**Answers to Questionnaire**

**Migrants’ Human Right to Liberty and their Protection from Arbitrary Detention**

On 13 December 1996, Bosnia and Herzegovina became a Party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which entered into force on 1 July 2003. Pursuant to Article 73, paragraph 1 of this Convention, State Parties undertake to inform the UN Committee on the implementation of the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families within the reference period of 5 years.

This Convention applies to all migrant workers who have migrated to the territory of BiH and members of their families without any distinction in relation to sex, race, color, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

**Part A: General Information**

1. Imposing surveillance by placement in the Immigration Center is prescribed by Article 118 of the Law on Aliens (“Official Gazette of BiH”, number 88/15). Aliens (migrants) who are subject to the expulsion measure imposed by a decision of the Service for Foreigners' Affairs shall be placed under surveillance by being accommodated in the Immigration Center:

* if there are reasonable grounds to believe that, upon a decision on expulsion, free and unrestricted movement of an alien might jeopardize the public order and peace, or security or international relations of BiH, or pose a threat to public health in BiH; that is, if it has been established that an alien poses a threat to legal order, public order and peace or security of BiH;
* to ensure the execution of the decision on expulsion, or in other cases when an alien has received the expulsion measure, if there are reasonable grounds to believe that he/she will flee or otherwise prevent the execution of the decision; or
* when there is doubt as to the veracity of the allegations of an alien concerning his/her identity, and the expulsion measure has been pronounced upon him/her.

The procedure of imposing surveillance by placement in the Immigration Center shall be carried out by the Service for Foreigners' Affairs, which is an administrative organization with operational independence within the Ministry of Security of Bosnia and Herzegovina. The Service for Foreigners' Affairs is managed by Director who is accountable for his work to Minister of Security BiH.

1. Aliens who have been issued the decision on expulsion measure and surveillance by placement in a specialized institution for the reception of aliens shall be accommodated in the Immigration Center in East Sarajevo. Placement of aliens in the specialized institution for the reception of aliens – immigration center, is a type of surveillance that limits the freedom of movement to aliens, but this shall not mean that they have been arrested. In carrying out the official duty, the inspector for aliens may use physical force to the extent necessary for the successful performance of his or her duty, that is, to repulse an attack on him/herself with minimal adverse consequences. In the case of the use of physical force or use of additional means of coercion, an inspector for aliens shall draw up a report to be submitted to the assistant director of Internal Control within 24 hours. Standards for the use of force are prescribed by the Law on Service for Foreigners’ Affairs (“Official Gazette of BiH”, nos. 54/05 and 36/08) and the Rulebook on standards of functioning of the Immigration Center (“Official Gazette of BiH”, number 55/16). At all stages of the proceedings, an alien shall be informed of the rights and obligations arising from the Law on Aliens.
2. Immigration Center staff members are officers employed at the Service for Foreigners' Affairs and assigned to Immigration Center in accordance with the Rulebook on Internal Organization and Systematization of the Service for Foreigners' Affairs, and are accountable for their work to the Center administrator.
3. The Immigration Center is a specialized institution for the reception and accommodation of aliens established as an organizational unit of the Service for Foreigners' Affairs outside its seat. The status of the Center is regulated by the Rulebook on Internal Organization and Systematization of the Service. The work of the Immigration Center is managed by the administrator.
4. The Ministry of Security shall supervise the work of the Immigration Center. The standards of functioning of the Immigration Center are prescribed by the Rulebook on standards of functioning of the Immigration Center (“Official Gazette of BiH, number 55/16). The Immigration Center is envisaged and organized in accordance with the standards promoted by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and it provides all conditions for the humane treatment of persons placed under surveillance.
5. In accordance with the Rulebook on standards of functioning of the Immigration Center, aliens placed in the Immigration Center are provided with communication with families, legal counsel and consular authorities. The authorized officer who received the beneficiary in the Immigration Center shall inform him/her about his/her rights and obligations related to the stay in the Center, in a language he or she understands, orally or through the information leaflet composed by the Service.
6. In accordance with the Rulebook on standards of functioning of the Immigration Center, the beneficiaries of the Center shall be placed and assigned to special rooms of the Center intended exclusively for the accommodation of the beneficiaries. A physical barrier shall divide the section of the Center where women are placed from the section of the Center where men are placed. Families may be accommodated in separate rooms of the Center in order to ensure family unity and right to privacy. The Center beneficiary may be accommodated separately from others when necessarily so required by his/her health status or the health of others, when the beneficiary of the Center requests that for own protection and upon approval of the Center administrator, or when the beneficiary of the Center poses a serious threat to the order of the Center. Beneficiaries of poor physical and mental health shall be accommodated separately from others so as to be under supervision of the medical personnel.
7. A minor alien who has entered the BiH illegally and is not accompanied by a parent or guardian, or a legal representative, or who has remained without their presence upon entering BiH and whom the Service for Foreigners' Affairs cannot immediately return to the country from which he/she arrived, or deliver him/her to the representatives of the country of his/her citizenship, shall be temporarily placed by the Service to the unit of the institution specialized for minors and inform the competent center for social work which would, in accordance with the law, immediately appoint a temporary guardian. The decision on whether a minor shall be placed in the Center shall be made by the competent authority in the presence of a minor's parent or guardian, and the placement shall be carried out under the supervision of a parent, guardian or guardianship authority. Placement of an unaccompanied minor in the Center shall be carried out if it is in the best interest of the minor, and he or she shall reside in the Center apart from adult persons who are not his/her family. For the minor, the Center shall provide customized nutrition and, as per possibilities, the facilities for rest, play and education that are suitable for the age of minors. Unaccompanied minors shall be detained in the Immigration Center exceptionally, only as a last resort measure and for the shortest possible time. Minor alien shall not be returned to the country of habitual residence or country that is willing to accept him/her until the provision of parental care or legal representation or guardianship or representative of a competent authority in the country of return has been guaranteed. An unaccompanied minor shall under no circumstances be returned in a way that would violate the European Convention on Human Rights and Fundamental Freedoms and the Law on Aliens.

**Part B: Legal Treatment**

1. The legal basis for detaining aliens in the Immigration Center is Article 118 paragraph (3) of the Law on Aliens. An alien shall be placed under surveillance by his/her detention in the Immigration Center:

* if there are reasonable grounds to believe that, upon a decision on expulsion, free and unrestricted movement of an alien might jeopardize the public order and peace, or security or international relations of BiH, or pose a threat to public health in BiH; that is, if it has been established that an alien poses a threat to legal order, public order and peace or security of BiH;
* to ensure the execution of the decision on expulsion, or in other cases when an alien has received the expulsion measure, if there are reasonable grounds to believe that he/she will flee or otherwise prevent the execution of the decision; or
* when there is doubt as to the veracity of the allegations of an alien concerning his/her identity, and the expulsion measure has been pronounced upon him/her.

1. The field of immigration is regulated by the Law on Aliens (“Official Gazette of BiH”, number 88/15).
2. Imposing surveillance by placement in the Immigration Center is a measure that is determined individually and in each individual case the circumstances of the case of the person to whom the surveillance relates shall be considered.
3. Alien shall remain under surveillance until the moment of his/her voluntary departure or forcible removal from BiH, or as long as it is necessary for the execution of the purpose of surveillance, or until the reasons that have constituted grounds for placement under surveillance have considerably changed, but not later than the time limit set in the decision on surveillance, or the decision on extension of surveillance. Surveillance by placement in the Immigration Center is imposed by decision of the Service for Foreigners' Affairs for a maximum period of up to 90 days. Upon expiry of this time limit, and if the reasons for surveillance of an alien still exist, the surveillance may be extended for a maximum of up to 90 days each time, so that the total period of surveillance in the Immigration Center shall not exceed 180 days. Exceptionally, in the event of alien’s lack of cooperation in the process of removal or delays in obtaining the required documents from the country of return, the period of surveillance may be extended to a period of more than 180 days, but the total period of surveillance in the Immigration Center may not be longer than 18 months continuously.
4. An alien may lodge an appeal with the Ministry of Security against the decision on his/her placement under surveillance in the Immigration Center, the decision on extension of surveillance and the decision on extraordinary extension of surveillance within three days from the date of its delivery. The appeal shall not stay the execution of decision. If the Ministry does not revoke a decision on placement under surveillance in the Immigration Center or decision on extension of surveillance or decision on extraordinary extension of surveillance in the Immigration Center within three days of appeal delivery, or does not reach a decision upon the appeal within the time limit, the alien may initiate an administrative dispute before the Court of Bosnia and Herzegovina. The lawsuit shall be filed within three days of the expiry of the time limit prescribed for the resolution of appeal, and the Court shall consider these cases as urgent, hear the alien and render a decision upon the lawsuit within three days from its initiation. The lawsuit shall not stay the execution of decision. All first- and second-instance decisions must contain the instruction on legal remedy.
5. The Law on Aliens stipulates that the authority conducting the proceedings shall make possible for an alien who does not understand the language in which the proceedings are conducted to follow the course of the proceedings through an interpreter or translator. Aliens shall be granted access to free legal aid that, in accordance with the Law on Provision of Free Legal Aid (“Official Gazette of BiH, number 21/16), shall be provided by the Office for Provision of Free Legal Aid within the BiH Ministry of Justice. In addition to the foregoing, access to free legal aid is provided through non-governmental organizations that deal with the provision of free legal aid and have signed the Protocol on cooperation with the Ministry of Security.
6. The BiH Ministry of Justice emphasizes that the Parliamentary Assembly of Bosnia and Herzegovina adopted the Law on Provision of Free Legal Aid (Official Gazette No. 83/16) in 2016, and the Article 13 thereof stipulates who the beneficiaries of the right to free legal aid are, specifying, among others, persons under subsidiary and primary protection. Pursuant to the provisions of the said law, the officers of the Office for Provision of Free Legal Aid within the Ministry of Justice of BiH shall provide legal assistance to persons under international protection upon their request in all proceedings related to exercising their rights. The law regulates forms of free legal aid, entities for providing free legal aid, conditions and manner of exercising, financing and supervising the provision of free legal aid before authorities and institutions of BiH, as well as supervision over the implementation of this law.
7. The Law on Aliens stipulates that in the event of an alien being placed under surveillance, the authority ordering such measure shall enable the alien, at his/her request, to contact the Diplomatic-Consular Representation of the state providing him/her with protection. This right is guaranteed in practice, and the manner of contact is regulated in detail by the Rulebook on standards of functioning and other matters of importance for the work of the Immigration Center (“Official Gazette of BiH”, number 55/16).
8. Bosnia and Herzegovina shall provide aliens with unimpeded access to prescribed proceedings to the same extent as to its own citizens, and the Law on Aliens shall prohibit discrimination against aliens on any grounds whatsoever, including gender or sex, race, color, language, religion, political and other opinion, national or social origin, affiliation to a national minority, property status, status acquired by birth, or any other status.
9. Aliens who have been placed under surveillance in the Immigration Center shall be allowed to express their intention to claim asylum.
10. The procedure of imposing surveillance by placement in the Immigration Center shall be carried out by the Service for Foreigners’ Affairs, and the director of the Service shall take decisions of surveillance imposition. The director shall be appointed by the Council of Ministers of BiH for a period of five years, with the possibility of re-election for another term. Concrete actions in the procedure of imposing surveillance (bringing persons to official premises, taking statements for the record, drafting decisions and other actions) shall be performed by an authorized officer of the Service for Foreigners’ Affairs.
11. Decision on imposing surveillance by placement in the Immigration Center must include: the decision on surveillance by placing an alien in the Immigration Center, the legal basis, the day, hour and time of placement, the duration of surveillance and other details relevant to achievement of the purpose of surveillance. Pursuant to the Law on Administrative Procedure (“Official Gazette of BiH, nos. 29/02, 12/04, 88/07, 93/09, 41/13 and 53/16), the decision on imposing surveillance must contain the name of the authority, number and date, introduction, operative part (wording), rationale, instruction on legal remedy, signature of the authorized person and the official seal. If the decision does not contain all mandatory elements that the written decision must contain, such decision may be annulled in the appeal proceedings.
12. The Law on Aliens stipulates that an alien may be placed in the Immigration Center solely on the basis of decision on expulsion and decision on imposing surveillance. The decision on expulsion and decision on imposing surveillance by placement in the Immigration Center shall be taken on the same day when an alien is brought in and heard on the official premises of the Service for Foreigners’ Affairs.
13. In the case of a family to be placed under surveillance in the Immigration Center, the status shall be decided on jointly, provided that a separate decision shall be taken for each adult while the status of minors shall be decided on together with the status of parents. Families with minors shall be detained in the Immigration Center only as a last resort measure and for the shortest possible time. For the minors, the Center shall provide customized nutrition and, as per possibilities, the facilities for rest, play and education that are suitable for the age of minors.
14. Aliens who illegally enter BiH shall be subject to the provisions of the Law on Aliens that relate to expulsion. An alien who has entered BiH illegally may be placed under surveillance, and the surveillance may be imposed in twofold manner, namely by:

* restriction of movement to a specified area or location, with an obligation to report to the organizational unit of the Service or police, that is, a more lenient measure of surveillance, or
* placement in an institution specialized for the reception of aliens, or the Immigration Center.

The reasons for imposing surveillance are prescribed by Article 118 of the Law on Aliens. The reasons for imposing surveillance by restriction of movement to a specified area or location are prescribed by Article 118, paragraph (2) of the Law on Aliens. For each individual case, the Service for Foreigners' Affairs shall assess whether an alien shall be imposed surveillance measure by restriction of movement to a specified area or location.

The reasons for imposing surveillance by placement in the Immigration Center are prescribed by Article 118, paragraph (3) of the Law on Aliens. If some of the conditions for imposing surveillance by placement in the Immigration Center have been met, the imposition of surveillance is then mandatory and the Service for Foreigners' Affairs shall issue a decision on expulsion ordering an alien to leave BiH within a certain period and prohibiting him/her to enter and stay in BiH for a certain period, as well as a decision on surveillance, and shall place an alien in the Immigration Center.

The conditions in the Immigration Center are equal for all aliens accommodated in this Center.

1. Appeal against the Service for Foreigners' Affairs decision on expulsion from BiH ordering an alien to leave BiH within a certain period and prohibiting him/her to enter and stay in BiH for a certain period may be lodged within eight days of the date of receipt of the decision. Exceptionally, in the case of an alien admitted on the grounds of the international agreement on cooperation in readmission of persons with illegal stay but without a residence permit in BiH, the time limit for appeal is 24 hours from the delivery of the decision. The appeal shall stay the execution of decision, that is, the alien may not be expelled from BiH until the decision on appeal has been issued. The appeal shall be submitted to the Ministry of Security through the Service for Foreigners’ Affairs, by mail or direct delivery to the Ministry’s office. The Ministry shall issue a decision on appeal within 15 days of the date of receipt of the appeal. An alien may initiate an administrative dispute before the Court of BiH against the Ministry’s decision on appeal within 60 days of the date of receipt of the second-instance decision.

**Part C: Impact on Detainees**

**1-2.** Officers of the Center shall treat aliens under surveillance by placement in the Immigration Center in a humane manner and in a manner that does not offend their dignity, and only those restrictions that are necessary for achieving the purpose of placement under surveillance, preventing escape, preventing the perpetration of a criminal offence, eliminating danger to the life and health of people and safety of the Center may be applied. These restrictions are more closely defined by the Rulebook on house rules issued by the director of the Service for Foreigners' Affairs. Aliens who have been placed under surveillance in the Immigration Center must not be subjected to torture or inhuman or degrading treatment or punishment. In treatment of the beneficiaries of the Center no discrimination shall be allowed on any grounds whatsoever, including gender or sex, race, color, language, religion, political and other opinion, national or social origin, affiliation to a national minority, property status, status acquired by birth, or any other status. Aliens who have been placed under surveillance in the Immigration Center shall have the right to file a complaint with the director of the Service for Foreigners' Affairs on the conditions of their stay at the Immigration Center, the treatment by officers and other reasons related to stay at the Immigration Center. All allegations in the complaint must be thoroughly investigated and, if justified, the appropriate measures must be taken. The director of the Service for Foreigners' Affairs shall take a decision on complaint within 7 days of the date of filing of the complaint.

**3-4-5.** A minor alien who has entered the BiH illegally and is not accompanied by a parent or guardian, or a legal representative, or who has remained without their presence upon entering BiH and whom the Service for Foreigners' Affairs cannot immediately return to the country from which he/she arrived, or deliver him/her to the representatives of the country of his/her citizenship, shall be temporarily placed by the Service to the unit of the institution specialized for minors and inform the competent center for social work which shall immediately appoint a temporary guardian. Accommodation for unaccompanied minors may be provided in partnership with the non-government sector. The Ministry of Security has signed protocols on cooperation with non-governmental organizations regarding the accommodation of unaccompanied minors. Unaccompanied minors shall be detained in the Immigration Center exceptionally, only as a last resort measure and for the shortest possible time. Placement of an unaccompanied minor in the Immigration Center shall be carried out if it is in the best interest of the minor. The decision on whether a minor shall be placed in the Immigration Center shall be made by the competent authority in the presence of a minor's parent or guardian. Placement of the minor shall be carried out under the supervision of a parent, guardian or guardianship authority. The minor shall reside in the Immigration Center apart from adult persons who are not his/her family. Since 2010, a special department for families with children has been set within the Immigration Center, an apartment pavilion which ensures the right to family life and the stay of a child with a guardian. For the minor, the Immigration Center shall provide customized nutrition and, as per possibilities, the facilities for rest, play and education that are suitable for the age of minors. Minor alien shall not be returned to the country of habitual residence or country that is willing to accept him/her until the provision of parental care or legal representation or guardianship or representative of a competent authority in the country of return has been guaranteed. An unaccompanied minor shall under no circumstances be returned in a way that would violate the European Convention on Human Rights and Fundamental Freedoms and the Law on Aliens.

A minor child of an alien who does not fulfill the conditions for temporary residence permit may be granted temporary residence on humanitarian grounds if he/she is abandoned or a victim of organized crime or has been left without parental care, guardianship or is unaccompanied for other reasons. A child who has been granted temporary residence as a victim of trafficking in human beings shall have the right of access to education.

Families may be accommodated in separate rooms of the Immigration Center in order to ensure family unity and right to privacy.

**6.** Women - aliens shall be placed in the Immigration Center when the conditions prescribed in Article 118 paragraph (3) of the Law on Aliens have been met. Women shall be placed in the rooms of the Immigration Center that are physically barred from the section of the Center where men are placed. At the time of admission to the Immigration Center, a general medical examination shall be carried out. Persons of poor physical and mental health shall be accommodated separately from others so as to be under supervision of the medical personnel, which shall be decided by the Center’s medical doctor.

During the stay in the Immigration Center, the beneficiary shall be entitled to medical care. The cost of medical care shall be reimbursed by the beneficiary of the Center, either through insurance or directly, and if such reimbursement is not possible, these costs shall be reimbursed in the manner of other costs of admission and accommodation in the Center. Medical services shall be provided during the working hours of the medical doctors of the Center, and should the beneficiary of the Center have health problems outside doctor's working hours, he/she may contact the on-duty officer who will take further measures and actions. According to the doctor's assessment, the beneficiary shall also be provided with medical treatment in a health institution outside the Center. The Center beneficiary may be sent for treatment at a health institution outside the Center based on the referral of the Center's doctors. Pregnant women who require special nutrition for health reasons shall have the food provided according to the proposal of the Center's doctors, and shall be provided with labor and delivery conditions in the adequate healthcare facility.

**Part D: Alternatives to Detention**

**1-2-3.** The reasons for imposing surveillance of an alien are prescribed by Article 118 of the Law on Aliens. Surveillance may be imposed in twofold manner, namely by:

* restriction of movement to a specified area or location, with an obligation to report to the organizational unit of the Service or police, that is, a more lenient measure of surveillance, or
* placement in an institution specialized for the reception of aliens, or the Immigration Center.

An alien may be placed under surveillance by his/her restricted movement to a specific area or location with an obligation of reporting to an organizational unit of the Service or police:

* in order to ensure the execution of the decision on expulsion, in the event of cancellation of residence in BiH or in other cases where the expulsion measure has been pronounced;
* in order to ascertain that he/she would leave the country after the rejection of his/her application for residence but failed to leave BiH;
* in order to secure the removal of an alien from the country;
* when the Service approves the postponement of the expulsion measure;
* if there are reasonable grounds to believe that free and unrestricted movement of an alien might jeopardize the public order and peace, or security or international relations of BiH, or pose a threat to public health in BiH; that is, if it has been established that an alien poses a threat to legal order, public order and peace or security of BiH;
* when there is doubt as to the veracity of the allegations of an alien concerning his/her identity or when an alien’s identity cannot be established within 6 hours of arrival to official premises;
* when an alien is admitted on the grounds of an international agreement in readmission of persons with illegal stay;
* in other cases as stipulated by this Law.

For each individual case, the Service for Foreigners' Affairs shall assess whether an alien shall be imposed surveillance measure by restriction of movement to a specified area or location. An alien shall remain under surveillance until the moment of his/her voluntary departure or forcible removal from BiH, or as long as it is necessary for the execution of the purpose of surveillance, or until the reasons that have constituted grounds for placement under surveillance have considerably changed, but not later than the time limit set in the decision on surveillance, or the decision on extension of surveillance. During surveillance, the Service shall take all necessary measures to reduce the period of surveillance to the shortest extent possible.

Decision of the Service for Foreigners' Affairs on surveillance by restriction of movement to a specific area or location shall contain: the decision to restrict the movement of the alien to a specific area or location with the address of residence, legal grounds, obligation to report to the organizational unit of the Service or police, and other information relevant for achieving the purpose of surveillance.

An appeal against the decision on surveillance by restriction of movement to a specific area or location may be lodged with the Ministry of Security within 15 days of the date of delivery of the decision. The appeal shall not stay its execution. The Ministry of Security shall take a decision on appeal. An alien may initiate an administrative dispute before the Court of BiH against the Ministry’s decision within 60 days of the date of receipt of the second-instance decision.