

LEX INTERNATIONAL
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ANALYSIS OF THE LAW ON MOVEMENT AND RESIDENCE OF FOREIGNERS AND ASYLUM

I INTRODUCTION

In the course of 2003 Bosnia and Herzegovina passed the new Law on Movement and Residence of Foreigners and Asylum¹⁾, which entered into force on 14 October 2003. Thereby the previous Law on Immigration and Asylum of Bosnia and Herzegovina²⁾ ceased to be valid.

Many important issues have been regulated by the Law on Movement and Residence of Foreigners and Asylum (hereinafter: the Law). They refer to the conditions and procedure of foreigners' residence in Bosnia and Herzegovina (hereinafter: BiH), reasons for rejecting their entrance and residence in BiH, reasons for cancellation of residence and expelling of foreigners from the territory of BiH, procedure relating to the filing of request for asylum, approval of asylum and termination of asylum in BiH, types and competencies of bodies in charge of the procedures and other issues.

Regulations of relations treated by the Law also refer to many issues relating to the status of refugees residing in BiH, particularly the part of the Law referring to the asylum. The current legal framework directly refers to rights and obligations of citizens currently residing in BiH, who before that used to live in ex-Yugoslavian republics (most of them are from the Republic of Croatia, Federal Republic of Yugoslavia, and Slovenia).

Purpose of this material is to provide for complete information about the existing solutions in the Law. Besides, we will try to point out some relevant international standards regarding the existing domestic legal framework and give an evaluation as to how much the positive legislation in BiH anticipates the same. With regard to the aforementioned, the positive-legal solutions will be considered in relation to the Agreement on Succession entered by the republics of former SFRJ³⁾ in Vienna (today independent countries). This Agreement on Succession (hereinafter: the Agreement) was ratified by all ex-Yugoslavian republics except of Croatia⁴⁾ Differences between the past and current valid regulations will also be pointed out.

Moreover, this material results from the need to at least partially consider the legal framework deriving from the fact that a big number of citizens that before

had citizenships of SFRY, and are today foreigners on most of the territories of the former common country, with legal repercussions resulting from the same.

II THE EXISTING LEGAL FRAMEWORK IN B&H

1. General

The existing Law is very comprehensive and a conclusion could be drawn that it regulates the issue of movement and residence of foreigners and asylum in a more consistent manner in terms of law and systematization than the previous law.

The existing law comprises 105 provisions that have been systematized in 10 chapters with the following titles:

- I General Provisions;
- II Entrance and Residence of Foreigners;
- III Entrance Permit and Travel Document;
- IV Residence of Foreigners;
- V Expelling of Foreigners from the Country;
- VI Acceptance of Foreigners and Custody;
- VII Asylum;
- VIII Special Provisions;
- IX Penal Provisions and
- X Interim and Concluding (final) Provisions.⁵⁾

Both state and entity bodies are in charge of the implementation of the Law. According to the explicit provision of the Law (Art. 2), the competent bodies for the implementation of procedure and decision making are the following: BiH Council of Ministers, BiH Ministry of Security, BiH Ministry of Foreign Affairs (MIP BiH), Ministry of Refugees and Displaced Persons, Ministry of Interior Affairs of the Federation of BiH (MUP FBiH), Ministry of Interior Affairs of Republic of Srpska (MUP RS) and the Police of Brcko District in BiH.

According to law, a foreigner is every person who does not have citizenship of BiH or a stateless person.

The Law asserts the principle of movement for foreigners (under conditions stipulated by Law), ban on discrimination, obligation to conform with the legal

system of BiH, the entities and Brcko District (BD), as well as the rights of the same in proceedings before the state bodies.

During their stay in BiH, foreigners have to possess certain documents in order to prove and confirm their identity, as well as their right to enter and stay in BiH, and to show the same to the competent body.

The Law stipulates general conditions for crossing the border and the residence, especially the issue relating to the means of self-support and the way of proving this condition (Art. 11 and 14).

Entrance in BiH can be approved and granted to a foreigner who wishes to work in the country or perform other profitable operations that are subjects to taxation if he/she has a work permit or another equivalent issued by the competent administrative body. In this case, when a foreigner possesses a work permit, he/she is regarded as having fulfilled the conditions of having means for self-support.

There are three categories of foreigners' residence in BiH: visa, approval of temporary or permanent residence. Within the temporary residence (up to three months) we are pointing out the category of temporary residence out of humanitarian reasons involving for example victims of organized crime, trafficking, abandoned minor children of a foreigner, stateless persons and other.

A foreigner can be expelled from BiH and the Law has stipulated conditions and procedure for that.

There is also a legal possibility of accepting a foreigner and putting them in custody of specialized institutions (Art. 67 till 71 of the Law).

2. Asylum

However, due to the fact that the purpose of this material is not a complete consideration of all provisions of the Law, but only those solutions referring to the position of refugees and displaced persons, special attention has been drawn to the provisions referring to the asylum.

3. Conditions for the Acquiring of Asylum

According to the provision of the Art. 72 of the Law, the asylum is being approved to a foreigner who, according to the definition of refugee mentioned in the Art. 1 A (2) of the Convention on Refugee Status (dating from 1951) and Art. 1 of the Protocol dating from 1967⁶), and due to justified fear of being expelled because of his/her race, religion, nationality, ethnic affiliation or

political orientation, is outside the country of which he/she has citizenship and who cannot or out of fear will not seek for protection from that particular country, or a foreigner who does not have a citizenship, but is residing outside the country in which he/she used to have a residence, and to which due to such events he/she cannot or out of fear wishes not to return.

4. Limitations

The Law sets up limitations not referred to by the above-mentioned provision of the Art. 72 of the Law. Even if a foreigner formally fulfills the conditions for an asylum, the same will not be granted to him/her if there are founded grounds to believe that he/she:

- Committed a crime against peace, war crime or crime against mankind as defined by international documents⁷⁾ including the provisions relating to such crimes,
- Committed a severe non-political crime outside the refuge country before his/her entrance in that particular country was approved, or
- Is guilty of actions that are in opposition to the goals and principles of the United Nations.

Besides, asylum can be rejected to a foreigner whose refugee status has been recognized in another country or he/she has found an effective protection of another country and has the possibility to return to that country and again use the protection.

5. Procedure and Competency for the Approval of Asylum

Procedure for the acquiring of asylum is being initiated upon a request. Body in charge of the receipt is the competent organizational unit of the Ministry of Security of BiH or Ministry of Interior Affairs⁸⁾ while the request itself is being considered at the headquarters of BiH Ministry of Security. After the request has been filed, a certificate is being issued giving the applicant the right to stay in the country until a valid decision is rendered upon the request.

The public has been excluded in the cases of asylum and all information relating to this procedure is regarded as confidential (Art. 77 of the Law).

The filed request for asylum is being decided on by individual document in form of a decision, against which no appeal can be filed, but complaint can be lodged requesting for the postponement of the execution of decision. It is an administrative dispute through which legal protection is being provided for the potential asylum seeker.

The Law also contains a very important provision according to which a foreigner will not be sent away from BiH even when by a valid decision the asylum has been rejected to him/her when all conditions have been fulfilled for the so-called principle of „ban on the return,“⁹⁾. In such cases a permit for the permanent residence due to humanitarian reasons is being issued, already referred to earlier in the text.

6. Rights and Obligations of Refugees

A foreigner who was granted asylum acquires the status of refugee, as well as the rights from the Convention on Refugee Status (1951).¹⁰⁾

It is interesting to mention that the Law also contains an explicit provision according to which even bigger rights will be recognized to a foreigner than the ones guaranteed for by the Convention on Refugee Status from 1951, if those (bigger or more favourable) rights are contained in another domestic law or international document accepted by BiH (Art. 81 paragraph 2 of the Law).¹¹⁾

With regard to the recognized rights, a foreigner with an approved asylum has the so-called national treatment. This means that a foreigner whose status of refugee has been acknowledged will have the right to employment, education, health and social care under the same conditions as the citizens of BiH.

The Law also contains a principle that a refugee status is being approved to a spouse, minor children, and other members of the immediate family that live in joint household on the territory of BiH, and foreigner that was granted asylum.

Foreigners with refugee status have the right to identification papers. They have right to a travel certificate for a period of at least two years, with the possibility of extending the same, if it is not against necessary (imperative) reasons for national security or public order of BiH.¹²⁾

7. Termination of the Validity of Asylum

The Law specifies situations when the asylum granted to foreigners ceases to be valid in BiH. Those are the following cases:

- If he/she again willingly uses the protection of the country of which he/she is a citizen;
- If, having lost the citizenship of another country, he/she again willingly acquires the same;
- If he/she has been granted a new citizenship and enjoys the protection of that particular country;

- If he/she has willingly returned to the country that he/she had abandoned or outside which he/she has lived out of fear for persecution in order to stay;
- If, as a consequence of cessation of circumstances under which he/she was recognized as refugee, he/she still cannot refuse the protection of the country of which he/she is a citizen;
- If he/she is without citizenship, but as a consequence of cessation of circumstances under which he/she was recognized as refugee, cannot refuse to use the protection of the country of previous residence;
- If he/she acquired the citizenship of BiH.

Under certain conditions, the Law does not allow the possibility of not having an approved asylum terminated due to the cessation of circumstances in which the asylum was approved. This will happen when a foreigner can give „...convincing reasons relating to an earlier persecution against the use of protection of the country of which he/she is a citizen...i.e. the country of previous residence „.

Decision on termination of asylum is issued by the same body that approved the asylum ex officio or on request of its organizational unit or the Ministry of Interior Affairs (RS, Fed BiH or BD). No appeal is allowed against the decision on termination of asylum, however one can lodge a complaint that postpones the execution of decision.

8. Cooperation with UNHCR

Claimants of asylum have to be enabled to at any stage of the procedure communicate with representatives of UNHCR or other organizations that can operate instead of UNHCR¹³⁾ This cooperation involves the submission of required data or information referring to the status of refugees, implementation of the Convention of Refugee Status, and the Law, regulations or other provisions concerning refugees that are effective or will enter into force.

III INTERNATIONAL STANDARDS

1. Universal Declaration of Human Rights

Universal Declaration of Human Rights (1948) includes two provisions that are relevant to foreigners and asylum. Those provisions are contained in the Art. 13. and 14 of this international document. Even though the UN Declaration of Human Rights does not have the force of international agreement, it is indisputably the starting point for the interpretation and creation of legal standards for human rights. The aforementioned provisions are as follows:

„(1) Everyone has the right to freedom of movement and choice of residence within the borders of a certain country.

(2) Everyone has the right to leave every country, including their own, and to return to their country,, (Art. 13).

„(1) Everyone has the right to seek for and enjoy in other countries the asylum from persecution.

(2) No one can plead this right in case of prosecution upon a non-political criminal act or procedure against the goals and principles of the United Nations,, (Art. 14).

2. International Pact on Civil and Political Rights

International Pact on Civil and Political Rights (from 1966, entered into force in 1976.) includes somewhat more complete provisions referring to the freedom of movement, foreigners and asylum.

„1. Whoever is legally residing on the territory of a country has the right to freely move and choose their residence.

2. Everyone has the right to leave every country including his or her own.

3. The above-mentioned rights cannot be limited, except when the limitations have been stipulated by law, or if the same are necessary for the state security protection, protection of public order, public health or morality, or the rights and freedoms of other persons, and if compatible with other rights recognized by this Pact.

4. No one can be arbitrarily deprived of the right to enter his or her country,, (Art. 12).

„A foreigner who is residing on the territory of a contracting state of this Pact cannot be expelled, except in the execution of a decision issued in accordance with the law and has to, if necessary reasons of state security are not against the same, have the possibility to give reasons against the expelling and have his/her case investigated by a competent body or person or persons especially appointed by him/her, thus to be represented for that particular reason ,, (Art. 13).

3. Convention on Refugee Status

Convention on Refugee Status (from 1951, entered into force in 1954) is probably most directly linked to issues of asylum and the status of foreigners (refugees) in relation to that. However, it seems possible that the solutions from the Convention regarding the status of refugees have mostly undergone the reciprocity from the previously mentioned Pact on Civil and Political Rights, however in more principle. Hereinafter are the cited provisions of this Convention that refer to the Freedom of Movement (Art. 26), Papers on Identity (Art. 27), Travel documentation (Art.28), Expelling (Art. 32), Ban on Expelling and Rejecting („refoulement,,) (Art. 33), and Naturalization (Art. 34).

„Every contracting state will give the right to refugees, who are regularly residing on its territory, to choose the place of residence (habitation) and to freely move under the conditions established by provisions that are generally being applied on foreigners under the same circumstances,, (Art. 26).

„Contracting states will issue papers on identity to every refugee who is residing on the territory of that state and who does not possess a valid travel document,, (Art. 27).

„Contracting states will issue travel documents to refugees who are regularly residing on the territory of that state in order to enable them to travel outside the territory, except when some imperative reasons of national security or public order are not against the same..., (Art. 28).

„1. Contracting states will expel a refugee who is regularly residing on the territory of that state if there are reasons for national security or public order.

2. That refugee will be expelled only in the execution of decision rendered in accordance with the procedure stipulated by law. The refugee should be allowed to, if some imperative reasons of national security are not against it, submit evidence to justify himself/herself, to file an appeal and for that purpose have a proxy before the competent authority or before one or more persons especially appointed by the competent authority.

3. Contracting states will give such a refugee a reasonable deadline in order to enable him/her to seek for permission from another country to enter the same. Within that deadline, contracting states can apply measures of interior character that they consider ,, (Art. 32).

„No contracting state will expel or return by force („refouler,,), in any way, a refugee to the border of a territory on which his/her life or freedom would be endangered due to his/her race, religion, citizenship, social affiliation or political orientation.

2. A refugee who should for serious reasons be considered dangerous for a state's security in which he/she is residing or against whom a final decision was rendered for a committed crime or a particularly severe criminal act and he/she is therefore dangerous for the community of the mentioned state, cannot plead the right to use this provision,, (Art. 33).

„Contracting states will enable as much as possible the assimilation and neutralization of refugees. They will especially try to speed up the procedure of neutralization and reduce as much as possible taxes and costs of that procedure,, (Art. 34).

At several places the Law refers to the application of international obligations, i.e. the adequate international standards. Thus, already according to the provision of the Art. 12, a foreigner may enter BiH even when he/she does not fulfill the conditions of the Law, if prescribed so by the international agreement in which BiH is one of the contracting parties, or by a special regulation of the Council of Ministers of BiH. BiH Council of Ministers is also in charge of exempting those persons from the procedure of acquiring visa for whom other countries have recognized their refugee status in line with the Convention on Rights of Refugees dating from 1951.

Moreover, the Council of Ministers can prescribe special conditions for the entrance of foreigners, if necessary for the national security and legal system of BiH, or other reasons deriving from international obligations.

IV PROVISIONS OF THE VIENNA AGREEMENT AND THE STATUS OF EX-YUGOSLAVIAN CITIZENS (FREEDOM OF MOVEMENT, REALIZATION OF INDIVIDUAL RIGHTS, ACCESS TO COURTS)

1. General

Bosnia and Herzegovina (BiH) ratified the Agreement on Succession that the former republics of the Social Federative Republic of Yugoslavia (SFRY), today sovereign countries, concluded and signed on 29 June 2001 in Vienna. BiH Presidency ratified the same at its session of 28 November 2001.

Agreement on Succession (Agreement) was concluded after years-long negotiations and by the same the inheritance issue regarding the property of former SFRY was resolved. Equal successor countries are the following: BiH, Federal Republic of Yugoslavia (now Serbia and Montenegro), the Republic of Croatia, the Republic of Macedonia, and the Republic of Slovenia.

Issues regarding inheritance have been sorted out and regulated by seven annexes to the Agreement. It refers to the Movable and Immovable Stare Property (Annex A); Diplomatic and Consular Property (Annex B); Financial Receivables and liabilities (Annex C); Archive Material (Annex D); Pensions (Annex E); Other rights, interests and debts (Annex F); and Private Property and Vested Rights (Annex G).

2. Access of Citizens to Courts and Other Bodies

The countries are obliged to implement the Agreement in good faith, in the spirit of the United Nations Charter and in accordance with the international law. The signatory countries are particularly obliged to take all necessary measures

based on reciprocity to make sure that courts and administrative bodies implement the provisions of the Agreement, and that other signatory countries or citizens of those countries have free access to the courts or administrative bodies of each signatory country. If necessary, domestic laws of each signatory country have to be adjusted.

This means that no cash advance of court fees and other costs will be required (*cautio iudicatum solvi*) in case when the plaintiff, i.e. the initiator of proceedings is not the citizen of the respective country before which bodies he/she is seeking for protection. Truly, this obligation will be fulfilled under the conditions of reciprocity.

The right to free access to bodies, without additional conditioning, is also relevant to the issue of entrance, residence and movement of foreigners, as well as asylum, which is the main subject of this material.

3. Mechanism of Implementation of the Agreement

The Constant Joint Commission has been established by the Agreement and consists of representatives of each successor country. The Agreement refers to "higher representatives" of each country that experts can help. The basic mandate of this commission is to monitor the efficient implementation of the agreement. The commission represents an institutionalized forum for discussions about all possibly disputable issues. It can always give adequate recommendations to the governments of countries successors. The commission has been regulated as a body in charge of solving disputes.

However, if, upon implementing the Agreement, some issues cannot be solved by discussion between individual interested countries, they can submit the case to an independent person that they themselves choose in order to bring a fast and authoritative decision, which will be observed and according to which specific deadlines can be set up for actions that need to be undertaken.

The Agreement stipulates a special mode of resolving disputes through experts who are not citizens of either of the signatories of the Agreement. The countries appoint this expert by mutual agreement. If no agreement can be reached, the expert is selected by the president of the Court for Reconciliation and Arbitrage OSCE. The appointed expert makes only a binding expert decision regarding the interpretation of terminology used in the Agreement and it is not in his/her mandate to determine the practical application of the Agreement or part of Agreement.

During the ratification, the countries cannot put any reserves on some parts of the Agreement (Art. 10).

The custodian of the Agreement is the General Secretary of UN, to whom the High Representative in BiH submits the Agreement, and he provides for its registration in accordance with UN Charter.

4. Principles of Non-discrimination

The Agreement accepts the principle of non-discrimination when it refers to the realization of individual rights of citizens who used to live on the territory of the former country.

Therefore, the signatories of the Agreement, among other things, committed themselves to regularly pay out pensions (according to the criteria of the Agreement) regardless the nationality, citizenship, place of residence and permanent habitation of the pension beneficiary.

The principle is the same regarding the guarantee of other rights. Thus the right to possess movable and immovable property in a country successor, and that were possessed by citizens as of 31 December 1990, is guaranteed by the Agreement regardless the nationality, citizenship, place of residence or permanent habitation of the rightful owner. This rights is guaranteed in accordance with the established and recognized standards and norms of international law.

Right to possession is also recognized of all persons who have acquired citizenship after 31 December 1990 or have established their place of residence or habitation in another country that is not a country successor of former SFRY. This is a vey impoartant provision for persons residing outside BiH and former SFRY that decide to take another citizenship. By taking citizenship of a third country their right to possession on the territory of former SFRY that they had as of 31 December 1990 can in no way be violated. Hence, if those persons took refuge in the course of hostilities from BiH to Croatia, in which they got and had the status of refugees, including the instruments of asylum, or vice versa, or any other similar case on ex-Yugoslavian territory, they can in no way be deprived of their previously vested rights.

Finally, the agreement especially guarantees for the enjoyment of citizens' tenancy rights. The countries successors have committed themselves to have their domestic legislation in terms of tenancy rights (rights to occupy an apartment) equally applied on persons who used to be citizens of former SFRY and who had such rights without discrimination upon any basis such as sex, race, language, religion, political and other orientation, national and social origin, minority national affiliation, property, birth or some other status.

It is important to stress that, in principle, the realization of any of the rights of citizens in terms of private property, tenancy rights or other vested rights is not

conditioned by concluding bilateral agreement between countries successors, even though the possibility of concluding such agreement is opened to them.

V CRITICAL REFERENCE TO THE DOMESTIC LEGISLATION

When compared to the previous Law on Immigration and Asylum of BiH (1999) the currently existing Law on Movement and Residence of Foreigners and Asylum (2003) presents a more comprehensive law. Hence, it can be concluded that the new Law presents not only a complete legislation in terms of quantity but in more and more detailed and precise provisions that strengthen the legal security and reduce the possibility of a more arbitrary application of the Law in practice. It seems quite possible that such a concept of the Law is not directed towards a bigger bureaucracy and unjustified giving of priority to the administration but towards a more equal application of the Law, thus strengthening of the legal security and trust of citizens in the government administration on state and entity levels.

When compared to the domestic legislative methods in the earlier period, by a number of its provisions the Law asserts direct linking to standards contained in international documents (e.g. Art. 13, 72, etc). Besides, most of the legal provisions present a direct reception of formulations from international agreements and other documents. Such an approach opens very flexible possibilities for a creative interpretation in practice (living law), and requires very qualified staff that will deal with the rights of citizens in individual cases.

Regarding individual legal decisions certainly some of the provisions could have been more clearly defined, and one could also mention that there were a lot of objections on norms and techniques, which all in all does not reduce the high value of the Law.

In principle, taking into account the environment and especially prominent political and legal request for a more intensive fight against terrorism, it seems that the Law is quite liberal. However, with regard to possible limitations for foreigners, its basic scope will primarily depend on how the standards for „the threat to national security, legal system and public order of BiH,, (Art. 11(1)f)¹⁴⁾ will be applied in practice. Indeed, according to some provisions the Law defines the aforementioned syntagm just as „a threat to the public order and national security of BiH,, (Art. 27 (1)h) or „...the protection of national security and legal system of BiH,, (Art. 11(2)) or „...violates the constitution or security of BiH...,, (Art. 47(1)a)), etc. There are also other inconsistencies not only in terms of terminology, and a sporadic and unnecessary repeating can be noticed, tautology, etc. Surely, important is the also the content that will be given in practice to other legal standards regulated by Law.

A more serious remark could refer to the authorization of the Council of Ministers to prescribe special conditions for the entrance of foreigners, exactly when required by „.....reasons for the protection of national security and legal system of BiH, of other reasons resulting from international civil obligations....,, (Art. 11(2) of the Law). It is possible that such an authorization is not compatible to the aforementioned standard stipulated by the international Pact on Civil and Political Rights (1966) by the provision of the Art. 12(3) and 13. These provisions imply only those limitations stipulated by a legal document of hierarchy value of the „law,,, however not by any document with a weaker legal force. As only the highest legislative bodies are in charge of passing the laws (but not the executive authority) the aforementioned authority of the Council of Ministers of BiH seems disputable. A special worrying fact is that only the Ministry of Security of BiH can prescribe additional limitations by a by-law (see for e.g. Art. 47(1)i) of the Law). The adopted human rights standards present the highest civil values, thus nothing should be an excuse for the establishing of limitations, passing the international standards that are being indicated and that commit BiH.¹⁵⁾

Regarding the aforementioned Agreement on Succession, it can be concluded that the installation of the principle of reciprocity between the successor countries, in terms of citizens' access to the bodies of an individual country (Art. 8. of the Agreement), has no particular justification. The institute of reciprocity is archaic and refers more to nationalism in law than a real need, especially in situations of establishing relations on a territory that once used to be a unique country. Due to that (unique legal territory) people had certain benefits, i.e. specific rights that they cannot be deprived of by a ban (condition) called reciprocity due to the fact that the standard of the vested right is super national and as such cannot be defended by the principle of reciprocity.

VI FINAL (CONCLUDING) CONSIDERATIONS – - RECOMMENDATIONS

In order to have a correct implementation of the Agreement, changes or issuance of new internal laws will be necessary, especially in some of the successor countries.

New regulation is also necessary in the part referring to the movement and residence of foreigners, as well as to the acquiring of asylum, which is happening¹⁶⁾.

The analyzed Law on Movement and Residence of Foreigners and Asylum of BiH is in the most general terms acceptable from the normative viewpoint. However, a change of the unacceptable practice will be necessary in many situations. The real application of the Law, i.e. the effective realization of the

rights of many persons damaged by the past war will significantly depend on this circumstance.

Anyway, in order to have a more complete implementation of the Law, a partial change of the same is being proposed as mentioned in the critical reference to individual solutions (the fourth and fifth paragraph of chapter V of this material).

Moreover, it seems possible that a faster establishment of several organizational units of the Ministry of Security of BiH within BiH would improve the application of the Law, due to the authorizations that this Ministry has in its application. Those organizational units could be located in bigger regional centres (Banja Luka, Mostar, Tuzla, Trebinje, Bijeljina, and Zenica).

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Remark along with the notes from the text:

¹⁾Published in the „BiH Official Gazette,, no. 29/2003 of 06 October 2003.

²⁾Published in „BiH Official Gazette,, no. 23/1999 of 23 December 1999.

³⁾This multilateral international agreement was ratified by BiH on 28 December 2001, and it was published in the „BiH Official Gazette,, (Appendix: International Agreement) no. 10/2001).

⁴⁾According to the statement of the current Croatian Prime Minister Mr. Ivo Sanader even the Republic of Croatia will in near future ratify the agreement (source: „Nezavisne novine,, Banja Luka, 03 February 2004).

⁵⁾The former Law was shorter, with a less complete and less precise legislation. It contained totally 64 provisions put in eight chapters.

⁶⁾In essence the Art. 72. of the Law paraphrases the aforementioned provisions of the Art. 1.A(2) of the Convention on refugee status that quotes the following: „For the purpose of this convention, the term „Refugee,, will be applied for every person:...that, in circumstances afflicted after 1 January 1951 for a justified fear of persecution due to their race, religion, nationality, political orientation or social affiliation, find themselves outside the country of which they have citizenship and cannot or, out of fear, does not want to seek for the protection of that country; or that, if he/she, if they do not have the citizenship and is outside the country in which he/she had a permanent residence, as a result of such events cannot or, out of fear, does not want to return.,,

⁷⁾V. Convention on prevention from and punishment for the crime of genocide (from 1948, entered into force in 1951).

V. Statute of the International Criminal Tribunal for former Yugoslavia (ICTY).

V. Roman Statute of the International Criminal Tribunal („BiH Official Gazette-International Agreements,, no. 2-2002).

⁸⁾Currently the Ministry of Security of BiH does not have organizational units outside the headquarters in Sarajevo. On the other hand, both the Ministry of Interior Affairs of BiH and of RS have their organizational units in every municipality.

⁹⁾This principle has been formulated in the Art. 60 of the Law that quotes: „Foreigners will in no way be returned or expelled to the border of the territory where their lives or freedom would be endangered due to their race, religion, nationality, social affiliation, or political orientation, regardless whether they have officially been granted asylum. The ban of expelling or returning refers also to persons for which there is a founded suspicious that they would be in danger of becoming subject to torture or any other inhumane or humiliating procedure or punishment. Moreover, foreigners cannot be sent to a country in which they are not protected from being sent to such a territory„.

¹⁰⁾ It is about rights contained in the Art. 3 to 34 of this Convention.

¹¹⁾ Compare for example, the Law on Refugees and Displaced Persons of BiH.

¹²⁾V. Enclosure A along with the Convention on refugee status that refer to travel documentation. This enclosure comprises 16 provisions, as well as the form of travel papers, which is being issued in two languages (of which one is English or French).

¹³⁾Pursuant to the Art. 35 of the Convention on refugee status „Signatory countries commit themselves to cooperate with the representative of UN for refugees or any other UN institution that would replace him in the performing of his duties and especially in order to ease up his task of supervising the application of provisions of this Convention„.

¹⁴⁾As already pointed out, the Law is not consistent in its technical approach. Thus, instead of the standard for the threat of „legal system and public order of BiH„, the more usual standard is „the threat to public order„, because the term „public order„, has a clear meaning in the international law.

¹⁵⁾There is an illustrated example of the so called „Algerian group „, in which case BiH Human Rights Chamber concluded that there was a violation of the European Convention by the authorities of BiH.

¹⁶⁾Thus for example the Republic of Croatia passed a new Law on Foreigners on 02 July 2003, which has been applied since 01 January 2004.

THIS MATERIAL WAS PREPARED WITHIN THE PROJECT OF BOSNIAN AND HERZEGOVINIAN LEGAL GROUP FOR ADVOCATING THAT IS BEING REALIZED WITHIN THE NETWORK SYSTEM FOR AID TO REFUGEES IN SOUTH-EASTERN EUROPE (SEE-RAN), IN COOPERATION WITH THE DANISH REFUGEE COUNCIL (DRC), ALONG WITH THE FINANCIAL SUPPORT FROM THE DANISH MINISTRY OF INTERIOR AFFAIRS.

BOSNIA-HERZEGOVINIAN LEGAL GROUP CONSISTS OF THE FOLLOWING NON-GOVERNMENTAL ORGANIZATIONS: INTERNATIONAL LEX BANJA LUKA, JOB 22 SARAJEVO, WOMEN BIH MOSTAR, BOSPO TUZLA AND THE BUREAU FOR HUMAN RIGHTS BIJELJINA.

