



**Submission by the Office of the United Nations High Commissioner for Refugees
in the case of *Seraj Eddin v. Serbia* (Appl. No. 61365/16)
before the European Court of Human Rights**

1. Introduction*

1.1. UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions for refugees.¹ UNHCR is responsible for supervising the application of international conventions for the protection of refugees.² UNHCR welcomes the opportunity to intervene in this case, as granted by the European Court of Human Rights ('the Court') in its letter of 13 June 2018.

1.2. In this submission UNHCR outlines the Serbian legislative framework and practice regarding the granting of travel documents to recognised refugees (Part 2), and concludes that Serbia's failure to grant such is at variance with relevant principles and obligations of international refugee law and human rights law (Part 3).³

2. The legislative framework and practice regarding the granting of travel documents to recognised refugees in Serbia

2.1. The Republic of Serbia is a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol ('the 1951 Convention'), and its Constitution provides for a right to

* This submission does not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law. UN General Assembly, *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, <http://www.refworld.org/docid/3ae6b3902.html>.

¹ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), para. 1, <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

² *Ibid*, para. 8(a).

³ According to this Court, the ECHR should be interpreted 'in harmony with other rules of international law of which it forms part', particularly where such other rules are found in human rights treaties (which would include the 1951 Geneva Convention and the ICCPR); European Court of Human Rights (hereafter ECtHR), *Al-Adsani v. The United Kingdom*, 35763/97, 21 November 2001, para. 55. See also: United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, Article 31(3)(c), <http://www.refworld.org/docid/3ae6b3a10.html>; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Article 53, <http://www.refworld.org/docid/3ae6b3b04.html>. Furthermore, this Court has taken into consideration a State's international obligations, including under international refugee law, when assessing its compliance with the ECHR in a number of cases. In particular, in the case of *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, 23 February 2012, this Court took into account a State's *non-refoulement* obligation under international law in the context of its finding that there had been a violation of Article 13 in conjunction with Article 3 ECHR (<http://www.refworld.org/docid/4f4507942.html>, para. 134).

asylum.⁴ In furtherance of this right, the *Law on Asylum* was adopted in November 2007 and Serbia assumed full responsibility for refugee status determination upon its entry into force on 1 April 2008.⁵

2.2. Article 58 of the *Law on Asylum* stipulates that a person who has expressed an intention to seek asylum, or filed an asylum application, or who has been granted asylum, shall be issued the following personal documents:

- 1) a certificate for a person who has expressed an intention to seek asylum; and
- 2) an identity card for an asylum-seeker; and
- 3) an identity card for a refugee; and
- 4) a travel document for refugees.

Article 58 further provides that the form and the content of these documents is to be prescribed by the Minister of Interior.

2.3. Article 62 of the *Law on Asylum* stipulates that at the request of a person over 18 years of age who has been granted refugee status in the Republic of Serbia, the Asylum Office **shall** issue a travel document on a prescribed form, valid for a period of 2 years, in accordance with the law.

2.4. Article 67 of the *Law on Asylum* further provides that the Minister of Interior shall issue regulations on the content and format of the asylum application and personal documents referred to in Article 58 of the Law within 60 days of the law coming into effect. **Such regulations have not been issued in relation to the issuance of travel documents.**

2.5. On 22 March 2018, the new *Law on Asylum and Temporary Protection*⁶ was adopted by the Parliament of Serbia and published in the Official Gazette No. 24 of 26 March 2018.⁷ Article 87 of the *Law on Asylum and Temporary Protection* provides for the types of personal documents and stipulates:

“The Ministry shall issue to a person who has been registered in the records of the Ministry, a person who has submitted an asylum application, or a person who has been granted asylum the following personal documents:

- 1) the Registration Certificate for persons who have expressed the intention to seek asylum;*

⁴ *Constitution of the Republic of Serbia*, 30 September 2006: Article 57 states “any foreign national with reasonable fear of persecution based on his/her race, gender, language, creed, ethnic affiliation or affiliation with another group, or his/her political opinions, shall have the right to asylum in the Republic of Serbia.” It further provides that the procedure for granting asylum shall be regulated by law; <http://www.unhcr.org/refworld/docid/4b5579202.html>.

⁵ *Law on Asylum* [Serbia], 26 November 2007, <http://www.unhcr.org/refworld/docid/47b46e2f9.html>. Prior to 1 April 2008, UNHCR carried out refugee status determination under its mandate for asylum applicants within the territory of Serbia.

⁶ <http://www.unhcr.rs/media/docs/2018/LawOnAsylumAndTemporaryProtectionRS.pdf>. This new law is repealing the 2008 Law on Asylum.

⁷ The Law came into effect on 04 April 2018 with implementation delayed for 60 days (i.e. 04.June 2018). In the meantime, the “old” law would apply. However, the deadlines set in the new Law apply from the day of the Law coming into effect. For instance, the 60 days period (as set in the Article 101 of the Law) for the Minister of Interior to issue regulation on the contents and format of personal documents runs from 04 April 2018.

- 2) *an identity card for asylum-seekers;*
- 3) *an identity card for persons who have been granted the right to refuge;*
- 4) *an identity card for persons who have been granted subsidiary protection;*
- 5) *an identity card for persons who have been granted temporary protection;*
- 6) *a travel document for refugees.*”

Article 87 further stipulates that:

“The contents and the form of the forms for the personal documents referred to in paragraph 1 of this Article shall be specified by the Minister.”

2.6. Article 91 of the *Law on Asylum and Temporary Protection* guarantees the right to a travel document for refugees:

“At the request of a person who has been granted the right to refuge in the Republic of Serbia, the Asylum Office shall issue a travel document in a prescribed form, valid for 5 years.”

2.7. In the context of the transitional and final provisions in Paragraph 1 of Article 101, the *Law on Asylum and Temporary Protection* provides that:

“Within 60 days of the coming into effect of this Law the Minister shall issue regulations on the procedure for registration of persons who have expressed the intention to seek asylum, the format and contents of the Registration Certificate, the contents and format of the asylum application and personal documents referred to in Article 87 of this Law.”

2.8. The *Law on Asylum and Temporary Protection* came into effect on 4 April 2018. On 1 June 2018, the Ministry of Interior adopted the ‘Regulation on the Content and Format of Asylum Application Forms and Documents That May Be Issued to Asylum Seekers and Persons Granted Asylum or Temporary Protection,’⁸ in accordance with Article 101 (cited above). However, as with under the 2008 law, the regulation does not extend to cover the issuance of travel documents.

2.9. Thus, under both the 2008 *Law on Asylum* and the new *Law on Asylum and Temporary Protection*, the Minister of the Interior of the Republic of Serbia failed to issue regulations pertaining to the format and content of travel documents for refugees granted the right to refuge. This is the case notwithstanding the issuance of by-laws for the issuance of the other personal documents listed in Article 58 of the 2008 *Law of Asylum*⁹ and Article 87 of *Law on Asylum and Temporary Protection* of 2018.¹⁰ Consequently, the Republic of Serbia has not, to-

⁸ *Regulation on the Content and Format of Asylum Application Forms and Documents That May Be Issued to Asylum Seekers and Persons Granted Asylum or Temporary Protection*, Official Gazette of RS, no. 42/2018, <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/reg/viewAct/961ecb3b-6b08-4d1e-9a1f-bc83cacc08e1>

⁹ *Regulation on the Content and Format of Asylum Application Forms and Documents That May Be Issued to Asylum Seekers and Persons Granted Asylum or Temporary Protection*, Official Gazette of RS, no. 53/2008, <http://www.refworld.org/pdfid/54cb4ccc4.pdf>

¹⁰ *Regulation on the Content and Format of Asylum Application Forms and Documents That May Be Issued to Asylum Seekers and Persons Granted Asylum or Temporary Protection*, Official Gazette of RS, no. 42/2018,

date, issued any refugee with a travel document, even though since the enactment of the Law on Asylum on 1 April 2008, 44 individuals have been recognized as refugees in Serbia up to the end of 2017.¹¹

2.10. Despite interventions by UNHCR and NGOs providing legal assistance to asylum-seekers and refugees, the problem of the non-issuance of travel documents to refugees has not been resolved.¹²

3. Principles of international refugee and human rights law regarding the right to travel documents and the freedom of movement of recognized refugees

3.1. Article 28 of the 1951 Convention relating to the Status of Refugees imposes an obligation on Contracting States to issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require.¹³

3.2. The wording of this provision, using the imperative verb “shall”, is unequivocal and implies that a Contracting State may not refuse to issue a travel document to a refugee if, for example, it regards the proposed travel as unnecessary.¹⁴ The *travaux préparatoires* to Article 28 indicate that a refugee is not required to “justify” the proposed travel in order to receive a travel document to which s/he is entitled “for travel purposes”.¹⁵

<https://www.pravno-informacioni-sistem.rs/SIGlasnikPortal/reg/viewAct/961ecb3b-6b08-4d1e-9a1f-bc83cacc08e1>

¹¹ The Asylum Office of the Ministry of Interior provides daily and monthly statistics to UNHCR. These statistics are compiled and published by UNHCR on the local UNHCR Serbia website: <http://www.unhcr.rs/media/docs/2018/AsylumFactsheet020518ENGF.PDF>.

¹² ECRE, Asylum Information Database, *Unravelling Travelling: Travel documents for beneficiaries of international protection*, October 2018, p. 5 – 6, <https://www.ecre.org/wp-content/uploads/2016/10/AIDA-Brief-Travel-Documents.pdf>, and <http://azil.rs/en/right-to-asylum-in-the-republic-of-serbia-2017/> page 111.

¹³ Article 28 provides that:

1) The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence;

2) Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

The granting of a travel document does not exempt refugees from having to comply with visa requirements imposed by countries to which they intend to travel.

¹⁴ UNHCR, *Amicus curiae of the United Nations High Commissioner for Refugees (UNHCR) on the interpretation and application of Article 25, Article 27 and Article 28 of the 1951 Convention Relating to the Status of Refugees*, 22 December 2016, para. 37, <http://www.refworld.org/docid/591589be4.html>.

¹⁵ UNHCR, *Note on Travel Documents for Refugees*, 30 August 1978, EC/SCP/10, para 14, <http://www.refworld.org/docid/3ae68cce14.html>.

3.3. The object and purpose of Article 28 is to facilitate the international freedom of movement of refugees.¹⁶ This is particularly important for a refugee, who, unlike an ordinary alien, does not enjoy the protection of the country of his nationality and cannot therefore avail himself of a national passport for international travel purposes. Furthermore, freedom of movement of refugees outside their countries of residence may be an essential prerequisite for a durable solution as it enables them to take advantage of opportunities for education, training or employment.¹⁷ When the international community, after World War I, approached the task of establishing an internationally recognized status for refugees, one of the first measures taken was therefore to ensure that refugees were provided with documentation to enable them to travel.¹⁸

3.4. The requirement to issue travel documents has been reiterated subsequently by States in the context of UNHCR's Executive Committee, most recently in 2017, where the Committee emphasized the importance of travel documents for refugees and stateless persons to facilitate their travel, and called upon States parties to the 1951 Convention to take all necessary measures to issue travel documents in machine-readable form, in conformity with the standards defined by the International Civil Aviation Authority.¹⁹ UNHCR has also issued guidance to assist States in the issuance of travel documents in machine-readable form.²⁰

3.5. The only lawful exception to the requirement for a Contracting State to issue a travel document to refugees lawfully staying in their territory is to be found in the words "unless compelling reasons of national security or public order otherwise require". In this context, the terms "compelling reasons", "national security" and "public order" should be interpreted and applied restrictively, and only concern grave and exceptional circumstances.²¹ The *travaux préparatoires* regarding Article 28 stress that the word "compelling" was to be understood as a restriction upon the words "reasons of national security or public order". Thus, not any ground of national security or public order may be invoked but only compelling grounds.²² The exception must be interpreted narrowly, and not every case which would ordinarily fall under the latter concept would therefore justify a refusal of a travel document, but only reasons of a very serious character.²³ Refusal of a travel document is only justified if the journey or journeys

¹⁶ UNHCR, *Note on Convention Travel Documents issued pursuant to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and/or the 1954 Convention relating to the Status of Stateless Persons*, January 2010, para. 3, http://unhcr.org.ua/img/uploads/docs/CTDsNote.Rev2_1_1_1.pdf.

¹⁷ UNHCR, *Note on Travel Documents for Refugees*, 30 August 1978, EC/SCP/10, para. 1, <http://www.refworld.org/docid/3ae68cce14.html>

¹⁸ UNHCR, *Note on Travel Documents for Refugees*, 30 August 1978, EC/SCP/10, para. 2, <http://www.refworld.org/docid/3ae68cce14.html>.

¹⁹ Executive Committee of the High Commissioner's Programme, *Conclusion on machine-readable travel documents for refugees and stateless persons No. 114 (LXVIII) 2017*, 6 October 2017, No. 114 (LXVIII) 2017, preambular paragraphs 4 and 5 and operational paragraph 3, <http://www.refworld.org/docid/59df19bc4.html>.

²⁰ UNHCR, *Guide for Issuing Machine Readable Convention Travel Documents for Refugees and Stateless Persons*, jointly published by UNHCR and the ICAO, October 2013, <http://www.refworld.org/docid/52b166a34.html>.

²¹ UNHCR, *Guide for Issuing Machine Readable Convention Travel Documents for Refugees and Stateless Persons*, jointly published by UNHCR and the ICAO, October 2013, para. 28, <http://www.refworld.org/docid/52b166a34.html>.

²² UNHCR, *The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis*, 1990, p.194, <http://www.refworld.org/docid/53e1dd114.html>.

²³ UNHCR, *Note on Travel Documents for Refugees*, 30 August 1978, EC/SCP/10, para. 16, <http://www.refworld.org/docid/3ae68cce14.html>.

outside the country give rise to fear of endangering national security or public order, for example, if a refugee is suspected of using the journey outside the country for action connected with intelligence or contrary to the customs or currency regulations.²⁴

3.6. The interpretation of Article 28 is also influenced by other human rights obligations, as the refusal to issue a travel document interferes with the right to freely leave a country.²⁵

3.7. The right to be free to leave any country is guaranteed *inter alia* in Article 12(2) of the *International Covenant on Civil and Political Rights* ('ICCPR'). The UN Human Rights Committee, in its General Comment 27, on Article 12 (Freedom of Movement) of the ICCPR, clarified that Article 12(2) must be interpreted to include a right to obtain the necessary travel documents:

*"In order to enable the individual to enjoy the rights guaranteed by article 12, para. 2, obligations are imposed both on the State of residence and on the State of nationality. Since international travel usually requires appropriate documents, in particular a passport, the right to leave a country must include the right to obtain the necessary travel documents. The issuing of passports is normally incumbent on the State of nationality of the individual. The refusal by a State to issue a passport or prolong its validity for a national residing abroad may deprive this person of the right to leave the country of residence and to travel elsewhere. It is no justification for the State to claim that its national would be able to return to its territory without a passport."*²⁶

3.8. This is further supported by States' obligations under Article 2 of Protocol No. 4 to the *European Convention for the Protection of Human Rights and Fundamental Freedoms* ('ECHR') which guarantees the right to freedom of movement and the right to be free to leave any country.²⁷ This Court found, in the case of *Napijalo v Croatia*, "that the right of freedom of movement as guaranteed by paragraphs 1 and 2 of Article 2 of Protocol No. 4 is intended to secure to any person a right to liberty of movement within a territory and to leave that territory, which implies a right to leave for such country of the person's choice to which he may be admitted".²⁸

²⁴ UNHCR, *The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis*, 1990, p.193, <http://www.refworld.org/docid/53e1dd114.html>. See also, UNHCR, *Amicus curiae of the United Nations High Commissioner for Refugees (UNHCR) on the interpretation and application of Article 25, Article 27 and Article 28 of the 1951 Convention Relating to the Status of Refugees*, 22 December 2016, paras 38-46, <http://www.refworld.org/docid/591589be4.html>.

²⁵ UNHCR, *Amicus curiae of the United Nations High Commissioner for Refugees (UNHCR) on the interpretation and application of Article 25, Article 27 and Article 28 of the 1951 Convention Relating to the Status of Refugees*, 22 December 2016, paras. 29-35, <http://www.refworld.org/docid/591589be4.html>.

²⁶ UN Human Rights Committee (HRC), *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, para. 9, <http://www.refworld.org/docid/45139c394.html>.

²⁷ Council of Europe, *Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto*, 16 September 1963, ETS 46, <http://www.refworld.org/docid/3ae6b3780.html>; see also Jens Vedsted-Hansen in Andreas Zimmerman, *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol - A commentary*, Oxford University Press, 2011, p. 1207.

²⁸ *Napijalo v. Croatia*, 66485/01, European Court of Human Rights, 13 November 2003, para. 68, <http://www.refworld.org/docid/402b56e34.html>. See also, *Bartik v. Russia*, 55565/00, European Court of Human Rights, 21 December 2006, para. 36, <http://hudoc.echr.coe.int/eng?i=001-78792>, where the Court supported its

3.9. The Court further established that any measure liable to infringe or to restrict the exercise of the right must satisfy the requirement that it be “necessary in a democratic society”²⁹ and in the pursuit of the “legitimate aims referred to in the third paragraph of [Article 2].”³⁰ Accordingly, the Court underlined that a State measure, which dispossesses an individual “of an identity document such as, for example, a passport, undoubtedly amounts to an interference with the exercise of liberty of movement.”³¹

3.10. The Council of Europe Commissioner for Human Rights, in its Issue paper (2013) on “the right to leave a country” highlighted that all Council of Europe States must “examine or re-examine their laws, policies and practices in order to fully align them with the Convention and the Court’s case law, in particular:

- the issue of travel documents and the legitimacy of any obstacles to such issue;
- the validity of their laws, policies and practices regarding the withdrawal or refusal of travel documents to citizens to ensure that they are fully consistent with the Convention right to leave a country;
- those states which have a record of failure to respect the right to leave must take particular care to ensure that their legislation and its application is brought into line with their human rights obligations.³²

3.11. Relevant EU asylum law, which is often taken into account by this Court as evidence of relevant State practice,³³ further confirms the above, including the mandatory obligation to issue travel documents to recognised refugees. Article 25 of the Qualification Directive (recast) provides that “Member States shall issue to beneficiaries of refugee status travel documents, in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require”.³⁴

finding by making reference to the UN Human Rights Committee, General Comment 27 on Article 12, (Freedom of Movement).

²⁹ Article 2, paragraph 3 of Protocol No. 4: Council of Europe, *Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto*, 16 September 1963, ETS 46, <http://www.refworld.org/docid/3ae6b3780.html>.

³⁰ *Napijalo v. Croatia*, 66485/01, European Court of Human Rights, 13 November 2003, para. 68, <http://www.refworld.org/docid/402b56e34.html>.

³¹ *Ibid.*, para. 69.

³² Council of Europe: Commissioner for Human Rights, *The right to leave a country*, October 2013, <https://rm.coe.int/the-right-to-leave-a-country-issue-paper-published-by-the-council-of-e/16806da510>.

³³ See in particular *Rahimi c. Grèce*, Requête no. 8687/08, European Court of Human Rights, 5 April 2011, <http://www.refworld.org/cases,ECHR,4d9c3e482.html> to illustrate this trend of identifying a European consensus regarding the best interests of the child with reference to the Reception Conditions Directive.

³⁴ European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, <http://www.refworld.org/docid/4f197df02.html>.

4. Conclusion

4.1. In light of the above, UNHCR submits that Contracting States to the 1951 Convention have an obligation to issue travel documents to refugees lawfully staying in their territory.³⁵ This applies to refugees who have been granted status and have been authorized to reside in the country. Having a travel document is an essential means for the exercise of the refugees' fundamental human right to freedom of movement, including the right to be free to leave any country, which is guaranteed in Article 12(2) of the ICCPR and Article 2(2) of Protocol no. 4 of the ECHR.

4.2. Thus, in UNHCR's view, Serbia's failure to grant travel documents to recognized refugees within its territory is at variance with relevant principles and obligations of international refugee law and human rights law.

UNHCR
20 June 2018

³⁵ Unless compelling reasons of national security or public order otherwise require, as discussed in paragraph 3.4 above.