

Good afternoon dear Colleagues, ladies and gentlemen, participants of the 2020 Annual Help Network conference,

Allow me first to apologise on behalf of Ambassador Drahoslav Štefánek, Special Representative of the Secretary General on migration and refugees for his absence this afternoon.

Allow me also to express gratitude to the organisers, in particular Eva, for providing us with the opportunity to address this important event.

The Secretary General appointed Ambassador Drahoslav Štefánek her Special Representative on migration and refugees in October 2019. The appointment was responding to the decisions adopted at the Helsinki Ministerial Session in May 2019, where member states recalled the need to continue addressing the challenges arising from global migration. Ambassador Štefánek took up his duties on January 15 this year. At the same time, his mandate was also revised in order to reflect developments in the field of migration.

While in Europe, the fluctuations in arrival figures may give an impression that the situation is under control, the pressure on frontline states is still present. However, in recent years, almost all member states of the Council of Europe have had to face challenges concerning irregular entries into their territories and the processing of an increasing number of

asylum claims made by people with complex backgrounds and mixed motivations for migration. States have had to properly address the additional vulnerability of refugee and migrant women and children, especially unaccompanied and separated children. While enforcing national immigration laws, combating trafficking and smuggling of migrants, Council of Europe member states often face difficulties in applying the human rights standards they adhered to. The exceptional situation created by the Covid-19 pandemic, with lockdown all over Europe has multiplied these challenges.

Let me go into detail in some of the most important and urgent ones:

First, access to territory.

While exercising border control, states must comply with international and human rights law. These rights and obligations are stemming from the rich body of case law of the European Court of Human Rights. The Court acknowledged that states enjoy an “undeniable sovereign right to control aliens’ entry into [...] their territory”, but it emphasised that they must exercise this right in line with the provisions of the European Convention on Human Rights.

However, reports of pushbacks are more and more regular, including the use of physical force at the borders of some of the CoE member states.

This runs contrary to the European Convention on Human Rights, as the use of force, and disproportionate violence may result in violations of Article 2 (right to life) and Article 3 (prohibition of torture), which are non-derogable rights. In the event of a breach of Articles 2 or 3, states have a duty to carry out a prompt and effective official investigation that identifies and prosecutes those responsible. Fair and safe access to territory is the first step to allow individuals to exercise their right to asylum and to safeguard the principle of *non-refoulement*, which is a cornerstone of international refugee and human rights law.

This leads me to the second challenge, closely linked to the first: access to asylum procedures.

Regardless of whether they are detected or apprehended, if migrants express the wish to seek asylum, they must have access to effective asylum procedures, legal support and legal information in a language they understand. It is vital to recognise that people seeking asylum often flee their countries in a rush, reaching and crossing a border without valid documents. For this reason, member states must ensure that provisions are in place to ensure that all the asylum requests are processed in a fair, fast and efficient manner. Too often member states have failed to provide migrants with such essential provisions, blocking them in excessively prolonged bureaucratic limbos where they cannot access social and health support, and ultimately increasing their vulnerability.

Another challenge is immigration detention. The wide use of immigration detention as a response to the arrivals of refugees, asylum seekers and migrants raises serious issues of compliance with human rights standards, particularly when the detention includes persons in a vulnerable situation, such as children. The right to liberty and security of person is guaranteed by Article 5 of the ECHR, whose central aim is to ensure that no one is deprived of their liberty in an arbitrary fashion. The conditions inside immigration detention facilities across Europe vary greatly depending on the member state, but some of the most concerning issues highlighted also by the SRSG are overcrowding, limited provision of legal assistance, restricted access to health services, mental health support, social assistance, lack of access to information on the rights of the detainees, lack of effective provisions for vulnerable families. Due to the negative impact of detention, especially on children and other vulnerable groups, the SRSG has consistently called for greater implementation of alternatives to detention.

Another challenge of migration management relates to returns. The mechanisms for carrying out returns varies by member state, category of migrant, as well as by the degree of coercion involved. Under the European Convention of Human Rights, member states must not expose a person to a real risk of death penalty, torture or inhuman or degrading treatment or punishment, persecution, or serious violation of other fundamental rights.

This also applies when returning an asylum applicant to a transit country that may be categorised as a “safe third country” but does not itself offer sufficient guarantees against refoulement. The expelling state cannot merely assume that the individual will be treated in the receiving third country in conformity with the ECHR standards. Authorities must carry out a rigorous and up-to-date assessment, notably of the accessibility and functioning of the receiving country’s asylum system and the safeguards in practice.

Last, let me briefly touch upon a challenge, which concerns individuals, communities, cities and regions, as well as authorities at state level: integration. Unlike the challenges described above, there are no prescribed standards on how to achieve integration. However, the success of integration policies fuels the policies on migration and in particular those on access to asylum and returns. If integration is successful, there will be less reticence towards newcomers.

The strategies employed differ from one country to another, and even in the same country, from one regional or local authority to another. Some states have recently restricted their policies on reception standards, residence rights and family reunification for migrants and refugees; others apply more inclusive strategies. However, on an individual scale, even the most inclusive strategies do not always succeed in overcoming daily discrimination and in providing equal

opportunities to everyone. Incidents of hate speech, xenophobia and violence against migrants and refugees, including against NGOs and journalists working in this field continue to be present in the member states of the Council of Europe.

Let me emphasise that vulnerable groups among refugees and migrants are extremely exposed to these challenges. Under Article 3 of the ECHR, states are required to take adequate measures to provide care and protection to the most vulnerable, such as children, victims of torture, victims of violence or human trafficking, persons with health issues and others in a vulnerable situation. This includes taking proactive and early steps to identify vulnerabilities and set up provisions accordingly. Special care should be given to children. States have an obligation to protect them under Article 3 of the ECHR, and such obligation should be prioritised over any considerations relating to the child's status as an irregular migrant. One of the top priorities of the SRSB was and continues to be the protection of refugee and migrant children.

To respond to ongoing and future challenges in the migration field, joint actions between different sectors are vital. The SRSB is mandated to coordinate in-house migration related activities. The lessons learned from the implementation of the Action Plan on protecting refugee and migrant children have

shown the added value of transversal co-operation within the Organisation and at national level. This approach prevents a fragmented response to migration challenges by delivering comprehensive solutions tailored to the needs of member states. In 2016, the situation of refugee and migrant children was deemed a short-term emergency. Today the protection of refugee and migrant children but also of other vulnerable migrants and refugees is understood as a long-term commitment and remains a priority.

A number of practical tools have been developed under the previous Action Plan to assist our member states to overcome the challenges mentioned and to comply with our human rights standards. Let me just mention a few:

The SRSG has contributed to some important courses developed under the framework of HELP. Back in 2018, we have launched the online course on refugee and migrant children, and just recently together with UNHCR, another online course on alternatives to immigration detention. This will be presented in detail by Eva. Let me also mention the ongoing update of the HELP course on ECHR and asylum, to which our office has been contributing too. Allow me to emphasise the usefulness of other courses developed under the HELP framework, such as trafficking, violence against women, CPT standards, family law, as they are also relevant for various angles touched by migration.

In addition, the efforts of the SRSG have been directed towards ensuring access to safe, legal and needs-focused asylum procedures. This approach is encapsulated in the recently published Handbook on “Family reunification for refugee and migrant children: standards and promising practices”, a practical guide on how to ensure feasible legal pathways for family reunification, taking always into account the best interests of children. Similarly, the publication on ‘Promoting child-friendly approaches in the area of migration – standards, guidance and current practices’ launched last December, also serves as a strategic resource for policy makers on how to ensure that children’s rights are properly protected in all circumstances.

To address the challenge of integration, the SRSG continues to promote, among other in-house initiatives, the European Qualifications Passport for Refugees (EQPR), a project that aims at facilitating the recognition of refugees’ qualifications in cases of absence of full documentation, and that could be used even if refugees move to new host countries in Europe. The passport’s added value was emphasised recently as many European countries struggled with the unprecedented COVID-19 crisis. The Council of Europe and UNHCR jointly encouraged states to benefit from the support that refugee health professionals can provide to national health systems in times



of pandemics, as the qualifications that refugees already have, but cannot fully document, can be used and can be built on.

Recognising that all the challenges mentioned beforehand were exacerbated during and in the aftermath of the Covid-19 crisis, we have further enhanced our cooperation and coordination with other international organisations to better address the human rights situation of refugees and migrants. In collaboration with the European Union Agency for Fundamental Rights (FRA) we published a joint note on the human rights of refugees, asylum seekers and migrants at European borders, considering both ECHR and EU law. Let me also mention that in April 2020, the Secretary General of the Council of Europe has issued a toolkit for governments across Europe on respecting human rights, democracy and the rule of law during the COVID-19 crisis.

As it has been done in the past, under his new mandate, the SRSG continues to be engaged in regular dialogue with member states', also by reaching out directly to state authorities responsible for asylum and migration issues through a Network of Focal Points.