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In focus: Law on Foreigners

On March 22nd 2018, the National Assembly of the Republic of Serbia adopted the Law on Foreigners which was published in the “Official gazette” of the Republic of Serbia no. 24/2018, entered into force on April 3rd 2018, and which shall apply from October 3rd 2018, (hereinafter: the “**Law**”). The former Law on Foreigners (“Off Gazette” RS, no. 97/2008) ceases to apply with entry into force of the Law.

The main purpose for adopting the Law is to harmonize the national system in the field of controlling the circulation and status issues of foreigners with the directives of the European Union which regulate the specified area, as well as a more detailed regulation of the issue of migration at the time of the major refugee crisis on a global scale, which is a prerequisite for greater legal security of foreign citizens, as well as for protection of the security of the Republic of Serbia and its citizens. Also, the provisions of the Law have been harmonized with the provisions of the laws regulating the confidentiality of data in terms of the collection and processing of personal data of persons participating in procedures which are decisive for the rights and obligations of foreigners, as well as for records kept by the competent ministries. Finally, changes were made to penal provisions with the imposing of new violations and increasing the amounts of fines for all foreseen misdemeanors.

The most important changes of the Law are:

1. Entry of foreigners into the territory of the Republic of Serbia

The Law gives additional reasons for refusing entry to a foreigner (if the foreigner does not have health insurance for the period for which he/she intends to stay in the Republic of Serbia, if there is a reasonable doubt that he/she will not leave the Republic of Serbia before expiration of the visa, or if there is a possibility of illegal migration upon entering the Republic of Serbia, etc.), and also accurately defines the deadlines and jurisdiction for undertaking certain actions in the procedure of deciding on the entry and residence of foreigners in the territory of the Republic of Serbia.

One of the important novelties introduced by the Law is that **all decisions are made on a standardized form**, which entails introduction of the **decision on refusing entry to a foreigner** (stating reasons for the refusal), which has previously been verbally communicated to foreigners and the refusal of entry inscribed in the foreigner’s travel document. Additionally, it is envisaged that **a foreigner can appeal** against the decision on refusing entry into the Republic of Serbia, as well as against the decision on refusing a visa application, application for visa issuance at the border crossing, the decision on cancellation or abolition of a visa, extension of the visa validity period, , **in eight days from the date of receipt of the relevant decision.**

The Law also prescribes that in the procedure of deciding on the rights and obligations of a foreigner related to his/her entry and residence in the territory of the Republic of Serbia, **the Ministry of Internal Affairs shall obtain the opinion of the state body competent for protection of the security of the Republic of Serbia in terms of assessing whether the entry or residence of a foreigner on the territory of the Republic of Serbia represents an unacceptable security risk**, while the assessment of the security risk can also be provided by the organizational unit of the Ministry responsible for the fight against organized crime and terrorism.

Finally, the Law prescribes the **prohibition of assistance or attempting to assist a foreigner to illegally enter the Republic of Serbia**, transit through the territory or illegally reside in the territory of the Republic of Serbia, with the exception that the prohibition does not imply helping to save lives, providing medical and humanitarian aid, or aiding for humanitarian reasons, without the intention of preventing or delaying compulsory removal.

2. *Visas*

The Law was amended in terms of types of visas, and explicitly stipulates that **the issued visa does not guarantee that a foreigner will be granted entry** into the Republic of Serbia.

In accordance with the provisions of the Law, **for certain countries it is necessary to obtain the prior approval of the Ministry of Internal Affairs for issuing visas**, while the applicant for visa issuance is obliged in any case to provide proof of the possibility of entering the subsequent country on the

planned route, a letter of invitation and travel health insurance.

While the previous law prescribed only the institute of annulment of the visa (if it is subsequently determined that there is any interference foreseen by law), the Law also prescribes **the institute of visa abolishment** - in cases where it is subsequently determined that the conditions that existed at the time of its issuance have ceased to exist.

3. *Residence of a foreigner*

In addition to specifying the legal grounds for obtaining temporary residence, which were provided for by the previous law, **the Law adds a new legal grounds** such as: performing a religious service; treatment or care; ownership of immovable property; humanitarian stay; the status of a presumed victim of human trafficking; the status of a victim of human trafficking; other justified reasons in accordance with the Law or an international agreement.

An important legal novelty is that the **legal basis for applying for a temporary residence permit must be the same as the legal basis for issuing a visa for extended residence/stay.**

While the previous law prescribed only the deadline for submitting a **request for the extension of a temporary residence permit** - 30 days before its expiration, the Law now stipulates the earliest moment when such a request can be submitted - **three months prior to expiration of the residence permit.**

4. *Illegal stay, decision on returning (return order) and forced removal*

Unlike the earlier generalized definition of illegal residence as a stay without a visa, residence permit or other legal basis, the

Law lists what is considered to be illegal residence in the Republic of Serbia. The Law also introduces provisions that suppress illegal entry or stay of a foreigner in the Republic of Serbia by concluding **the so-called marriage of convenience**, while prescribing circumstances that may indicate that such a marriage has been concluded, whereby the application of relevant provisions also pertain to the extramarital unions.

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In case of illegal stay in the territory of the Republic of Serbia, the Law explicitly stipulates that the **deadline for voluntary exiting of the country** determined in the decision (**the so-called return order**) cannot be shorter than 7 or longer than 30 days. Also, the Law prescribes the possibility of imposing an **entry ban** to a foreigner, for a specified period which **cannot be longer than 5 years** except in the case of serious threat to the security of the Republic of Serbia.

The Ombudsman is anticipated as a **supervisory body in the process of forced removal**, and also specified are provisions relating to the removal of minors without escort and accommodation of a minors in the Shelter for foreigners.

Mandatory stay as a measure to ensure the availability of a foreigner to the competent authority for enforcing a forced removal may, according to the provisions of the Law, **last up to one year and may extend for the same period**, which is a novelty in relation to the previous legal solution according to which it could last no longer than 180 days..