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**Promotion and protection of all human rights, civil,
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including the right to development**

Report of the Special Rapporteur on the human rights of migrants on his visit to Bosnia and Herzegovina

Comments by the State*

* The present document is being issued without formal editing.

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The BiH Ministry of Security provides the following clarification regarding paragraph 15.

The Law on Foreigners provides that surveillance by placement in an immigration center is ordered by a decision for a period not exceeding 90 days and, after the expiration of this period, if there are still reasons for which a foreigner has been ordered to be placed under surveillance, the surveillance may be extended up to 90 days so that the total duration of surveillance at the immigration center cannot exceed 180 days. In case of a lack of cooperation of a foreigner in the process of deportation or a delay in obtaining the necessary documents from the country to which the foreigner is deported, the duration of surveillance may be extended for a period longer than 180 days, provided that the total duration of surveillance at the immigration center may not exceed 18 months continuously. If it is not possible to deport the foreigner from BiH within this period, he or she may be placed under surveillance by restriction of movement to a certain area or place, with the obligation to report to the organizational unit of the Service for Foreigners' Affairs or Police Department. An appeal to the second-instance authority may be lodged against the decision on ordering surveillance by placement in the immigration center within three days of service of the decision. The appeal does not stay enforcement of the decision. An appeal may be lodged against the decision to place a foreigner under surveillance by restriction of movement to a certain area or place with the second-instance authority within 15 days of service of the decision. The appeal does not stay enforcement of the decision. In both cases, an administrative dispute may be instituted against the decision of the second-instance body by filing a lawsuit before the Court of BiH.

The BiH Ministry of Security provides the following clarification regarding paragraph 20.

In 2013, the Council of Ministers of Bosnia and Herzegovina adopted the Decision establishing the Coordination Body for Migration in Bosnia and Herzegovina. The 2016 Decision amending the Decision on the Establishment of the Coordination Body for Migration in BiH extended the competence of the Coordination Body, so that in case of migration emergencies or predictions of a migration emergency, the Coordinating Body also acts as the Operational Headquarters for Migration in BiH. In that case, it will also include representatives of the headquarters at the entity and Brcko District levels. It is the responsibility of the BiH Operational Headquarters for Migration to coordinate all activities with relevant institutions and agencies, as well as with established headquarters or other bodies at the entity and Brcko District levels and with international organizations and non-governmental organizations in order to overcome the particular migration crisis situation. It is the responsibility of the BiH Operational Headquarters for Migration to propose measures, decisions and procedures, through the Ministry of Security, to the BiH Council of Ministers and appropriate institutions and agencies to address the particular migration crisis. On 15 May 2018, the Coordination Body started functioning as the Operational Headquarters for Migration in BiH.

The BiH Ministry of Security provides the following clarification regarding paragraph 21 and 22.

The sentence "in the meantime, the Special Rapporteur notes with concern that the Coordination Body has limited power to enforce its decisions at the entity, cantonal and municipal levels" is superficial and not in the spirit of respecting the constitutional and legal competencies in BiH, this should be removed or clarified.

In August 2018, the Coordination body to monitor the movement of illegal migrants across the territory of the Republika Srpska was established in the Republika Srpska to monitor

the movement of migrants in accordance with a decision of the Government of Republika Srpska¹.

The Republika Srpska Ministry of Internal Affairs provides the following clarification regarding paragraph 34.

The above data related to unaccompanied minors does not correspond to the IOM estimates or data of the Migration Profile of BiH, nor is the Ministry of Internal Affairs of the Republika Srpska aware of the 20% children.

The Ministry of Security of BiH, Service for Foreigners' Affairs, comments on one migrant being put in solitary confinement in the immigration center during the Special Rapporteur's visit regarding paragraph 58.

Namely, it is not possible to conclude clearly from the report what kind of objection this is and the Immigration Center wants to point out that the person discussed, Abdelkarim Ali (one migrant being put in solitary confinement), is an citizen, and had been placed under the measure of milder surveillance in Usivak temporary reception centre, but because he had physically and psychologically abused his family, he had been transferred to the Immigration Center, that is, he had been ordered to be placed under surveillance in the Immigration Center. Upon admission to the Immigration Center, in the room in which he was housed he triggered an incident that grew into a physical confrontation with his compatriot, allegedly because of his political belief.

Given beneficiary's aggressive behavior and in order to prevent a major violation of Immigration Center's House Rules, pursuant to Article 55 (a) and Article 57(2) of the House Rules of the Immigration Center, the interim head issued Decision no. 18.6.2-50-639/19 dated 25 September 2019 on placement of the person in solitary confinement for a period of seven (7) days. It follows from the foregoing that the valid House Rules were followed in the specific case as well as every time until the moment of the visit when there was a violation of the House Rules and a more serious threat to other beneficiaries by a beneficiary of the Immigration Center.

The Ministry of Security of BiH, Service for Foreigners' Affairs, comments on the statement that at least two migrants detained at the facility claimed to be minors in paragraph 59.

The Immigration Centre admits migrants who have received a decision to be placed under surveillance issued by the competent field office of the Service for Foreigners' Affairs. When interviewing a migrant for the first time, his/her personal details are ascertained, that is, they are taken on the basis of identification documents or, if they do not have any identification documents, personal details they give themselves are recorded.

If during the interview the individual declares that he/she is a minor, then the Centre for Social Work responsible for the AOR is notified in order to appoint a guardian to the minor. The Centre for Social Work issues a decision on guardianship and submits a request to the Service for Foreigners' Affairs for transfer of the individual to an adequate institution. Based on the request, he/she is referred to one of the juvenile centres.

Namely, individuals who are placed in the Immigration Centre often use this possibility (to change their identity statement), i.e. after a certain period of stay in the Immigration Centre, they declare that they are minors. In fact, it is an abuse of rights that migrants practice to get transferred to juvenile centres.

¹ Website of the entity Government of Republika Srpska, available at: <http://www.mup.vladars.net/eng/index.php?vijest=19060&vrsta=>

For every request of a migrant for a change of identity, there is a strictly prescribed legal procedure to follow, including for minors, and the Service is obliged to act in accordance with the Law on Foreigners (Article 123 Protection of the Rights of Minors), so any request is processed under urgent procedure unless otherwise determined.

The Ministry of Security of BiH, Service for Foreigners' Affairs, comments on the statement that some detainees were deprived of outdoor activities in paragraph 60.

According to the daily activities schedule, Immigration Center beneficiaries are entitled to 90 minutes daily sports activities and exercise the right for outdoor walks.

The Immigration Center most often houses individuals who are a threat to national security, individuals of concern for security agencies, potential smugglers and perpetrators of criminal offenses, individuals to serve prison sentences awaiting return to their country of origin and drug abusers.

Outdoor activities are carried out in accordance with the House Rules at the Immigration Center in a way not endangering the security at the Immigration Center.

We emphasize that there is some intolerance among individuals of different nationalities, there is intolerance among drug abusers due to abstinence crisis and they are high-conflict personalities.

Further, individuals whose identity has been confirmed and a travel document has been issued and they do not want to return voluntarily to their country of origin are high-conflict personalities and challenge their return by violating the house rules and attempting permanent escapes.

Given this situation, outdoor activities can be organized in groups to avoid potential conflicts and injuries for both migrants and security officers.

The Republika Srpska Ministry of Internal Affairs provides the following clarification regarding paragraph 62.

The Republika Srpska Ministry of Internal Affairs believes that such a statement may lead to a wrong conclusion, that is, the Republika Srpska police violate the human rights of migrants, which is absolutely not true.

At a meeting held in Banja Luka on 26 September 2019, representatives of the Coordination Body for monitoring the movement of illegal migrants across the Republika Srpska emphasized that all legal provisions and principles of humanity were respected when dealing with migrants. It was further clarified to Mr Morales that the Republika Srpska police do not prohibit migrants from leaving the Sarajevo-Bihac train or restrict their movement through Republika Srpska, as stated by Mr Morales, on the contrary, all migrants who had a confirmed intention to file asylum applications had full freedom of movement in the direction approved in the certificate, while the found migrants who did not have a certificate were notified to the Banja Luka Field Office of the Service for Foreigners' Affairs.

It was also emphasized that the Republika Srpska was a transit country for migrants and that migrants did not stay in the territory of the Republika Srpska, since their ultimate goal was to go to the EU countries. After having realistically and objectively analyzed the situation, the Government of the Republika Srpska and the Coordination Body for monitoring the movement of illegal migrants across the territory of the Republika Srpska rightly stated that the Republika Srpska had no necessary capacities and conditions for accommodation and care of migrants or establishment of reception centers.

The BiH Ministry of Security provides the following clarification regarding paragraph 73.

A Decision on amending the Decision on the Establishment of the Coordination Body for Migration in Bosnia and Herzegovina has been prepared in such a way that it determines that, when this body sits as the Operational Headquarters for Migration in Bosnia and Herzegovina, in addition to the representatives of the entity and Brcko District headquarters, it also includes representatives of the Ministry of Defense, the Ministry of Finance and Treasury, the Ministry of Civil Affairs and the Prosecutor's Office of Bosnia and Herzegovina.

The Ministry of Security of BiH, Service for Foreigners' Affairs, comments on the statement that migrants at the Immigration Center do not have access to free legal aid in paragraph 74.

During the first interview with a migrant in the broader territory of BiH, the interview is conducted in the mother tongue with the help of an interpreter or in a language that the migrant understands and he/she is informed about the rights to free legal aid.

Migrants who are housed in the Immigration Center are also informed, with the assistance of an interpreter, of their rights and obligations during their stay and, inter alia, of their right to free legal aid.

With regard to paragraph 76, the Republika Srpska Ministry of Internal Affairs makes an identical comment as on paragraph 62.
