic information, like why they left the country of origin, they talk about it all in the procedure itself, but I simply

²¹⁶ UNHCR, Interview, Belgrade, 10 December 2020.

²¹⁷ Ibid.

²¹⁸ SWC Savski Venac, Interview, Belgrade, 20 November 2020.

summarize it somewhere. How they have been since the moment of arrival, that is, what their experiences were during the trip, what they experienced, because especially, I don't know in those...I don't know, they had a couple of those children, just from Zmaj, and they beat them, and they were abused, so they worked and they weren't paid, I mean, you already know what they are experiencing... And then from the moment they arrived in our country, where were they accommodated? How did they work there? How do they work today? Do they go to school? Just how they adapted, how their stay here and their daily functioning went, there were still some problems, and then somewhere based on that I make a recommendation, I don't think I can say whether he should get asylum or not. That is not our role somewhere.²¹⁹

As evidenced, ultimately, they can only make recommendations, and the final say is in the hands of the Asylum Officer. For this reason, it is important that they do their job thoroughly in accumulating information about their ward. In 2019, an AIDA report revealed that 'substantial support' was extended to 5% of unaccompanied children, 130 underwent best interest assessments, and the Asylum Office requested a total of 20 best interest determinations.²²⁰ Local organizations have noted that prior to the introduction of the LATP the Asylum Office did not consider the best interest principle in decisions. Positively, by the end of the year 2018 the first asylum decision had been granted to an unaccompanied minor, demonstrating that the inclusion of this provision positively influenced the asylum procedures dealing with applications from unaccompanied children.²²¹ Asylum was granted to 4 children, with another 15 applications under review in upon the publishing IDEAS' report.²²² BCHR has reported that all asylum applications submitted on behalf of children have resulted in positive decisions.²²³ However, this new trend has been conditional to applications submitted after the LATP came into force, those submitted in the prior period when

²¹⁹ SWC Savski Venac, Interview, Belgrade, 20 November 2020.

²²⁰ BCHR and ECRE, p.49.

²²¹ BCHR, 2020, p. 54.

²²² IDEAS, 'Best Practices in Providing Guardianship Protection for Refugee Children in Serbia', *IDEAS Publications*, 2020, p. 6, <http://ideje.rs/wp-content/uploads/2020/06/Dobre-prakse-u-pruzanju-starateljske-zastite.pdf>, (accessed 8 August 2020).

²²³ Ibid.

the LA was operating have not been met with the same results because their applications have been operating under the provisions outlined in the LA.

This description of what is taken note of by the guardians falls in line with UNHCR Best Interest Determination Guidelines that require a holistic approach to information gathering, and national MLEVSA Instructions. These Instructions require that during the first interview the following information be collected:

Name and surname, age and place of birth, information on the family situation in the country of origin, educational status, information on the reasons and manner of leaving the place of residence in the country of origin; information on the previous way of traveling and on the persons with whom he traveled, information on the health condition, information on acutely unmet security needs, clothing needs, nutrition, etc. and other information relevant to planning the further protection of migrant /refugee minors.²²⁴

Along with this, ‘observations about the unaccompanied child should be made with attention to the child's behavior, psycho-physical condition of the child, the child's attitude towards the persons with whom he traveled, and other behavioral indicators of the child's condition’.²²⁵ The revision of this content may be repeated as required in the later stages of the procedure to further assess the best interests of the unaccompanied child.²²⁶

In further conversation with the representative from SWC Savski Venac, their process of assigning guardians was described, explaining the workload of different guardian’s is taken into account, how many children have already been placed in their care, and that also they have knowledge of how each guardian functions and what their level of competency is. In a sense they try to make the best match for the needs of the child at hand and whom can be the best guardian for them depending on the approaches they employ in their work and relationships.

²²⁴ MLEVSA Instruction No. 011- 00-00682/2017-1.

²²⁵ Ibid.

²²⁶ Ibid.

We also know how each guardian works and what their knowledge is, in which areas they may be better and what kind of approach they have to the child. So we look at those specifics related to a particular child, and in accordance with that we assign a certain guardian.²²⁷

It was also explained by SWC Palilula that it is possible for an unaccompanied child to request the guardianship of a specific person. In this sense the input of the child is very often respected and fulfilled.

Well you know if we have a child who expresses a wish, for example for (anonymous) to be their guardian, of course we will respect that. Or, for example, if a guardian says: I cooperated really with this little one... We then respect that request, but if we have no desires and so on, then we look to see that everyone has the same number of children, because it's really not okay for someone to have ten and someone else to have only two.²²⁸

Similarly, upon the need for a legal representative, it was assured throughout interviews that children were duly informed about their rights in that regard and were able to participate in the selection of who is to legally represent them.

Guardians work with the kids, speak to them, inform them and together with the kids decide. For us as a Centre it is important that the kids have legal support so now whether that is APC or BCHR... the kids have the right to choose, for us in the Centre it is important that the kid has the proper legal support for us it really doesn't matter who it is, only that the child is legally protected and that the legal support it extended to them... the guardian informs them and the child makes the decision, I am not present in how or what they say to the children.²²⁹

Most often they are teenagers, so sometimes they themselves say that they want APC to represent them or I want BCHR... and then they are present at every hearing.²³⁰

It was also explained that occasionally there are cases where a guardian may not be immediately available for an important situation that calls for the presence of a guardian, and that other guardians, social workers, or case managers can take on the role.

²²⁷ SWC Savski Venac, Interview, Belgrade, 20 November 2020.

²²⁸ SWC Palilula, Interview, Belgrade 19 November 2020.

²²⁹ Ibid.

²³⁰ UNHCR, Interview, Belgrade, 10 December 2020.

We also have situations where we employ indirect guardianship, which is to say some of us from the Centre. We have emergency intervention, something like that for situations where no guardian is free in that moment. I mean, they are not obliged to be free for emergency interventions at all times. We put one of us there, it's nothing, I mean, and it's not a problem. It continues to function.²³¹

Comradery and cooperation amongst guardians was further described at SWCs. Sharing the workload seemed a common practice, with guardians stepping in to help each other whenever it was needed.

They all have good cooperation, they jump when it happens that, for example, some are already busy with another child, and a child needs something to be done, so if the guardian is not able, of course, there is one of us from the Centre...if one of our colleagues is not there, it doesn't matter, we are guardians in front of the guardianship body by line of duty.²³²

While it is potentially not favourable for an individualized approach to have intermixing and inconsistency in the guardians providing assistance and care, in a system that is so understaffed, it may be better that unaccompanied children receive some form of support rather than none. However, it is important to mention that the most influential factors in establishing a good relationship is 'the availability of guardians, sincere interest, commitment to the realization of their wishes, and concrete support in various life situations', which could be impacted in this practice.²³³ Interviews revealed some worse poor practices in the realm of guardianship. One representative explained Asylum Officials have instigated initial interview procedures for unaccompanied children without the presence of guardians.²³⁴ BCHR equally reported cases of this practice, where the Asylum Office would have held an oral hearing without a temporary guardian had a caseworker not stepped in.²³⁵ This highlights a likely poor consideration for the best interests and other child centered standards in their absence.

Another thing that guardians report to us is that sometimes interviews last 6 or 7 hours, with very few breaks that are very short, and this anyways is not in the

²³¹ SWC Savski Venac, Interview, Belgrade, 20 November 2020.

²³² Ibid.

²³³ IDEAS, p.33 (direct quote translated by author of this paper).

²³⁴ UNHCR, Interview, Belgrade, 10 December 2020.

²³⁵ BCHR, 2020, p. 109.

best interest of the child...it's horrible. To be interviewed in that kind of a manner continually for hours.²³⁶

It was difficult to obtain direct information from the SWCs in respect to how many children were in their care and exactly how many children have been assigned a guardian, as many of the organizations were not transparent in this regard. Data shows that at the end of June 2018 90% of children in government run facilities were appointed a guardian, but this percent decreased to 50% in July to September because of a rise in arrivals of UAMs in Serbia.²³⁷ BCHR also reported that less than 16% of the unaccompanied children who were staying in the asylum centre in Krnjača had been assigned a temporary guardian in 2019²³⁸. An applicable example in an interview was provided about a situation where an unaccompanied minor who had been living in Krnjača for 9 months, was not registered, and did not have a guardian.²³⁹

An unaccompanied minor, foreign to this country, of migrant status, and has special health needs was without a guardian! When I asked how this was possible everyone told me to be quiet and not ask.²⁴⁰

It was also mentioned that the same UAM had been registered in school, something that should not have been possible without a guardian. BCHR has additionally noted that from the organizations experience it seemed guardians were only provided to a child if there was a specific need to be fulfilled or a procedure that required a guardians presence, such as an official asylum application, medical intervention, or official transportation from one location to another.²⁴¹ Furthermore, ratios of children to guardians alter and fluctuate depending on the number of unaccompanied children at any given point, and not all children will be assigned a guardian. In cases where a guardian is assigned, BCHR also noted that they are often working in conditions that cannot promote the adequate level of care and quality to meet acceptable standards. Thus, one of the main obstacles to standards

²³⁶ UNHCR, Interview, Belgrade, 10 December 2020.

²³⁷ CRPC and HCIT, p.32

²³⁸ BCHR, 2020, p. 101.

²³⁹ ZVDO Niš, Interview, Belgrade, 3 December 2020.

²⁴⁰ Ibid.

²⁴¹ BCHR, 2020, p. 101-102.

of care is the lack of human resources. There are not enough guardians staffed in SWCs, resulting in the overburdening of the staffed guardians.²⁴² An example of such a situation has been recorded in the Palilula Municipality, where there was a single caseworker who had 175 children that they were responsible for.²⁴³ The GRETA report also took note of high children to guardian ratios.²⁴⁴ Serbia does not have law stipulating a recommended ratio, however standards from best practices by CPWG stipulate no caseworkers should have over 25 children.²⁴⁵ This discrepancy is alarming and begs the question of how best interests and quality of care can be adequately provided.

For example, in Sjenica they have, yes, they have 200 there. Well, yes. I think that's incomprehensible. So, in Sjenica there is still one person left for 200 of them, one person gets custody for 200 of them. Now the number varies, for example, I've been following in recent months the number has varied between 150 and 200.²⁴⁶

This decision to have one person caring for 200 children is in violation of all legal standards and guidelines. In part this decision can be explained by the distance of the Sjenica asylum centre and the lack of transport connecting it to the Centre so that it can be frequented regularly by professional guardians, cultural mediators, or translators that are based in Belgrade.

Second, there is the problem of communication. With the kids, down here now that this year is over, they won't have any translators there. This of course, implies the questing of why Sjenica is a place for these children at all. Because it is far from all non-governmental organizations, if you are sending someone from Belgrade, you have to give them accommodation. Yes. You have to pay for the trip, you have to pay for his accommodation, you have to pay for the food, then the salary is significantly increased.²⁴⁷

Inadequate capacity has been a continued issue and has sustained the call for additional support. Many guardians are funded by civil society projects such as IDEAS and

²⁴² BCHR, 2020, p. 103.

²⁴³ Ibid.

²⁴⁴ GRETA (2017)37, 2018, para. 71.

²⁴⁵ CPWG, 'Minimal Standards for the Protection of Children in Humanitarian Activities', *IDEAS Publications*, 2012, p. 138, <http://ideje.rs/CPMS.pdf>, (accessed on 26 July 2020).

²⁴⁶ UNHCR, Interview, Belgrade, 10 December 2020.

²⁴⁷ Ibid.

MADAD.²⁴⁸ Programs are lead and funded by a variety of organizations, which has created a decentralized system of guardianship from the different sources of guardians.²⁴⁹ Some guardians are hired directly by the municipal SWC, and others are hired through projects run by organizations working together such as MLEVSA, IDEAS and UNHCR, whose objectives are to combat the gaps in the guardianship systems capacity caused by increasing needs. The project ‘Strengthening Child Protection and Inclusion of Refugee Children in Serbia’ also aimed to provide assistance to case management and to assist in training.²⁵⁰ Through the project 5-10 guardians were hired and trained by IDEAS.²⁵¹ As these guardians were not under direct employment of the CSW, this allowed improved flexibility for the allocation of the guardians as needs arose.²⁵² 2,229 unaccompanied children received guardianship services from the joint project between IDEAS and UNHCR throughout the period of 2018-2019.²⁵³ Guardianship was shorter than 3 months for 66.5% of these children, with 9% being under guardianship for longer than a year. 187 best interest assessments were conducted, and 17 best interest determinations were undergone for the asylum procedure from this project.²⁵⁴ Based on the results from the initiative, it was deemed a successful model of best practice by MLEVSA, the state authority that is to adopt the model with EU support in 2021.²⁵⁵

Unfortunately, not all projects conclude with such positive results. While often well intentioned, it can occur that assistance provided through project initiatives and funds by third parties are sometimes only band aid solutions. For example, in an attempt to solve an identified problem over a lack of coherence and division of responsibilities at SWC Loznica, an external expert from the IOM was hired for support in a role as an expert field

²⁴⁸ BCHR, 2020, pp. 103-104.

²⁴⁹ SWC Palilula, Interview, Belgrade 19 November 2020.

²⁵⁰ IDEAS, p. 3.

²⁵¹ Ibid, p. 5.

²⁵² Ibid.

²⁵³ Ibid. p. 6.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

worker.²⁵⁶ This IOM employee was brought over through a temporary contract that could last as long as there was funding to support it, which brought along two issues. The first is that the temporary worker from the IOM had taken on roles that were outside of what was established within the contract. Instead of performing the job as expert field worker, the individual took on a much more needed position acting as a case manager. In working as a case manager, the contracted help accomplished a variety of responsibilities such as supervising children and fulfilling their wide-ranging needs (taking them to the doctor, school enrollment, providing assessments etc.).²⁵⁷ Secondly, this contract provided only a temporary fix, it did not in any way provide a permanent solution that would be sustainable upon the departure of the IOM employee. The IOM expert has since left, and permanent staff in Loznica expressed concern over being left short of hands with a new need for the role to be filled, but that there is no one who has the availability nor knowledge for those duties. The employees now left to pick up the responsibilities exuded an uncertainty in how they would proceed without the IOM worker, and acknowledged that support for the refugee children will not be available to the same extent. ‘What she did was from morning till night...I have a right to my free time’²⁵⁸ was one comment expressed, along with a persistent attitude of discouragement and doubt surrounding the different projects for refugee children that never have enough resources or capacity. ²⁵⁹

Capacity, or rather lack of capacity, is an issue that plagues the entire guardianship and social work system. Employees of the SWC expressed that they do the most they can; however, overexerting themselves is neither favourable nor sustainable. While it can be acknowledged that there is some awareness of how this influences the care offered to children, it seems that they faced much discouragement. ‘What the IOM worker did, I am not able to do even 30%, nor do I want to’,²⁶⁰ a statement that expressed the sheer

²⁵⁶ SWC Loznica, Interview, Belgrade, 29 November 2020.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

unimaginable ability to maintain the system without additional personnel but also recognizing that these groups of unaccompanied children have needs that should be met.²⁶¹ Similarly, in the centre ZVDO Niš it was discovered that the project MADAD was funding the employment of 6 guardians until the end of December 2019.²⁶² This again created a question around who would fill the gap after this period and with what resources, as the budget assigned for 2020 would not be sufficient. Out of three guardians permanently employed at ZVDO Niš, the Director of the centre is one, a decision intentionally made to ensure that someone could always be available for any arising needs. This, in the opinion of ZVDO Nis, ‘is better than to be constantly calling someone from the SWC who physically cannot make it’.²⁶³ While the additional guardians from the MADAD program do help and were regarded as supportive, there is dissatisfaction with the guardians’ professional knowledge and competencies.²⁶⁴

Throughout the interview at ZVDO Niš there was great emphasis, attention, and respect for the best interest of the child. It was also commented that it is more important that ‘the child is functioning well and receiving what they need, regardless of the difficulty or cost’²⁶⁵ that comes to those employed at the centre. This type of dedication and care awarded to the needs of the children was very notable and impressive, and created the impression that much of the best interests of all the children were looked after in a personal and individualized approach. However, because so many roles are taken on by a small number of people, it is clear that a level of quality and sustainability is in question.

Commonly present in alternative care centres for unaccompanied children are individuals hired as a “vaspitac”, roughly translated as a monitor in this context. Their role is to be present daily and is responsible for supervising and assisting the children with their regular

²⁶¹ Ibid.

²⁶² ZVDO Niš, Interview, Belgrade, 3 December 2020.

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

needs. While not quite a guardian, they occasionally take on some of the supervisory roles and are in regular contact with guardians. A common theme was commented in relation to the topic of these monitors. Often, they were described as being inexperienced and generally improperly trained in child protection matters. This is partly rooted in the fact that monitors are hired from various professions, it was shared that one is for example a dentist. It has also been noted that they do not always seem to understand the full extent of their roles, as they have failed to take children to school or to the doctors, regarding these tasks as ‘not part of their jobs’.²⁶⁶

As required under international law, review processes are in place within the Serbian guardianship system. Individual guardians are at the minimum responsible for submitting yearly reports in February to the Social Work Centres.²⁶⁷ This keeps them accountable and serves as a ‘receipt’ of the services they provided over the course of the year. It is also possible in irregular circumstances there is the necessity for extra submission of reports and assessments.

According to the law, for example, in regular circumstances a guardian is responsible to submit a yearly report somewhere in February. However, with professional guardians we are in contact with them daily and they are always sending notes and informal reports. So, we are really up to date no matter what happens. Sometimes more than we want or need to be, but well that I think that depends on the case manager. Some case managers, for example I like to be in the loop and really, I like to know everything about the subject I am working on, I don’t like to do things halfheartedly. So, for me it is not a problem if they notify me about something in the middle of the night, no matter what.²⁶⁸

Essentially...in addition to informing us about the functioning and condition of the minor, the guardian is obliged to submit an account, so to speak, to the guardianship authority, reporting everything that they did as a guardian, how they undertook the protection of rights and the best interest of their ward. So that is provided annually, and if requested sometimes an extraordinary report.²⁶⁹

²⁶⁶ SWC Loznica, Interview, Belgrade, 29 November 2020.

²⁶⁷ Family Law, Article 145.

²⁶⁸ SWC Palilula, Interview, Belgrade 19 November 2020.

²⁶⁹ SWC Savski Venac, Interview, Belgrade, 20 November 2020.

This confirms the level of required monitoring for the work that guardians do and that rights based, and best interest approach is held to standard and assess to some degree. It is also positive that guardians are held accountable for their duties. With regard to who is hired as a guardian, there was no indication of a specific educational or professional background that is required. Almost anyone can become a guardian, it is only necessary that the individual passes an eligibility test and they can then be selected for the job.²⁷⁰ This approach promotes an interdisciplinary strategy to guardianship and is regarded as positive because it is open minded and diverse.

There is no such law, they believe that it should not exist because it has been shown to be crucial and relevant. Yes. It just matters that someone is reliable and an educator, we have people who -I don't know- a guy who finished philosophy is great, he works so hard. He is given custody of children who have some of the most complex problems. And he manages to help the children out of them...You have in the law on social protection who can work in the center for social work, who can be the case manager. That's defined, that's okay. You have to have some standards.²⁷¹

Regular sessions of training were noted as provided by the SWC, especially for field workers who are regularly dealing with the particular population of unaccompanied children regularly.²⁷² A general sense of contentment was displayed around the work of the guardians. Many thought that they do their job well and can be trusted to take certain responsibilities and initiative independently. SWCs and accommodation facilities acknowledged the centrality of the guardians' role with unaccompanied children and for being successful in navigating the various systems.

Yes, I think that the guardians are really professional, they are really in tune and connected with us, I mean they address whatever is needed, whenever they need to give their consent...I think that they work really well.²⁷³

It was discussed that there is also the option for children to change their guardian if they are not satisfied. While it seemed that what could be done to inform the children of their

²⁷⁰ SWC Palilula, Interview, Belgrade 19 November 2020.

²⁷¹ UNHCR, Interview, Belgrade, 10 December 2020.

²⁷² SWC Savski Venac, Interview, Belgrade, 20 November 2020.

²⁷³ Ibid.

options was carried out, it could not be guaranteed that all children knew and understood how to instigate the switching of guardians should the need arise.

It's like this, whoever complains, we respect. We talk to the child and see what the problem is and why it is they are asking and all that...so they usually complain to the field workers...when they need something they ask. What do I know? Probably there are some who don't know that they have that possibility, I can't say now that everyone knows. But for most of them I'm telling you, there were cases when they complained, and it was changed.²⁷⁴

In all interviews with the SWCs, emphasis was placed on taking into account the wishes of the child. This is respected in a variety of scenarios for services and support that is offered to unaccompanied children. Interestingly, it was mentioned that there are times when it is impossible to aid them or to enact the best interest assessment, that sometimes children simply reject assistance. In these instances, the interviewed respondents from SWCs expressed their standpoint that 'the participation of a minor is mandatory, if they don't want it you can't do anything, we can't accommodate our child, I mean one that is here, if they don't want to.'²⁷⁵ It is a sensitive balance of their right to make decisions for themselves, and ultimately there is no way to force them to stay longer and accept State services.

Their goal is to be as close as possible to the border, so that they can go further on, and honestly, we can't prevent them, and then if you think about it, I think it's not alright that we stop them in that. If it's their goal, then it's in their interest to arrive to their destination. We are here to help them. Whether in a given moment to house them, to extend them different forms of support if there is a need for that, to inform them about where and what.²⁷⁶

Also noted was the difficult factor of influence from the family back home, that sometimes it is evident that the child at hand would choose to stay in Serbia if it was up to them, however culturally the family pressure is too strong. Unaccompanied children continue the journey because it is what they are told to do, and many have family that made sacrifices

²⁷⁴ Ibid.

²⁷⁵ Ibid

²⁷⁶ Ibid.

for them to go, or others have the obligation to send money back and reach the destination approved by the family.²⁷⁷

Or what I noticed that is a problem is that they have to follow the instructions of their family, the parent that stayed back in their home country or that is waiting for them over there in the country that they are hoping to arrive to. Until that person says its okay you can go to the camp, nothing matters at all. Sometimes you can see it, that is another problem if for example a young child, where we can see that they are a kid and that they want to stay because they are already tired from the journey and all of that, but I mean simply, their culture and upbringing is stronger, so there is no way to contradict the instruction.²⁷⁸

In such instances it is very difficult to deter the child from their path if that is what is assessed as the best interest.²⁷⁹ Contrary to this standpoint, BCHR has disagreed with this common sentiment to let children make these decisions for themselves, stating:

Regardless of whether or not a child wishes to stay in the RS, his/her best interest, life and safety are paramount and must be protected...The child's insisting on staying out of the protection system, in inhumane conditions, surrounded by smugglers, should in no way justify the lack of adequate accommodation and care for that child.²⁸⁰

Such a stance is hard to ignore and demonstrates the sometimes taxing and difficult duties guardians and state authorities have in doing what is best. In these situations, the best interest overrides the input of the child. NGO Atina shared critical remarks about the current system of guardianship. The respondent shared their view that the services and care offered to unaccompanied children are much too fragmented, and that this is ultimately the largest detriment to functioning implementation of children's best interests considerations.

I think it's very dangerous to spilt up guardianship services in that way, because a child in the context of migration absolutely must receive full and comprehensive support coming from the guardianship authority. Disjointed distribution of roles where the CSW is responsible for one thing, for another the professional guardian, and another organization contributes a special, specific role. Service support in this context has very difficult coordination, mutual communication can only be a direct damage to that child. So, for me, that model

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ UNHCR, Interview, Belgrade, 10 December 2020.

²⁸⁰ BCHR, 2020, p.132.

is very problematic, irritating and very challenging. Especially when it comes to the division of guardianship for individual affairs...This is very dangerous in the context of the child because it risks that the best interest of the child will be assessed properly, and that the best interest of the child will ever be essentially what is actually the best interest.²⁸¹

The point made is very relevant, for the more steps required to complete a procedure the less likely it is for it to be addressed within an acceptable timeframe. Separation of services and organization, paired with a failure to coordinate can be detrimental. ‘Why is there no synergy amongst systems? Why is human trafficking separate from the asylum system? They are the same but at the moment each is independent’.²⁸² Similarly, throughout the interview with SWC Loznica the lack of cooperation between organizations clearly stood out.²⁸³ Efficiency of the system is brought to question, where without coordination of key intersecting issues one cannot expect improvement. This failure comes at a great cost to the vulnerability of unaccompanied children. In recognizing a subpar response of the Serbian State, the role of NGOs is evidently crucial to patch some of the gaps in State response capacities.

We were practically forced to make an internal response because even today there is no state response to the problem of violence against migrants. So, if there is a violent situation - and there are a lot of them - in principle, we have our statistics annually, let's say one call a day. This is a lot because we are only a small screw in the mechanism, and there are a lot of factors to identification. First from non-recognition, to when it is recognized, what is covered up, and in practice what referrals are made and to whom they are referred, and ultimately how much trust there is in civil society organizations.²⁸⁴

As an issue that specifically impacts UAMs, there is an underwhelming reaction to the issue of trafficking, and is in great need to receive more attention and harmonized action from the State of Serbia.

²⁸¹ Atina, Interview, Belgrade, 27 December 2020.

²⁸² Ibid.

²⁸³ SWC Loznica, Interview, Belgrade, 29 November 2020.

²⁸⁴ Ibid.

Guardians have many roles and levels of authority as a protector of the child's best interest on paper, but throughout the interviews it became apparent that within the system sometimes that influence can be stripped or ignored by larger State institutions and agendas. A UNHCR representative brought into focus the State, institutional and political interests that are present in the field and determine what issues are to be focused on and subsequently financed. With a critical lens, it was discussed that the best interest of the child is rarely the top priority of donor agendas, and that various actors will do whatever it takes to fit it. Signifying a lack of genuine prioritization towards the wellbeing of refugee children.

Everyone has their own agenda, where is the best interest of the child? That gets lost. In essence, everything that's being done, be it non-governmental organizations, state bodies, social services, means that any action to be taken must be in the best interests of the child. But in fact it's just a story. We see that this doesn't apply. And all this in order to justify some funds, the donor agenda. Let's say that a certain number of people - let's push people into the asylum procedure in order to justify to the donor that we are something- of course then these people leave the procedure, if it's not authentic then it's not a matter of us recruiting people. Saying come on, sign my consent, I'll represent you. People should always be given some time to think about whether they want it or not. But, not that we now have to say at the end of the year that we represented 200 people in the asylum procedure, and out of those 200, 180 of them left the procedure. Yes it's then very bad for both the police and all the people who then they feel that all they do is completely unnecessary. That demotivates them and then when you really come across someone who wants to have protection here it's harder.²⁸⁵

Addressing the oversaturation of false expressed intention to seek asylum is a key issue present within Serbia. As the interviewee mentioned, it has shown to negatively influence genuine asylum seekers because such a large population is only temporarily regularizing their stay. However, this more shockingly points towards the malleable use for best interests to mold a dire situation using a vulnerable population to achieve milestones that serve the benefit of institutions and organizations rather than children.

²⁸⁵ UNHCR, Interview, Belgrade, 10 December 2020.

4.4 Accommodation

Upon the issuance of a registration certificate by a competent regional police administration, refugees –including children- are required to report to a relevant accommodation facility, such as an asylum centre, within 72 hours.²⁸⁶ The timeframe is not to be surpassed without a justifiable cause; otherwise the Law on Foreigners can be called into action. ²⁸⁷ Asylum seekers are otherwise also able to register directly at an AC or any other appropriate accommodation facility, where Asylum Officers will register their intention to seek asylum.²⁸⁸ The Commissariat for Refugees and Migration (CRM) works in partnership with the SWCs in designating the material reception conditions (accommodation, food, clothes, and cash allowance) of an unaccompanied minor at either a social welfare institution or other relevant form of accommodation.²⁸⁹

Accommodation centres in practice generally lack the capacity and conditions to properly house unaccompanied children in either RTCs or ACs. Accommodation for refugees is comprised of 5 Asylum Centres and 14 Reception Centres. The total capacity of the 19 Centres in total is 5,990²⁹⁰ a number that has proven to be insufficient for accommodation of asylum seekers due to characterizations as overcrowded, lacking in privacy, and with poor hygienic conditions.²⁹¹ Two of these Asylum Centres, Sjenica and Krnjača, have been responsible for the housing of 88.8 % of unaccompanied children by June 2019.²⁹² Rarely in prior practice was there separation by age or gender, especially for those over 14 years of age, and even less for those with other specific needs- a crucial aspect under the LATP and international standards.²⁹³ The main accommodation centre for UAMs was originally the Asylum Centre Krnjača, the only centre with a separated area for children, where there was

²⁸⁶ LATP, Article 35; BCHR, 2018, p.19.

²⁸⁷ BCHR and ECRE, 2019, p 27.

²⁸⁸ LATP, Article 35.

²⁸⁹ LATP, Article 52.

²⁹⁰ BCHR and ECRE, 2019, p.64.

²⁹¹ BCHR, 2018, p. 73-77; BCHR and ECRE, 2019, p.66.

²⁹² BCHR, 2020, p.126.

²⁹³ Save the Children and IRC, 2017, p. 6.

a low presence of guardianship and a scarce presence of security staff.²⁹⁴ This greatly affected the safety and wellbeing of unaccompanied children, subjecting them to incidents of violence and sexual abuse that were on the rise from increased overcrowding and clashes amongst groups/clans in the centre.

Encouragingly, these negative characteristics and circumstances were recognized and acted upon through the renovation of another centre, Sjenica, in order to improve the general safety and living conditions for the UAMs. It was decided close to the end of 2018 when Krnjača became very overloaded, that only UAMs under 14 would be staying in Krnjača and those over 14 would be moved and accommodated in Sjenica.²⁹⁵ Encouragingly, in addition to the renovations, Sjenica is equipped with available interpreters quite regularly who were provided by CPRC.²⁹⁶ Approximately 93% of the population housed in this centre was comprised of unaccompanied children in 2018.²⁹⁷ Sjenica is an example of existing attempts to create specialized centres that serve vulnerable groups, however it is still are not at the level needed to house or support the actual population of UAMs.

That was the most interesting topic last year, the top theme at this time last year, now it's not anymore. You know how, we ourselves may have caused the number of these so-called minors to increase so much, giving Krnjača a specific purpose. And when you give Krnjača a specialization for minors, and we gave it for reasons of vulnerable groups and the accessibility of services, our reason was very you know, legally justified, and somehow humanly justified for vulnerable categories...Meanwhile then the numbers jumped, we saw it go from 350 and 370 to 500...it was clear that there were people who were presenting themselves as minors and they weren't.²⁹⁸

Such a statement interestingly indicates the unintended impacts certain decisions can ignite. Since Serbia is a transit state, and many refugees do not have the intention to truly stay in the country, they often look to be located in strategic areas. Preferred areas are

²⁹⁴ BCHR, 2018, p. 62, 73; BCHR and ECRE, 2019, p.14.

²⁹⁵ CRPC & HCIT, 2019, p. 32.

²⁹⁶ BCHR, 2020, p. 80.

²⁹⁷ BCHR, 2018, p. 78.

²⁹⁸ CRM, Interview, Belgrade, 27 December 2020.

either close to the border or to the capital, Belgrade. Krnjača's location is convenient and close to Belgrade, it is approximately 4km away from the downtown area of the city and has regular bus connections every 20 minutes.²⁹⁹ Thus, many adult refugees were claiming to be underage in order to be placed there. Due to the fact that significant information sharing occurs amongst each other and is experience based, it is not surprising that unaccompanied children claims increased in order to secure the desired accommodation. It was reported that the children who were living in the AC expressed dissatisfaction due to overcrowding, and mixing with adult.³⁰⁰ BCHR equally reported conditions of overpopulation and poor access to resources, while also expressed concern that in sharing spaces with adults there is an increased risk for smuggling or sexual violence.³⁰¹

The fact that the rules...formally do not exist by law. This means that it is something that has been agreed, we in Serbia do not have a single camp for minors, it simply means that all the camps that exist, only one is let me say formally by law an asylum center, everything else is temporarily open accommodation.³⁰²

It all depends on the instructions from the CRM. When I say the instruction of CRM, I do not mean that the CRM assesses what is the best interest of minors where to stay, but in the sense that Krnjača used to be a camp for minors, now it's not anymore. Krnjača has been suspended, now it's Sjenica. That is, their capacity is now at our disposal. Now it is our job to assess in that specific case whether that child will go to the institution or will go to the camp.³⁰³

As the organization that is designated to ensure the accommodation and material conditions are met, it is concerning to hear that the decision making procedure by CRM does not necessarily go through any kind of best interest procedure when making decisions impacting a group of children. Especially when the purpose of assigning a centre specifically is for these vulnerable children, it seems contradictory to not incorporate and employ all the standards and safeguards to ensure the best decision is made for the interests

²⁹⁹ BCHR, 2020, p. 82.

³⁰⁰ BCHR and ECRE, 2019, p.68.

³⁰¹ BCHR, 2020, p. 120, 131; BCHR and ECRE, 2019, p. 69.

³⁰² SWC Savski Venac, Interview, Belgrade, 20 November 2020.

³⁰³ Ibid.

of those children they are supposedly helping. Additionally, the informality of decision-making, enabled through a lack of concrete legal declaration and procedures for carrying out decisions about official allocation of accommodation centre for specific purposes and use makes it that there is a dangerous flexibility to alternate decisions easily. A representative from a SWC confirmed that the manner in which they were notified of the changes was done through a telephone call³⁰⁴, and BCHR reported incidents where ‘guardians were not even informed that his/her ward had been moved to Sjenica’.³⁰⁵

Now we have a situation where minors claim to be adults in order to avoid going to Sjenica. Yeah, now it's the opposite. That they claim to be of legal age, now I don't know for example someone who is 15 says he is 18. Either he gets Obrenovac or he gets Krnjača or we have this situation that they want to go up in the North, for example Šid, Adisevci, Principovac to be closer to the border, it is much more convenient for them, of course, to try to cross the border so minors say they are adults.³⁰⁶

APC equally reported about this practice by unaccompanied children where they present themselves as older in order to not be separated from their travel group.³⁰⁷ Rather than increasing the attention to best interests and care of unaccompanied children, it turns out that the decisions made by CRM have instead been minimizing their visibility and decreasing the likelihood that children will go to a centre that should be safer for them. Not only is the location a problem for the unaccompanied children, the distance from Belgrade is an obstacle for the accessibility of legal and humanitarian aid that is mostly based in the capital.³⁰⁸ In 2018 this centre received the least amount of visits from asylum officers than any other centre for asylum, a troubling statistic that has not improved considering that Sjenica has placed one person in charge of collective guardianship to attend to the care needs of all.³⁰⁹ Additional information reported by BCHR has stated that decision have

³⁰⁴ SWC Loznica, Interview, Belgrade, 29 November 2020.

³⁰⁵ BCHR, 2020, p.125.

³⁰⁶ UNHCR, Interview, Belgrade, 10 December 2020.

³⁰⁷ APC, ‘Unaccompanied minor refugees often lie about being older to be admitted to the camp’, *Asylum Protection Centre*, [website], 27 August 2019, <http://www.apc-cza.org/en/8-vesti/1665-unaccompanied-minor-refugees-often-lie-about-being-older-to-be-admitted-to-the-camp.html>, (accessed 1 August 2020).

³⁰⁸ BCHR, 2020, p. 78; BCHR, 2018, p. 73.

³⁰⁹ BCHR, 2018, p. 78.

been made to 'refer all newly arrived children directly to the Sjenica AC as soon as they are registered'³¹⁰ arguably creating more room for error, danger, and lack of space to effectively undergo best interest assessments to decide if such accommodation is in line with the child's needs.

There are two criteria for assessing the years. The first is what they say, and the second is the observation of a social worker that is present on that occasion. The observations have not been accessed and are never assessed except in special cases. So we accept if you say you're 17, you're 17. But you're going to Sjenica. And to start from the beginning...So when there were 500 and something of them in Krnjača, then we said this: we can't change the certificate that stated he was registered in Savska as a 17 year old, but we estimate he has 27, we will divide them so the smaller children will stay in Krnjača, the ones that are visibly small. Then we will move the older ones to Sjenica, and that's what we did. Twice. It was done twice, and poor thing, first of all for the benefit of these small children, because it is not in their interest to be with these older people, it is better to be with families in Krnjača, it is safer for them, and we moved these older ones out.³¹¹

However, what is happening. It can't be black and white. You know? You have a little one, who travels with a big one. That big one says, I'm seventeen, and this one says 12. And now you, where are you going to send him? You send them both to Sjenica. And then this older one leaves, and the 12-year-old is left in Sjenica and then someone comes in and says, you have a 12-year-old child in Sjenica, what does that look like? That's how it happens...A few of them come and declare themselves as a family, brothers, and then the oldest leaves and we are left with a small child. And then you have to work fast. You know, you have to move them quickly, if they are really small, because you have really small children 12, 13 years old, and they should go to special accommodation facilities with the solution from the Center for Social Work.³¹²

All interviewed representatives from different institutions verified the adoption of this approach to assignment of accommodation for unaccompanied children. Naturally a decision to place young unaccompanied children in a centre occupied by families with children where mixing between children and families does not carry the same risks and

³¹⁰ BCHR, 2020, p.125.

³¹¹ CRM, Interview, Belgrade, 27 December 2020.

³¹² Ibid.

danger compared to previous conditions where the unaccompanied children were mixing with single adults and so can be regarded as a better decision.³¹³ It is nonetheless still problematic that the group of unaccompanied children that are older are simply disregarded and endangered. In sending older age categories of unaccompanied children to Sjenica along with other individuals with questionable age claims, a hierarchy of importance and access to protection is made, and goes against all principles of children's rights. It also means that a very large majority of unaccompanied children are not having their physical and material rights honoured, as the largest percentage of unaccompanied children present in Serbia are between the ages of 14-17, and Sjenica has housed 93% of unaccompanied children in 2019.³¹⁴

For lower ages categories, of course we are looking to place them in institutions, we have, I mean by institution when I say, we have an institution up in Vodovodska, we have Zmaj, JMS also has accommodation capacities, you have Loznica, Nis Institute. Those are the institutes. For older age categories, at the moment they are being sent to Sjenica...If I've understood well CRM has made the decision that Krnjača is now more for families with children. Well, I think it's been a year since Sjenica was opened, they are heading to Sjenica.³¹⁵

Essential to mention are the MLEVSA Instructions, which stipulate that only children older than 16 should be placed in ACs, and under the condition that the AC meets standards for the accommodation of children.³¹⁶ It also stipulates that the child in question and guardian have instigated the asylum procedure and the guardianship authority has conducted an assessment for the child's needs and best interest.³¹⁷ Additionally outlined in the Instruction is that the only body legally assigned with the authority to make accommodation decisions is the guardianship authority which has taken guardianship measures and appointed a temporary guardian for the child. Four potential options exist for accommodation of an unaccompanied child, the first being foster care for children who are up to 14 years of age. The second option is placement in a Social Protection Institution; the

³¹³ SWC Palilula, Interview, Belgrade 19 November 2020.

³¹⁴ BCHR and ECRE, p. 68.

³¹⁵ SWC Savski Venac, Interview, Belgrade, 20 November 2020.

³¹⁶ MLEVSA Instruction No. 011- 00-00682/2017-1.

³¹⁷ Ibid.

third is a medical institution if the health condition of the child requires it, and lastly an Asylum Centre.³¹⁸

Several alternative accommodation arrangements exist that ideally are to receive all unaccompanied children under 16. These are: the Institute for Education of Children and Youth in Belgrade, the Institute for Education of Youth in Niš, the Children's Home Jovan Jovanović Zmaj (JJ Zmaj) and the Jesuit Refugee Service (JRS).³¹⁹ The level of care at the alternative accommodations has been praised by all who were spoken to, including the very representatives of such institutions who were more than aware of the quality of support and resources they had to care for the children placed in their institution. In JJ Zmaj monitors with credible professional backgrounds supervised children around the clock. Interviews established that children placed in these alternative accommodations are usually the ones identified to be at a higher risk of violence, abuse, or have special needs. During the interview with JJ Zmaj, the respondent highlighted some of the key steps and requirements that take place when a child is placed at the home.

A formal request is sent to the Home and we have 15 days to answer if the child will be accepted or not in to the institution, but typically if possible, we try to react with a much quicker response for cases regarding unaccompanied minors by using the phone and fax machine rather than mail to correspond. But we never decide within an hour because it doesn't result in the best decision if it's rash.³²⁰

Typically, JJ Zmaj does not act as a primary accommodation, but rather a secondary housing unit where children arrive as transfers because insufficient attention and care in Asylum Centres impact children's wellbeing. Communication with field workers, who assess the child, police registration certificate, and a medical check stating that the child is in good health to be placed in a communal space, are the basic acceptance requirements for being placed in an alternative care accommodation.³²¹ An important comment made demonstrated the general approach to new comers and the difficult decision making process

³¹⁸ Ibid,

³¹⁹ BCHR, 2018, p.63.

³²⁰ JJ Zmaj, Interview, Belgrade, 2 November 2020.

³²¹ Ibid.

for balancing needs of new comers vs. protection of the best interests of the children already being accommodated at the institution. Focus is placed on children who are currently being housed, as they in a sense have “priority” because ‘they already are in the process and have been here for a long time’³²², so while JJ Zmaj cares for wellbeing of potential newcomers, the priority is on those already in the facility. This demonstrates the commitment that JJ Zmaj makes to the children in their care, and that different aspects are always considered against the best interests of their children.

Well now there are eight of them, some were previously in Krnjača, so it was assessed that it was in their interest to be placed in an institution because of certain risks, whether there was any abuse, a risk of smuggling and things like that...the relevant center assessed that it was better to be in the institution, so now they are in Zmaj, they are under guardianship, accommodated, all are included in the educational process.³²³

Many children recognize the privilege of being accommodated in an institution like JJ Zmaj, and so they rarely ever have a turnover of occupants. For the most part, unaccompanied children are content at the institution and respect all the rules upon which they may earn their keep, such as being enrolled in school, behaving accordingly, and participating in house chores and responsibilities. There are also a few unwritten rules such as a three-strike rule for going to ‘game’ (illegal border crossing).³²⁴ On the odd occasion however, there have been some incidents where an unaccompanied minor was removed from the institution. Decisions like this do not come lightly, and involve the SWC, guardian, JJ Zmaj monitors and director.

Now at this moment I can't remember what exactly the initial incident was - whether those escapes, that is, the attempt to cross the border, but both the guardian and we and everyone agreed that he had to find another accommodation, because simply, what message are we sending if he is breaking the rules without receiving any kind of sanction. Everyone else must understand that. That was it as far as he was concerned. And the other one also had several situations, several, let's say violations, and in the end the last one he reacted absolutely inappropriately to one of the mentor's interventions. He was extremely arrogant,

³²² Ibid.

³²³ SWC Savski Venac, Interview, Belgrade, 20 November 2020.

³²⁴ JJ Zmaj, Interview, Belgrade, 2 November 2020.

rude, insulting, cursing and aggressive for an hour. It was a more serious episode...some agreements have to be made. You know that's life. I mean, communal life living together and what you would do with kids in a family. So that's exactly what we're trying to do here. That's it. Now I say, when those things really happen they are recorded, there are books, there are files, and everything is written, it is announced to the Center for Social Work, etc. We don't have anyone at the moment that is close to being relocated.³²⁵

Such scarcity of incidents like that is a positive note, in addition to a very 'by the book' approach to ensuring all parties are involved in the decision making of important decisions regarding the child. Although displacing the misbehaving minor may not be in the best interest of the individual, in this case it was a clear assessment of best interests for the majority. It is also good practice to see that decisions are recorded, justified accordingly and transparent. Alternative accommodations tend to systematically be reserved for extending assistance towards younger categories of UAMs. This demonstrates a difference in treatment based on age that can be found in practice for procedures that determine the placement decision for the accommodation of an unaccompanied child. While on one hand the differential approach does account for the age and maturity of each minor, it has not proven to be completely comprehensive. Rather it disproportionately discriminates against older unaccompanied children by placing them in asylum centres, which continue to raise serious concerns due to their inadequacy for hosting children. UAMs are at serious risk in almost all reception facilities due to their exposure to organized crime groups involved in smuggling and potentially human trafficking. ³²⁶

Small children that without discussion, immediately...so that means a under 14 years old ...But literally, for example, for very young children, there must always be a place, and we really have the support of the ministry. If they reject us, and it has happened, for example, that they reject us. For example, a 10-year-old child, they say we have no place and we then call the ministry, they call and when the ministry intervenes everything is overridden, and the child is accepted.³²⁷

³²⁵ Ibid.

³²⁶ BCHR and ECRE,

³²⁷ SWC Palilula, Interview, Belgrade 19 November 2020.

Such a level of clear disproportional treatment is troubling, this sense of urgency and unquestionable delivery of services is not extended to unaccompanied youth in the same way. In an interview with a representative from the Palilula SWC it was expressed that the best approach for accommodation of unaccompanied children would be to have specialized centres, but doubt was expressed for such a scenario due to the contextual realities of Serbia, where often there is not even enough support for its own people.

Truthfully, I think that for all unaccompanied children it would be better if they were in some institution that is specialized for unaccompanied children, it is also safer, but we live in Serbia and that is impossible, this doesn't even exist for our children. Recently I had to accommodate one child, and I barely, barely found a place. So, in that sense it isn't only a problem with migrants, but again, with regards to the conditions, our capabilities, it is better to be in the camp than on the street.³²⁸

The option of specialized foster care is one of the best alternatives to tackle this issue, having proved to be very successful in cases where the practice was implemented.³²⁹ Unfortunately the option of foster accommodation has not been very popular in Serbia since its introduction in 2016. Low popularity is explained by the fact that many UAMs are over 14 and families tend not to want to take in children of older ages. Equally UAMs prefer to stay with the group they are travelling with, and cultural upbringing typically has boys considering themselves as men at an earlier age capable of caring for themselves.³³⁰

4.5 Education

Education is a fundamental human right enshrined under the United Nations Convention on the Rights of the Child, and the United Nations Covenant on Economic, Social and Cultural Rights. Access to education is key for promoting, supporting, and protecting the human dignity of every individual, as it strengthens the capacity of every child to enjoy and benefit

³²⁸ Ibid.

³²⁹ M. Nowak, 'United Nations Global Study on Children Deprived of Liberty', *Omnibook*, 2019, p.550, <https://omnibook.com/view/e0623280-5656-42f8-9edf-5872f8f08562/page/7>, (accessed 6 August 2020).

³³⁰ BCHR, 2018, pp. 65-66.

from their human rights.³³¹ It has also been recognized as central to integration of migrant and refugee children, and the presence of integration has increasingly made its way into both policy objectives and the public dialogue in the domain of the resettlement of the migrant population.

The LATP has outlined the right to universal free primary and secondary education for all asylum children, and states for it to be immediately provided no later than 3 months from the asylum application.³³² Foreign children have the right to access and obtain education, regardless of their status. The Act on the Foundations of Education System confirms that that foreign nationals and stateless persons shall enroll in primary and secondary schools and exercise the right to education under the same conditions and in the same manner as Serbian nationals.³³³ According to Help on the Route and UNHCR data, ‘95% of children aged 7 to 14 are included in elementary schools, while 12 % of children are enrolled in secondary schools and pre-school institutions’³³⁴ in 2018. UNICEF and Commissariat data reported that 420 children were enrolled in all levels of school, ‘including 211 of newly registered.’³³⁵ BCHR reported throughout the 2018/2019 school year 82 unaccompanied children were enrolled in school.³³⁶

Integration of vulnerable groups in the education system is often well looked upon in the context of Serbia, and this was generally reflected amongst the relevant interviewed actors and institutions for integration of unaccompanied children -and refugee or migrant children

³³¹ Committee on the Rights of the Child, ‘General comment No. 1 (2001), Article 29 (1), The Aims of Education’, 17 April 2001, CRC/GC/2001/1.

³³² LATP, Article 55.

³³³ Zakon o Osnovovama Sistema Obrazovanja i Vaspitanja, “Sl. glasnik RS”, br. 88/2017, 27/2018 –dr. zakon, 10/2019, 27/2018 – dr. zakon 6/2020.

³³⁴ Ana and Vlade Divac Foundation, Arbeiter Samariter Bund Deutschland e.V. and Helsinki Committee for Human Rights of the Republic of Macedonia, ‘Help on the Route Annual Report for 2018: the rights of refugees, migrants and asylum seekers in Serbia’, 2018, p.18, https://www.divac.com/upload/document/annual_report_2018_-_the_rights_of_refugees.pdf, (accessed on 2 August 2020).

³³⁵ Ibid.

³³⁶ BCHR, 2020, p. 177.

in general- being spoken of in a positive light. Particularly well spoken of is Branko Pešić Elementary School, which in 2016 was the first school to formally begin accepting and working with all refugee and migrant children. Many efforts were made to ensure that education could be accessible to this vulnerable population, and to try to address the most pressing needs of these new incoming students.

Close to 400 individuals have been enrolled since 2016 up until 2019 in Branko Pešić Elementary School.³³⁷ When asked about average attendance and dropout rates, it was revealed that this information simply is unavailable because it does not exist. The representative from Branko Pešić explained that it is difficult to comprise an average of how long students attend the school for, as all cases are individualistic and should be assessed case-by-case. The school does not formally keep track of statistics regarding attendance, part time vs. fulltime, or dropout rates.³³⁸ This was also confirmed by the Education Union whereby the representative interviewed stated that dropout rates have gone undocumented, that it is not practical nor a focus for the schools or ministry of education.³³⁹ For this reason, indicators or mechanisms that would measure what the dropout rate is, when, at what levels etc. have not been established, and thus not recorded. However, interestingly it was noted during the interview at Branko Pešić School that of the 104 students that were enrolled the previous year, none had reenrolled at the beginning of the new school year on September 1st, 2019, indicating that they had all crossed over the border over the summer.³⁴⁰ It was also noted that even children who worked hard and were provided the necessary assistance to pursue secondary school enrollment, did not follow through with attendance or long term stay.

We can't set up indicators for following drop out rates because it just doesn't exist, I don't think they should even give that information about children and others in school, and then you have to establish some mechanisms on how to monitor the degree of dropping out of school and when, at what levels, so you

³³⁷ Branko Pešić Elementary School, Interview, 21 November 2020.

³³⁸ Ibid.

³³⁹ Union of Educational Workers, Interview, Belgrade, 20 November 2020.

³⁴⁰ Branko Pešić Elementary School, Interview, 21 November 2020.

have to introduce it into the system, and when, and you have to introduce that into the system, I think ... it doesn't work.³⁴¹

A unanimous theme that arose from all interviewed actors was about the nature of Serbia as a transit country, and the difficulty this poses for refugee and migrant children in the system of education. The perception of Serbia as a temporary point in their journey to the permanent destination impedes on the desire to attend school and the understanding of how school in Serbia can be beneficial. A good example of this notion was spoken in the interview with Branko Pesic Elementary School, where it was stated:

You know what the problem is, is that when they come here when someone brings them from the camp and when they come back they can't understand this, this is just a passing part of their lives, you know that. They can't understand this as an institution where they can really get an education and get a paper for it.³⁴²

With the representative from the Education Union, when speaking about enrollment and the temporary, unplanned nature of it for unaccompanied children in Serbia, it was said, 'they didn't have the intention of staying that long. Now they happened to stay that long that they could enroll'.³⁴³ Additional reference to this issue was made at JJZmaj:

Their main need is the need for existence, the need for financial, material resources. They have a support network, they have contacts and they use it a lot ... Now there are things that we can't even know, that are happening outside the institution. They spend part of the day at school, part of the day at home, part of the day away from home. Then we find out later from other parties that it is, I don't know, that they get involved somewhere to be freelance translators, to do some freelance work. Yes, from the beginning it was their focus, to work and go to school a little bit, that is to respect the rules, that's how we see it, to follow the basic rules that we insist on, and then they look for holes in this whole situation, so we are all responsible for those holes together and there is still a deficiency.³⁴⁴

It appears that value and attention is placed on securing immediate needs, which satisfy short-term necessities rather than long term. For this reason, youth prioritize finding jobs to

³⁴¹ Union of Educational Workers, Interview, Belgrade, 20 November 2020.

³⁴² Branko Pešić Elementary School, Interview, 21 November 2020.

³⁴³ Union of Educational Workers, Interview, Belgrade, 20 November 2020.

³⁴⁴ JJ Zmaj, Interview, Belgrade, 2 November 2020.

secure some financial means. While sometimes the needs for finances are legitimate, as what is provided by the state of Serbia is not always regarded adequate, the UNHCR representative brought up that other cases seem to be influenced by peers who have designer clothing, high end perfumes, or other material possessions. This peer pressure and comparison impacts their decisions.

It is a problem that when you have one or two young men who wear branded clothes, then the others he will not want things from UNHCR's warehouse, when they see these others wearing branded clothes, the best perfumes, going to clubs where drinks cost 500, 600 dinars. I mean, they're young, that's it, they'll think: what am I doing here? I'm going here to school and I don't even have enough for lunch, I mean and that's how it is.³⁴⁵

Authors like Bhabha have recognized this particular trend with regards to the work-education discrepancy found in the organization of an unaccompanied child, or rather adolescents- life. She highlights the shortage of space awarded to discourse in human rights and child rights circles surrounding the right to work. The lack of validation toward the pursuit (and in fact need) for economic security places income-generating opportunities in opposition of education goals. Thus the decision to pursue economic goals serves as a 'factor justifying exclusion rather than an element relevant to a best-interest assessment.'³⁴⁶ Such pitting of rights against one another arguably stems from a misunderstanding of the complexity of experiences and desires of unaccompanied children, and a failure to acknowledge that 'the luxury of a carefree adolescence is not available to most unaccompanied young migrants'.³⁴⁷ Rather, unaccompanied children must navigate their state of vulnerability in a system that does not effectively rid them of the insecurity associated with their identity. This in a sense only further convolutes the 'process of determining what is in their best interest.'³⁴⁸

³⁴⁵ UNHCR, Interview, Belgrade, 10 December 2020.

³⁴⁶ Bhabha, p. 247-248.

³⁴⁷ Ibid, p. 248.

³⁴⁸ Ibid.

In an attempt to tackle this resistance to -or lack of prioritization towards school- various incentives have been used and introduced to try to draw in students and increase the numbers of enrollment. In the case of JJ Zmaj, it is a mandatory requirement for children and youth who are accommodated there to attend school. As long as they are enrolled, attending either on a full-time or part-time schedule, they can remain housed at the institution up until the age of 26.³⁴⁹ Thus the children from Zmaj are enrolled in elementary, secondary, and even university level. As the services and care offered at JJ Zmaj are quite high in comparison to other accommodation centres for children, the house rules established work to motivate them to stay, integrate into the community, and steer them in a path that is in their best interests.

It's like this, they should not leave them, they should not because some of the children in their care earn say, three or four average salaries by working as translators. Now what's wrong with that, and that's something that I really resent about Zmaj, is allowing some of these young people to go from attending high school fulltime to part-time to work several jobs, that they have practically no contact with the school, to go to school once a month. In the long run for those children it is not good...He will not know how to do anything, and he will never be able to cash in on his knowledge again and end up as a manual worker or as a criminal.³⁵⁰

This opinion expressed by the UNHCR highlights the concern over allowing the youth at Zmaj to make the decisions to work jobs that can only benefit them with earnings in the short term, sacrificing the 'regular' childhood experiences and the potential to gain long-term life skills. This topic is one where the best interest of the child is controversial, where the weighing of their right to participation in decision-making is complex.

For the children that are not placed in such fortunate circumstances, rather in the different asylum centres around Serbia such as Krnjača or Sjenica, incentives for enrollment were introduced in a more material manner. The children were offered free backpacks, pants, or other supplies of the like in exchange for their enrollment. Numbers have increased;

³⁴⁹ JJ Zmaj, Interview, Belgrade, 2 November 2020.

³⁵⁰ UNHCR, Interview, Belgrade, 10 December 2020.

indicating that the efforts put towards increasing registration and access to education - especially secondary school- for children has been successful. However, critical of this approach, the representative from UNHCR spoke to the harmful unintended effects that result from such methods that succeeded from playing on the material needs of the children, and not assessing the negative impacts it could evoke.

They enrolled him in primary school there at all costs, and he neither had textbooks, nor did he have notebooks, he had one pair of pants that were too short. He was in such stress and then at any cost, without preparing him you force the child, so that you would have it written that you enrolled someone. I mean, that's it. And the little one was in such stress that he ran to the gym that this security man could not wake him up and all that so APC could say that they enrolled I don't know how many children from the Banja Koviljaca- don't push him if he's only here for 20 days!³⁵¹

Since the largest challenge has been related to enrolling students into secondary school, where it has been noticed that youth do not have the motivation to participate or sustain continuity. Rather it is more enticing for them to enroll in streams that enable them to acquire trades skills (hairdresser, chef, driver, etc.) that can be put to use more immediately and are universal in whatever context they may find themselves in.³⁵² The Union for Education interviewee shared a positive outlook on this type of education and a validation of the motivation of the refugee youth to acquire skills.³⁵³ This was contrary to the attitude that was encountered at CRM, where the impression was shared that secondary school does not function well because of a lack of interest from the children.³⁵⁴ This can be a result of numerous factors, for example discussed by the UNHCR representative it was mentioned that the academic standard at secondary schools is quite high, even for the local Serbian children. Thus, expecting foreign children to succeed without support is almost impossible, and again bringing to light the theme of cultural differences in regard to schooling.

This is how you should know what the problem is with high school. We all know that high school in our country is difficult. And for domestic children, how much

³⁵¹ Ibid.

³⁵² Union of Educational Workers, Interview, Belgrade, 20 November 2020.

³⁵³ Ibid.

³⁵⁴ CRM, Interview, Belgrade, 27 December 2020.

parents have to pay for various additional classes. Imagine a young person who never went to a school that is not literate in their own language, how they will join all this?³⁵⁵

The UNHCR representative argued that pursuing higher enrollment through the method of incentivizing and persuading children in such manners had not been positive for the best interests of the child. She argued that placing children and youth in such challenging circumstances is unnerving and negatively affects their mental health, stability and moral. There are not enough resources to adequately assist the newcomers to make their enrollment a welcoming and pleasant experience. Thus she critically put to question the quality of care in comparison to just statistics that tell a positive story (statistics which were repeatedly used for this very reason by others to prove progress). This viewpoint put to question the intentions that drive what happens 'behind the scenes', uncovering again the messy self-interest that plays into decisions that trusted organizations make at the cost of the vulnerable.

It was a mass enrollment last year or even the year before last, last September or even during the school year you see that the school is buying children backpacks, tracksuits, sneakers to motivate them to enroll. Children, and they don't have an interpreter. Without any prior testing of knowledge and then you wonder what is the motive? The motive exists, of course, and that is that the instruction given by the ministry that in order for a class to exist you must have at least 15 students. In Sjenica you have 5,6 students. So it is important for you to formally enroll these children in order to save jobs for the employees... Schools that enrolled refugee migrants they had access to, they could ask for their school yard to be redone. For example..the children had to travel to a school 50 km away. They did it to make a school yard that was superbly made designed from that money.³⁵⁶

Of course, when he sits there, doesn't understand the language, doesn't know that subject matter, of course he will leave. And that's why I say it's literally Potemkin's village. Like they have access, but it is not access to that effective education, it is a formal approach, and it is useful for that school and not for the child.³⁵⁷

³⁵⁵ UNHCR, Interview, Belgrade, 10 December 2020.

³⁵⁶ Ibid.

³⁵⁷ Ibid.

Such an opinion highlights the idea that when decisions are not made in the best interest of the child, and without their participation, they will not have the desire to stay in the situation they are placed in. It also addresses the benefit that organizations have in abusing their inherent power to manipulate vulnerable unaccompanied children, even hinting to corruption within these systems.

Organizations have commented on their reliance for donations and financing from third parties. Similarly-but less critically- a comment was made at Branko Pešić, where the fluctuations of funds from year to year have been drastic and seemed to depend on the 'popularity' of an issue in that moment in time. Where at one point the school was able to completely refurnish and equip the school with whatever was needed, this support has dwindled since.³⁵⁸ This is a factor that influences all of the actors' abilities or inabilities to do their work and assist children. From the interviews it can be extracted that funding is sporadic and unreliable, with even the most basic of services not always secured. An example of this was given with transportation; a very necessary service that makes education accessible to children accommodated in reception or asylum centres, and the impact of varying donors that change from year to year:

One year it was financed by the city association, the first year by the UNHCR, then by the Danish council, then again by KIRS, then by IOM. When someone gives up, someone comes who will pay for it, so absolutely ... it was important to me in the sense ... because if I don't know if I'm going to have this transport, I can't even have students, then I can't I don't even have a department ... back then we had transportation, then a lot of those NGOs got involved, it was very interesting for everyone then, so we got help and PIN did workshops and Adra offered us help and the UNCHR and the Danish council offered. Everyone got involved and everyone tried to help us somehow.³⁵⁹

The stability of programs and available resources is highlighted as unpredictable on a yearly basis. This includes other crucial services such as specialized staff.

³⁵⁸ Branko Pešić Elementary School, Interview, 21 November 2020.

³⁵⁹ Ibid.

They had that program at the very beginning, the same thing about that, and it was again provided through donations, and that will be after six months, after we don't know who will go where. When they had some children who went to high school in Obrenovac and then it was, so what are we going to do with those children who are going to high school in Obrenovac, when this donation is over, what will we do.³⁶⁰

With integration and education being a genuinely crucial aspect for children, it can only be hoped that support continues for this issue. The importance of education and its recognized impact was stressed in all conversations with interviewees. It was noted by the teaching staff that improved wellbeing was visible with the participation and inclusion of refugee youth into their schools. Not only have the children established trusting relationships with the educators through an increased sense of security, whereby the children have confided some of their greatest struggles and experiences, but they have also been able to noticeably benefit from structure and care provided.

You can see exactly how they return to a normal path of development and how when they come they are children from the streets, and then to say, they slowly become more mature and responsible. I can see that the continuity and security and adults looking after them means something to them. They are no longer alone.³⁶¹

While at the interview with Branko Pesic, it was additionally noted how being able to have time outside of the camps they are situated in is critical for their development and wellbeing. 'You can't say let them be in the camp, it is the worst for them to be in the camp.'³⁶² Previously, prior to 2016 asylum seeking children were offered informal programs that took place at the asylum and reception centres. The strategy to pursue integration into formal education measures rather than maintaining the previous informal programs has better enabled circumstances for the young individuals to exercise their developmental needs.

³⁶⁰ Union of Educational Workers, Interview, Belgrade, 20 November 2020.

³⁶¹ Ibid.

³⁶² Branko Pešić Elementary School, Interview, 21 November 2020.

Why should I sit here in between these four walls and for it to be easy for me. It should to be nice for them (the children) too. You have to have something to offer them, I'm always saying give them some options.³⁶³

The children seem to be welcomed with positive and dedicated attitudes by staff, and it was positively noted that children are included and treated equally as all other children. Regardless of their status in this context they have been treated as children first rather than refugees. As Branko Pešić their flexible attitude and welcoming school atmosphere was characterized with statements like, 'the door is open for everyone and every child is enrolled'³⁶⁴, and affirmed that their main goal is 'our goal is that they feel good here'.³⁶⁵ As well at JJ Zmaj it was shared that the children always were able to participate in whatever activities, including extracurricular, that were available openly and according to their interests. Social connections and bonds like these within migrants' community enhance prospects of integration.³⁶⁶ Such examples are positive, as these social bridges are beneficial for increasing participation and forming an increased sense of belonging.

Dedication of staff was further proven through the involvement of a program from the Ministry where some educational classes were run at the camps themselves. Here one representative described how he even began to learn Farsi himself, as a way to further earn the trust and motivate the students to learn Serbian, implementing a process of reciprocity.

We even went to the camp according to the project of the Ministry and also taught there and that's not at all, I even started learning Farsi ... and started to communicate with them because if you expect someone to understand you in Serbian, I guess they also expect that and you tell them something.³⁶⁷

Upon discussing experiences of working within integrative environments, a representative and the director of the school Branko Pešić touched on the very distinctive systems and meanings of school or education culturally. While there is a number of foreign students that

³⁶³ Ibid.

³⁶⁴ Ibid.

³⁶⁵ Ibid.

³⁶⁶ JJ Zmaj, Interview, Belgrade, 7 November 2020.

³⁶⁷ Branko Pešić Elementary School, Interview, 21 November 2020.

have never attended formal school due to complex contextual realities, for those that have, what one student may claim to have completed education-wise in their home country usually does not align with the system used in Serbia, or subsequently the Western standard functioning in the desired EU destination countries.

We had 30% of children for sure who never saw school ... not that they didn't go but they didn't even see it, and according to some of our estimates 30% maybe more those who went would tell a story like this boy that said his mother taught him to write and read.³⁶⁸

While it is important to listen to the experience of the student, it is also necessary that they are assessed and placed in a setting that will adequately benefit and assist the student with their needs, knowledge, and skill level. A unique solution that arose from experience with differing cultural knowledge and systems, as well as problematic lack of documentation that can prove an asylum-seeking child's participation in school, was the development of the "School Report".³⁶⁹ The school report was first created at Branko Pešić Elementary School, and serves as proof of school attendance, as well as to mark certain knowledge indicators and progress a child has demonstrate throughout their time in the Serbian education system. The contents are written in English and officially stamped by the school. This report was explained as crucial due to the role it can play in giving the next school the child enrolls in the relevant information that will help to better place the child within their educational institution based on the appropriate level.

When you say that someone finished the 6th grade, when you go there, it doesn't mean anything because of the different educational system, but if you say he came with such and such knowledge, and after two months he mastered this, that, and the other and that the outcome of his work is such and such. This is described, of course, in English as well. Wherever he goes next, when he shows it...Then it is easier to determine where he belongs in their system. With us, he might be in the 4th grade, and there in the 6th, because that's exactly how educational systems differ. So that's a special advantage over everyone else. You know, as a country in transition, everything that they master in our

³⁶⁸ Ibid.

³⁶⁹ Ibid

country, everything will be recorded somewhere, and when they come, then they appear with it first. It's an extremely good thing like this.³⁷⁰

In addition to the cultural barriers, there was also frequent attention brought to the obstacles concerning language. While all interviews mentioned the availability of translators, interpreters or cultural mediators, it was clear that such resources have not been consistently obtainable. Rather, accessibility is sporadic and greatly depends on donations and budget to sustain assistance from interpreters. Without the role of a translator, the schools are left to their own devices to try to establish communication with the newcomers, as described:

First with our hands and feet, then in Serbian, then in English, then in Farsi, and then we combine all that and then something comes out of it. We've had an interpreter before. He came every day until before this year, until April, we had a translator every day.³⁷¹

Once again, as an active institution at the forefront of integration in the field, Branko Pešić Elementary School played a role in the development of Serbian as a Second Language, and also ensured that English classes were additionally provided. This has helped build the skills of children in order to better communicate within the community they are in, especially for day-to-day needs in Serbia. While working to equip the students to be able to function within Serbia, it was obvious that developing English capabilities was important as well. For this, Branko Pešić started giving additional classes for English outside of school hours.³⁷² It is interesting that also English assisted in the development of Serbian as a second language, acting as a model for which the new system was built upon.

While assisting refugee children has its many rewards that are often spoken about, it also takes a toll on those that work in the field, sometimes affecting moral: 'you get discouraged when someone has been coming 10 days and you see improvement, you feel it, but then

³⁷⁰ Union of Educational Workers, Interview, Belgrade, 20 November 2020.

³⁷¹ Branko Pešić Elementary School, Interview, 21 November 2020.

³⁷² Ibid.

that individual just disappears.’³⁷³ This phenomenon has similarly been recorded by BCHR, where the ‘frequent fluctuations of children along with language barriers impedes on the ability to teach.’³⁷⁴

5. Discussion

The previous results section brought to light an assortment of interconnected topics and trends to be digested. While the various aspects of care and asylum for unaccompanied children touch on different issues, they can all be united by the theme of the best interests of the child. Before delving into commentary and recommendations, it is essential to establish the freshness of the LATP as a legal standard and to acknowledge that since its enforcement increased positive status determinations for unaccompanied children have been granted, with the best interests determination having been a key point of reference and consideration within the decision process. This can only serve as a bright light for the future of unaccompanied children’s quest for protection, and acts as a fruitful base upon which the transformation of Serbia beyond the role as a transit country can be built. With that being said, legal recognition of unaccompanied children’s right does not fundamentally guarantee their protection. Several violations in the realm of best interest procedures linger, and are in need of improvement.

Despite results in positive asylum decisions for unaccompanied children, it still remains questionable how continuously best interests are utilized in everyday matters. Several instances have demonstrated a blatant disregard for the best interests principle. The first is the horrible decision made in terms of accommodation allocation procedures, and the second dealing with school enrollment practices. When delving into the decision to send obviously visible ‘young’ children to Krnjača and ‘suspicious’ or ‘questionable’ looking ‘older’ children to Sjenica there is a clear breach in best interest considerations. As

³⁷³ Ibid.

³⁷⁴ BCHR, 2020, p.177.

explained in the previous section, this means that adults who falsely claim to be underage will be put in the same accommodation as real children, and adolescents who appear to look older. It is almost unfathomable to consider how a hierarchy of those ‘more worthy’ of protection can be created that results in an entire part of the unaccompanied minor population to be disregarded with such lack of care. *All children* under international law should be approached with the same standards and consideration. Subjective opinion of any State official can result in the arbitrary denial of rights. Without ensuring that youth between 16-18 have some kind of security or safety against being placed with adults there is a clear level of disregard for their best interests and a failure to employ the principle of non-discrimination. This practice is in dire need of revision and the incorporation of an official procedure that utilizes formal channels for decision making to ensure that government bodies like KIRS cannot simply make decisions at whim and at the cost of vulnerable groups. Best interest procedures are not only important for individual cases, consideration is also required for decisions involving ‘general or specific groups’³⁷⁵ Additionally, guardians should be included in such processes and at the very least should be notified formally about the decisions made in relation to the children they are acting as guardian for.

The second clear breach of best interests in regard to education has equally been shocking. Forced and incentivized enrollment preying on the vulnerabilities of unaccompanied children goes against all established child’s rights. There is no doubt that education is a crucial and mandatory right, however it is not a cause that is to be pursued at whatever cost. Integration initiatives in Serbia have been commended for showing an improvement in enrollment statistics of refugee children. However, if there is one lesson to learn it is that data can be very misleading, and the path to education is not always the best interest for all children. If a child is without a guardian, it should be out of the question that they are enrolled without the presence of one. These practices have revealed an alarming situation,

³⁷⁵ UNHCR, ‘UNHCR Guidelines on Determining the Best Interest of the Child’, (2008), p.20.

demonstrating a clear lack of best interests' assessments, endangering the mental and physical wellbeing of children for monetary benefits and positive press coverage. Methods and practices of enrollment have arguably led to more distress on behalf of several children, which is in contravention to the UNHCR Guidelines on Determining the Best Interest of the Child.³⁷⁶

Data has shown the high number of UAMs that are entering Serbia and remaining invisible by not pursuing actions to temporarily legalize their stay. Interviews outlined key factors like transit country perception, as well as mistrust in authorities to be motivators in remaining illegal and undetected. In one regard, the lack of interest for genuinely seeking asylum in Serbia is understandable and even more so difficult to change, considering that increasingly Serbia's own youth is motivated to find and establish livelihoods outside of their home country as a result of the complex legacy and historical past of the Balkans that has affected the economic opportunity of the region. However, this does not excuse the State of Serbia from improving its cooperation amongst its sectors, especially to unite the its own authorities such as the Ministry of Labour, MI and CRM to work together to better identify and register unaccompanied children ³⁷⁷ The invisibility of vulnerable unaccompanied children only unnecessarily increases the exposure to child specific risks and dangers, and further masks the true extent of the issue at hand. NGOs typically do account for and engage with the unregistered populations of UAMs who fall outside the scope of official protection systems, however data coordination is largely incomplete. This issue is largely reproduced within the entire region of the Balkans, and explains the common discrepancies between government data and data from civil society or international organizations.³⁷⁸ Such incoherence and fragmentation controls the quality and

³⁷⁶ UNHCR, 'UNHCR Guidelines on Determining the Best Interest of the Child', (2008), p.70.

³⁷⁷ BCHR, 2020, p.100.

³⁷⁸ Save the Children & the International Rescue Committee (IRC), 'Out of Sight, Exploited and Alone: A joint brief on the situation for unaccompanied and separated children in Bulgaria, the Former Yugoslav Republic of Macedonia, Serbia and Croatia', *Save the Children's Resource Centre*, 2017, p.5, https://resourcecentre.savethechildren.net/node/12103/pdf/out_of_sight.pdf (Accessed 20 November 2019).

level of support that can be provided for children because it obstructs on the potential to adequately plan resources and strategies.

In relation to this, a call for greater training of all who partake in child refugee matters is urgent. It can no longer be acceptable to overlook poor implementation of the law and child friendly standards in identification. Failure to develop proper methods for determining an asylum seekers' age, leaves it up to an official's personal observations as the only criteria upon which identifying children is made. This wrongly allows police and border officials to arbitrarily ascertain a person's age. Therefore, it is necessary to create a standardized level of training to minimize systemic gaps in qualification for child refugee matters, and improve practices of best interests by ensuring professionals know what to look for.³⁷⁹ This would effectively decrease the barring of accesses to rights and care children are entitled to, especially that of best interest considerations.

The Republic of Serbia has an obligation to ensure each unaccompanied child has a guardian. It cannot be stated enough that guardianship is central to the fulfillment of regular best interest assessments and that children's safety is preserved. In many cases a durable solution may not be on the horizon for unaccompanied children, nor are they looking for one in Serbia due to the nature of the country as a transit zone, however actions such as best interest assessments should always be vigorously pursued to establish a child's legal, social, health, psychological, material and educational needs.³⁸⁰ Best interest assessments by guardians can ensure that the time spent in Serbia is one of development and safety, rather than danger and fear. The allocation of finances to make sure guardianship authorities have resources to do their jobs, and invest in additional efforts will guarantee that not only all children have a guardian but also that the guardian can assist them in the fullest capacity. It would also work to eliminate the practice of police registering unaccompanied children without guardians, a practice that greatly violates several levels of

³⁷⁹ BCHR, 2018, p. 34; Save the Children & IRC, p. 15.

³⁸⁰ BCHR, 2020, p.104.

law and provisions in regard to the rights of children. Currently the imbalance of weight placed on the “prompt” aspect of registration rather than in an age appropriate and gender sensitive manner is problematic, because it sacrifices the key element of guardianship in exchange for swift processing. Thus, an increased availability and presence of guardians will effectively erase such impatience and poor decision-making by police.

Organization around the improved safety and security of all accommodation facilities, especially those housing unaccompanied children needs immediate attention. These sites need to be under constant supervision and must offer access to a variety of services from professionals on site. This is particularly the case for the asylum centre Sjenica, where the distance in relation to main hubs of key infrastructure is an endangerment to the best interests procedures for children. Furthermore, by improving the standards of safety and overcrowding, it would minimize the number unaccompanied children from sleeping out in the streets and informal settlements.³⁸¹ Additionally, in order to uphold the best interest principle, future decisions with regard to the designation of a single asylum centre for unaccompanied children should employ more official channels for decision making, and without question should ensure guardians are always aware of the issues that will affect their ward beforehand rather than being notified after the fact. This includes that to some extent they are involved and consulted with in the decisions that affect the housing of children under their care. On a larger note, to further promote the principle of non-discrimination, it would be crucial to amplify occupancy of alternative care institutions or foster care channels that have significantly better standards of care and opportunities for unaccompanied children. For example, the minimum standard of guardianship is enacted with a much deeper level of attention in alternative care institutions, turning it into a luxury arbitrarily awarded to some rather than to all. This would safeguard equal treatment between all unaccompanied children and also equal treatment with domestic children in situations of similar need for government care.

³⁸¹ BCHR, 2020, pp. 131-133.

It may also be noteworthy to comment on this concept of equality with all national children. While frequently the sentiment that expressed in numerous interviews that ‘everything that is for our children, that is the same for them’ transmitted the intention of equality in all aspects of child care and support, in reality there is a limit to this notion. Such limits arise from contextual realities, which simply put, some local kids have that unaccompanied children do not. For example, in the cases of guardianship no matter how dedicated to the work the professional guardian may be, there is a limit to their capacity and working hours. Local children often have secondary family who at the very least can step in when needed in a situation that the main caretaker cannot. Furthermore, the system simply cannot address the needs of its own national children, and that inability can only be mirrored back –or worse, like carnival mirror enlarged- at the needs of foreign children who already have increased barriers from cultural and linguistic obstacles.

There is an apparent dire need for increased cooperation and organization not only amongst entire organizations but within them as well. This issue was made clear through the perspective of the NGO Atina, amongst others, that commented on the disjointed approaches and needless splitting of duties within guardianship authorities, revealing the roles and responsibilities within the childcare system is too separated and fragmented. Such fragmentation of key actors removes the possibility for an integrated individual approach and enhances children’s vulnerability.³⁸² On one end, the presence of external projects and organization that deal with specific issues works to enhance a multidisciplinary and multi-stakeholder approach suggested by international guidelines. The fine line between centralization and diversity should not be discouraged, but rather serve as a goal towards which to strive. In the Serbian context, it is also crucial to promote relationships between actors and organizations for the right reasons. It was often impressioned in conversations

382 T. Waage, ‘Challenges in Implementing Child Rights – A Call for Innovative Governance for Children’, in *Child-friendly Justice: A Quarter of a Century of the UN Convention on the Rights of the Child*, Brill, Nijhoff, 2010, p. 129. Available From: Brill Online Books, (accessed 6 April 2020).

with different actors that good cooperation amongst stakeholders and organizations was a result of the relationships between people, rather than that each organization needed the other for their services or was duty bound. This means employing 'who you know' is the only way to get anything done. Connections and personal networks can always provide some benefit, but that is all it should ever remain at. It is ridiculous to consider that that only by being in good standing with those at the top is the reason that things can get done and 'favours' are made rather than because its part of a job, system or law.

Most importantly and thus most complex, this research has highlighted the tremendous need for a restructuring or rethinking of the entire donation or financial processes through which organizations, both governmental and non-governmental, depend on to do crucial human rights work. The instable and volatile flow of money creates conditions of uncertainty that do the most harm to the most vulnerable. Without any sort of constant flow of money, it is near impossible to maintain the same level of care, and even more problematic to plan for the future and introduce new measures to improve the current system. This was seen with the various cuts in funding to crucial supplementary programs, and crucial services like interpreters, supplies and transportation. Such insecurity and constant chase for finances has provoked some of the questionable actions by organizations at the expense and endangerment of unaccompanied children. In this sense, it is interesting to consider how global politics and powers create many of the human rights problems that are dealt with today, and in the same vein they hold much of the power (the money) to make or enable circumstances for solutions. It is unfortunate that the right intentions mean nothing if money is entered into the mix and organizations are dependent on receiving money to be able to function and do their work. This dependency for money and the imbalance of its allocation from global to local levels created by a capitalist system is what hinders just and fair action in the field, and why vulnerable groups are sometimes subjected to unfair play at the hands of those who should be helping them.

Finally, while not quite optimistic, it is crucial to explore the question of whether foreign children can ever be truly treated as children first and migrants second. As discussed in the early parts of this work, intersecting identities which unaccompanied children hold result in an almost automatic differential treatment, particularly at this cross between two vulnerable categories as children and as refugees. This intersection becomes even more complex as the age of the minor nears to the maximum threshold of completing 18 years. Noticeable growth in indifference of their treatment because of the temporary status of childhood - and refugee generally- tips the scale in favour of treating them as foreigners rather than children. By way of fundamentally separating unaccompanied children and placing them in asylum or reception centres is the first line of ‘othering’ refugee children from domestic children. Asylum centres have only worked to ostracize and oppress children that are not nationals of Serbia, working like dominoes to effectively knock down access to fair and equal treatment in all other relevant areas of education, health, guardianship, and ultimately status. In an extreme viewpoint, for this reason the best interest of the child as primary consideration cannot ever truly occur if the recognition of childhood is not placed at the forefront, if all treatment and protocols are based on nationality or country of origin. Even when you find out what would be in the best interest of a child, of all children, it cannot be implemented, because the system as it exists does not allow it.

6. Recommendations:

In order to combat the existing issues in the system of care and application of best interests presented in the above sections, a set of recommendations will be offered in the following. The suggestions do not by any means encompass an absolute comprehensive list but are some of the most crucial considerations and changes to be implemented to better promote best interests for unaccompanied children.

Firstly, as mentioned earlier, the enforcement of the LATP has brought with it a number of expansions in regard to the included provisions and standards. However, some of the articles that are contained within the new asylum law have remained too vague³⁸³, where the lack of specificity has been more of a detriment than an improvement. This applies to the special procedural and reception guarantees from Article 17 that looks good on paper, but has not had a particular influence in terms of a concrete call to action in practice. Amendments to the LATP are needed to develop additional clauses with special procedural guarantees to better support their consistent and unified application.³⁸⁴ At the moment each state individual can interpret the law in whatever manner they choose, endangering the equal application of this principle. Likewise, for the best interest principle, while it is mentioned in the LATP and other laws that involve children like the Family Law, various Education Laws, and the Laws on Social Protection, there is still no clear procedure outlined for what would consist of adequate consideration and due process of the best interest of the child informed by UNHCR Guidelines. Serbia should also continue to work on the recommendation to pass a Children's Act. Such an act would serve to harmonize the many different legislative pieces and address relevant gaps.

The omission of a provision or procedure for age assessment is also a detriment. Age assessment procedures and policies need to be developed. One could ask why this issue has prevailed for such a long time, and who it is that benefits from the absence of an adequate approach to age determination, but as no concrete information was found it would simply be baseless speculation. Prompt identification and age assessment following 'child friendly, gender sensitive, and culturally appropriate'³⁸⁵ approaches should be initiated in order to begin addressing identification problems and the issue of adults claiming to be underage. These key principles will ensure that children are not only identified but extended the level of care appropriate for them.

³⁸³ BCHR, 2020, p. 145.

³⁸⁴ Ibid, p. 56.

³⁸⁵ M. Nowak, p.491.

Children should be ‘referred to the regular domestic child protection system’³⁸⁶ in order to receive optimal ‘attention, protection and care’ working to diminish many of the systemic discriminatory separations between national children of Serbia and non-nationals.

At the current moment, there is absolutely no age assessment procedure, and all age declarations are taken at face value. This is not a new problem, but it still continues to create challenges and concerns for the safety of actual unaccompanied children who are supposed to be placed in accommodation centres without adults. A small body of child experts drawn from a variety of professions and disciplines should be formed to assess claims where doubt is present. While not necessary to concern themselves with clearing claims of doubt involving adolescents that are from 17-19 years old, this body could at the very least work to evaluate individuals who are full-fledged adults, and would ensure that through a formalized procedure their claim can be rejected upon reasonable grounds. These assessments should be culturally informed and take into account diversity. EASO guidelines suggest non-invasive methods such as age assessment interviews, where child friendly interview techniques are employed to assess the individual. It is important to note that physical and medical methods of assessment continue to be linked with high levels of controversy for imprecision and inaccuracy.

By this point, the significance of guardianship as a prerequisite to the accessibility and security of children’s rights is quite evident. Timely appointment of a guardians³⁸⁷ in accordance with the LATP. Many of the current flaws in the guardianship system can be traced to a lack of capacity. For this reason, there is a dire need for stable financial investment in SWCs in order to establish more sustainable guardianship programs and

³⁸⁶ Ibid.

³⁸⁷ GRETA(2017)37, 2018, para. 73.

services. Greater access to sustainable budgetary funds would allow for hiring more staff to ensure that no guardian or caseworker is overworked and dealing with more cases than they can effectively handle. In meeting the recommended ratio by the CPWG, it can be safeguarded that each child will be awarded the right amount of time and attention, and will thus have best interests assessments and decisions made in manners more favourable to every individual situation. It is encouraging that MLEVSA has planned to adopt an improved guardianship model inspired from IDEAS best practices generated on the ground. Serbia must continue to take on this approach to adopt practices from the ground and further empower the roles of local actors in creating solutions. Additional attention is needed to expand the State's guardianship capacities to minimize fragmentation and better centralize the role of SWCs as a guardianship authority. This circles back to the call for SWCs, and thereby MLEVSA, to secure more sustainable financial resources to ensure that any amendments made to the social protection system may remain stable and long lasting.³⁸⁸ Funds should be allocated to hiring field social workers that will identify unaccompanied children in the field and reduce the numbers of children that remain undocumented and at risk. More field social workers will also decrease the prevalence of unaccompanied children being registered without a temporary guardian by police; effectively increasing adherence and access to rights for children by ensuring procedures are correctly followed. This way more best interest assessments can be undertaken to secure the best possible individualized decisions and plans for each child.

Further centralization of the guardianship authority is needed to organize training in a systemic and regular manner. Current legislation regulates to some degree the professional and educational requirements of social workers (guardians/). Greater efforts should be invested in establishing clear length and the content of training courses for guardians, with smaller training sessions maintained each year/ and few Member States make it mandatory for guardians to participate in training activities. This is needed especially for guardians

³⁸⁸ BCHR, 2020, p.104

who are working with unaccompanied children, whom need specialized training that will equip them with the knowledge and skillsets to deal with vulnerabilities of particular groups of children. In this vein, focused effort should be placed on developing targeted action for guardians in identifying child victims of trafficking and how to best assist their needs.

Notably for Serbia as a transit country, where refugee children want to stay for short period, it may be difficult for responsible parties to come up with an individual child development plan and actually go on to implementing it. Nonetheless, it is impossible to predict what child could end up staying on the territory of Serbia and for how long. Therefore, this uncertainty should not dictate the behaviour of guardians, nor the allocation of guardians to children. Proper allocation of guardians will also counteract much of the frustration that unaccompanied children face of poor communication and slow advancements in their procedures with guardians, which can further discourage their belief in the Serbian system and diminish their desire to stay long term.

The Asylum Office should likewise increase their capacity in order to handle asylum decisions for unaccompanied children in a quicker manner, aligning their practices to be in accordance with special procedural guarantees outlined in the LATP. Asylum Officers must also be better allocated to serve specific ACs -especially Sjenica- and even consider visiting RTCs more broadly to assist unaccompanied children who have slipped through the cracks and do not have the same access to information and rights as children in Krnjača and other alternative accommodation centres. An unacceptable discrimination between groups of children

Accommodation options and practices are currently not fulfilling the standards for the accommodation of children. Of utmost importance is terminating the unlawful practice whereby the MI or CRM makes overarching decisions on where children are to be accommodated, especially without best interest assessments. This decision is the duty and obligation of guardians and the guardianship authority, as they are the ones who can assess

the needs of each individual child under their care in line with their best interests. The Commissariat must also immediately implement more formalized channels for decision-making about specialized ACs for unaccompanied children, along with a formalized process for the dissemination of said standards. Informal decision-making fails to verify that the right steps and procedures were adhered to, and also does not ensure that a consistent and unified message is delivered to all relevant actors making decisions about accommodation of children. It can also be said that regardless of the decision to relocate unaccompanied children in either Krnjača or Sjenica, neither AC has provided a uniquely exclusive environment to keep the space child friendly. Rather their decisions and attempts in both instances to have a specialized centre have risked the safety of unaccompanied children in both centres.

Countless organizations have vocalized the need to improve upon the housing options for unaccompanied children, and especially for the need to secure a centre that will specifically serve the needs of these children.³⁸⁹ In order to comply with Article 20 of the Convention, more emphasis should be placed on housing unaccompanied children in spaces where the national children of Serbia are placed, such as institutions under the jurisdiction of social protection. In order to make this a reality, further investment into existing childcare institutions should be made to renovate and expand capacity. This responsibility calls to action MLEVSA, CRM and MI as the relevant state authorities.³⁹⁰ The success of such an endeavor seen at JJ Zmaj should serve as an example towards the positive impacts, where the standard of care has proven to be much higher in such institutions. Otherwise, further expansion of the foster care system and promoting foster care options for younger unaccompanied children would not only offer a higher level of individualized care for these children but would also effectively free up spots in institutions to aid those who otherwise may not be able or may not want to live with a foster family. Foster care is not only a good

³⁸⁹ APC, 'Call to form a center for migrant children', *Asylum Protection Centre*, [website], 7 June 2019, <http://www.apc-cza.org/en/8-vesti/1614-call-to-form-a-center-for-migrant-children.html>, (accessed 1 August 2020).

³⁹⁰ BCHR, 2020, p. 100.

practice, but it has been deemed ‘a suitable form of family-based or family-like community’.³⁹¹

Placement of children in separate centres tailored to their needs and guaranteeing their security is the least that has to be done to reduce risks to their lives and safety. Especially in cases for ACs housing unaccompanied children in Sjenica and Krnjača, there is an immediate need to increase the presence of qualified professionals at the asylum centres, as well as expand supervision and security measures to ensure the safety of children. This can assist in minimizing the dangers unaccompanied children are exposed to like smuggling, assault and other violence. It is imperative that all ACs, especially those accommodating children, are located closer to urban areas. This way the accessibility of essential services and institutions can be improved. In cases where locations cannot be altered, as previously suggested the Asylum Office should increase its presence by intensifying the number of regular visits per centre or by hiring Asylum Officers to work specifically at a given location. It is not acceptable for asylum seekers to miss out on their chances to enter the already difficult asylum procedure due to a failure of the Asylum Office to effectively offer its services. Increased capacity for available Asylum Officers will ensure that those needing information may access it and will also access the asylum process quicker, with fewer complications.

Since the nature of Serbia as a transit country influences the great disparity between lodged intentions to seek asylum versus asylum applications, the BCHR has recommended that it would be beneficial for the asylum system if humanitarian assistance were offered to those not genuinely seeking asylum.³⁹² This is an important recommendation, as the humanitarian assistance would fulfill refugees’ needs to regularize their stay on the territory of Serbia and obtain access to basic needs of shelter, food, healthcare etc. In being able to divert the registration of people through another channel, this would free the immense burden placed

³⁹¹ Nowak, p. 560.

³⁹² BCHR, 2020, p. 21

on the Asylum Office and allow them to better allocate their time and resources to genuine asylum applicants.

The MI should work to primarily issue registration certificates in a language that is accessible to foreigners. Documentation and forms crucial to refugees' protection and status should not be only in Cyrillic, it impedes on their right to information and the ability to meet vital timeframes such as reporting to the designated accommodation centre within 72 hours, and subsequently submitting the asylum application within 15 days.

Interview procedures with unaccompanied children additionally call for changes. As revealed by the interviews and reports by local organizations, child friendly practices are not usually implemented accordingly to deal with the necessities of unaccompanied children. The usual recommendations implying the need for more training to improve the use of child friendly standards and interview methods can be suggested. However, it could be beneficial to refrain from direct questioning of children with asylum authorities altogether. It would be best to develop a procedure whereby those that are already trained and regularly deal with children are given the authority to submit reports to the asylum officers. For example, legal representatives could be given the role to compound different aspects that are discussed with the child during child friendly interview procedures. This would also maintain that children are constantly in touch with the same people, whom they can build trusting relationships with.

In line with BIAs, the concerns mentioned about the methods through which unaccompanied children are enrolled in school is not satisfactory in the least. Guardians do not seem to be safeguarding the best interests of the child when it comes to education, rather blindly accepting that every child should be pushed into enrollment regardless of other factors. Schooling should not be mentally or physically taxing on the state of a child, and the fact that children have refused to attend after initial enrollment speaks volumes to the specialized attention and care they are not receiving at educational institutions.

Therefore, it is recommended that there be no further incentivized programs to enroll children. Not only incentives for children, but also incentives for organizations and institutions should be abolished. Such methods only attract attention and ‘success’ for the wrong reason, pumping up numeric goals that treat children like objects to be acquired and used instead of treated with respect and dignity.

7. Conclusion:

This thesis has shown that access to the system of care for unaccompanied children in Serbia is plagued with diverse and deep-rooted institutional challenges. It is without question that ‘a gap remains between lip service paid to children and resources budgeted for them’.³⁹³ The recognition of rights on paper means nothing to a child who cannot access them in their day to day, and in fact, many academics view law as the easiest step in a long chain of actions needed for the realization of children’s rights.³⁹⁴

While the research question has used the enforcement of the LATP as a starting point for assessing change, by no means is there an implication that the LATP -or any law for that matter- can effect immediate transformation. No single law can initiate the adequate scope of change needed to improve the treatment and care of unaccompanied children in Serbia. It is simply necessary to assess what -if anything- has been implemented, and if new decisions or procedures have been made in accordance with the law. It must be noted that the LATP has been crucial for producing the missing link between asylum procedures and other social protection services for children, having added obligations for the State towards foreign children in a more concrete manner. By including provisions on guardianship, accommodation, registration, and education, with specific reference to unaccompanied children, a clearer line has been drawn between refugee laws and other national laws pertinent to social protection and care.

³⁹³ Waage, p. 127.

³⁹⁴ Bhabha, p.260.

Harmonization of the national legal framework with international standards has improved with direct influence on the consideration of the best interests principle, increasing the practice of offering such consideration to refugee children and concretely resulting in numerous positive decisions for unaccompanied children – a first for Serbia. Despite new provisions and a restructuring of Serbia's asylum law, gaps still exist. The omission of an age assessment, as well as clear provisions for special procedural guarantees are the most significant. While further efforts for building a comprehensive national framework are welcomed, greater levels of attention should now be paid towards implementation and authentic investment for restructuring of systemic approaches and strategies to practical issues. Without this, along with political will as a non-negotiable piece of the puzzle, problems that have existed before the LATP will continue to persist.

The best interest of the child is a principle that is not an unattainable standard rooted in idealism. Rather it holds a great significance as an essential concept in the world of rights. Nevertheless, in order for the best interest principle to be meaningful, options need to exist. In systems where there is no good option, a decision in the best interest of the child cannot effectively be made. In this sense, a focus towards building a world abundant with choices is the best way to ensure that a child can get the outcome they deserve.

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Abstract English

This thesis explores the current system of care offered to unaccompanied refugee children in Serbia from a legal and practical perspective. Particular attention is paid to the best interests of the child principle, as its inclusion and role within the realm of children's rights (especially for unaccompanied children), is pivotal. With the introduction of a new Law on Asylum and Temporary Protection, Serbia's asylum system has extended updated rights provisions to children. This law's efficacy and influence is investigated in relationship to the country's social protection system.

In maintaining an approach that is human rights focused, child's rights standards and principles are used to evaluate the existing framework of legal and social protection structures. This works to identify what level of protection has been granted and what gaps exist to better dismantle obstacles that exclude individuals in vulnerable positions. Relevant literature is reviewed, as well as the inclusion of 11 semi-structured interviews conducted in relation to the topic with representatives from key refugee and human rights organizations. Results are then compounded and presented through a thematic analysis dealing with: identification, age assessment, guardianship, accommodation, and education.

The results of this research highlight that although important advancements have been made in the legal sphere of Serbia's laws, the best interests of the child is not adequately implemented or assessed as a result of key systemic barriers.

Best Interests Procedure – Unaccompanied Children – Children's Rights – Serbia –
Refugees and Asylum Seekers – United Nations – Child Protection – Asylum Law

Abstract German

Diese Arbeit untersucht das derzeitige Betreuungssystem für unbegleitete Flüchtlingskinder in Serbien aus rechtlicher und praktischer Sicht. Besonderes Augenmerk wird dabei auf das Wohl des Kinderprinzips gelegt, da seine Einbeziehung und Rolle im Bereich der Kinderrechte (insbesondere für unbegleitete Kinder) von zentraler Bedeutung ist. Mit der Einführung eines neuen Gesetzes über Asyl und vorübergehenden Schutz hat das serbische Asylsystem die aktualisierten Rechtsbestimmungen für Kinder erweitert. Die Wirksamkeit und der Einfluss dieses Gesetzes werden im Zusammenhang mit dem Sozialschutzsystem des Landes untersucht.

Unter Beibehaltung eines menschenrechtsorientierten Ansatzes werden Kinderrechtsstandards und -grundsätze verwendet, um den bestehenden Rahmen der rechtlichen und sozialen Schutzstrukturen zu bewerten. Auf diese Weise wird ermittelt, welches Schutzniveau gewährt wurde und welche Lücken bestehen, um Hindernisse, die Personen in gefährdeten Positionen ausschließen, besser abzubauen. Relevante Literatur wird überprüft und gleichzeitig werden 11 halbstrukturierten Interviews, die zu diesem Thema mit Vertretern wichtiger Flüchtlings- und Menschenrechtsorganisationen durchgeführt wurden, unterstützend herangezogen. Die Ergebnisse werden dann zusammengesetzt und durch eine thematische Analyse präsentiert, die sich mit folgenden Themen befasst: Identifizierung, Alterseinschätzung, Vormundschaft, Unterbringung und Bildung.

Die Ergebnisse dieser Untersuchung zeigen, dass zwar wichtige Fortschritte in der Rechtssphäre der serbischen Gesetze erzielt wurden, das Kindeswohl jedoch aufgrund wichtiger systemischer Barrieren nicht angemessen umgesetzt oder bewertet wird.

Best-Interest-Verfahren - Unbegleitete Kinder - Kinderrechte - Serbien - Flüchtlinge und Asylsuchende - Vereinte Nationen - Kinderschutz – Asylrecht