



Belgrade Centre
for Human Rights

**RIGHT TO ASYLUM IN THE
REPUBLIC OF SERBIA
PERIODIC REPORT
APRIL-JUNE 2016**

INTRODUCTION

The Belgrade Centre for Human Rights (BCHR) continued implementing the project focusing on the extension of free legal aid to asylum seekers with UNHCR's support in 2016. BCHR lawyers have regularly been visiting centres for the reception and accommodation of asylum seekers, extending advice to refugees, migrants and asylum seekers and familiarising them with their rights and obligations. The project activities also include monitoring of the decision-making process and analysis of individual Asylum Office and Commission decisions on asylum applications, as well as monitoring of the work of other state authorities with asylum-related jurisdiction. In addition to extending direct legal aid and its monitoring and reporting activities, the BCHR has also been investing efforts in raising public and institutional awareness of this topic and in promoting new, adequate solutions to problems identified in practice.

In the first half of the year, the BCHR particularly focused on the integration of people granted international protection in Serbia and prepared and published *Serbia - from Transit to Destination Country – Refugee integration challenges and practices of selected states*, in cooperation with the Embassy of the Kingdom of the Netherlands in Belgrade and the Amsterdam-based Dutch Refugee Council. This publication deals with the integration of refugees in Serbia and the region and includes recommendations on the further development of the relevant policies and their alignment with the relevant European standards. It provides an overview of the situation in the countries in the region facing similar challenges (Slovenia and the Former Yugoslav Republic of Macedonia), as well as in the Netherlands, which boasts one of the most successful integration systems in the world and from which Serbia can learn a lot in the process of developing its integration-related capacities.

The BCHR has also devoted particular attention to raising the capacities of the Serbian judicial authorities in the field of refugee law and, with UNHCR's support and in cooperation with the Judicial Academy, published a document entitled *Enforcement of the Principle of Impunity of Refugees in Misdemeanour Proceedings*, authored by Supreme Court of Cassation judge Radmila Dragičević Dičić, Appellate Misdemeanour Court judge Marija Vuković Stanković and BCHR lawyer Lena Petrović. This manual was designed on the basis of 14 seminars for Misdemeanour Court judges organised in 2014 and 2015 and aims to answer their numerous dilemmas about misdemeanour proceedings conducted against aliens illegally entering or residing in Serbia and facilitate their enforcement of the principle of impunity and thus contribute to the harmonisation of the courts' divergent practices.

Furthermore, BCHR's legal professionals and researchers took part in several major conferences at which they advocated the importance of integrating refugees in Serbia's cultural, social and economic life.

ACTIVITIES PLANNED FOR THE UPCOMING PERIOD

- Extension of legal aid both during the asylum procedure and the refugee integration process in Serbia;
- Regular visits to Asylum Centres, occasional visits to the Belgrade Airport "Nikola Tesla" international zone and to other centres for the reception of aliens in need of international protection at the borders with Bulgaria, Hungary, Croatia and FYROM;
- Organisation of three round tables for Serbian Administrative and Misdemeanour Court judges and judicial associates on international refugee law and European Court of Human Rights asylum-related standards;

- Involvement in the implementation of three one-day training sessions for border police officers on domestic and international standards regarding the treatment of asylum seekers as a particularly vulnerable group of migrants;
- Monitoring of the status of aliens deprived of liberty in Serbia within the National Preventive Mechanism (NPM);
- Organisation of an exhibition to raise public awareness and sensitise the citizens and decision makers to migration and refugee issues (in cooperation with *Liceulice*);
- Strategic representation before international bodies, above all the European Court of Human Rights.

This Report, prepared by BCHR researchers Bogdan Krasić, Nikolina Milić, Lena Petrović, Anja Stefanović, Bojan Stojanović, Sonja Tošković and Ana Trifunović, covers the April-June 2016 period and includes only data relevant to that period. Comprehensive information about the asylum system in Serbia is available in BCHR's *2015 Right to Asylum in the Republic of Serbia* report.

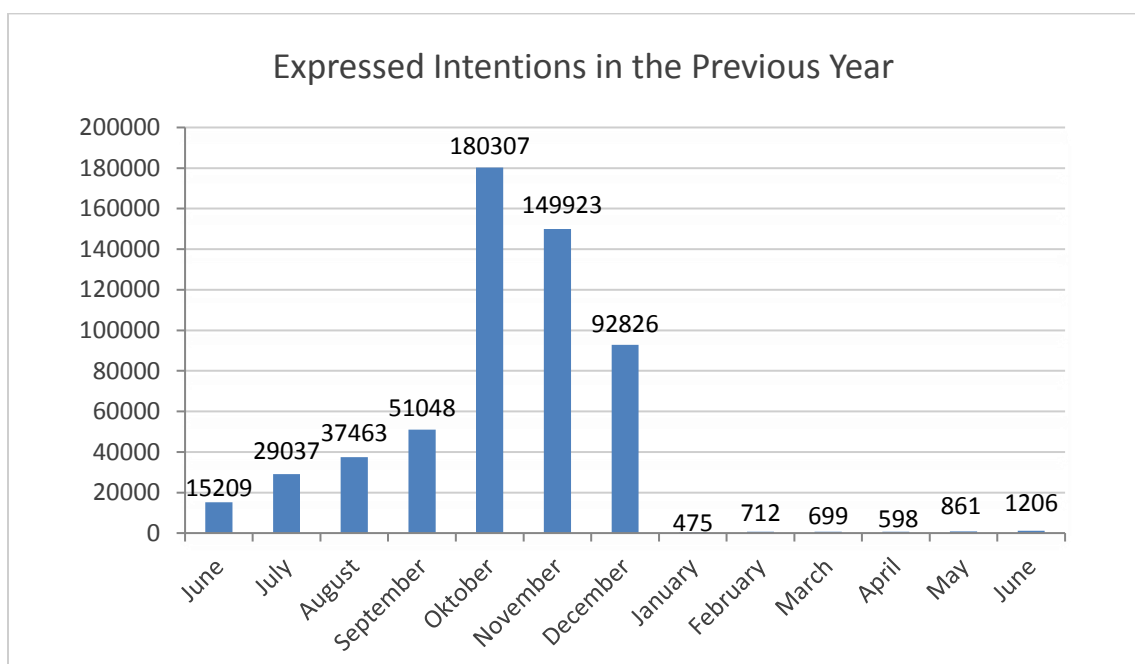
The masculine pronoun is used in the Report to refer to an antecedent that designates a person of either gender unless the Report specifically refers to a female. Both the authors of the Report and the BCHR advocate gender equality and in principle support gender neutral language.

Belgrade, July 2016

STATISTICS¹

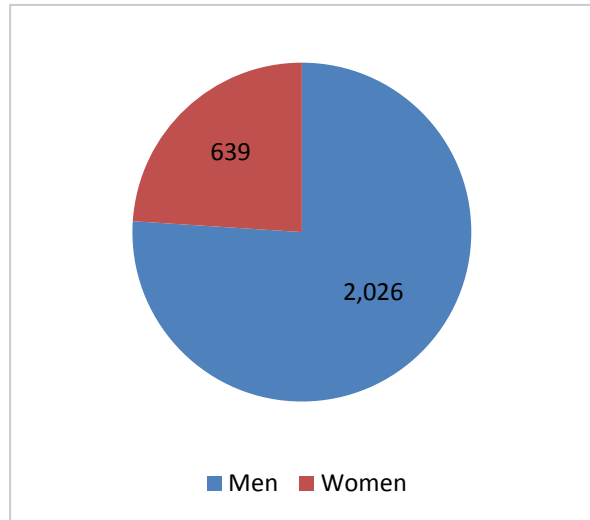
STATISTICS ON THE NUMBER OF EXPRESSED INTENTIONS TO SEEK ASYLUM

In the April-June 2016 period, a total of 2,665 people initiated the asylum procedure by expressing the intention to seek asylum in Serbia. Men prevailed over women – 76% vis-à-vis 24%; 1,003 were minors, 87 of them unaccompanied by their parents or legal guardians. The vast majority of the unaccompanied minors were again boys (93%) -from Afghanistan (72.4%), Syria (19.5%) and Pakistan (5.7%).



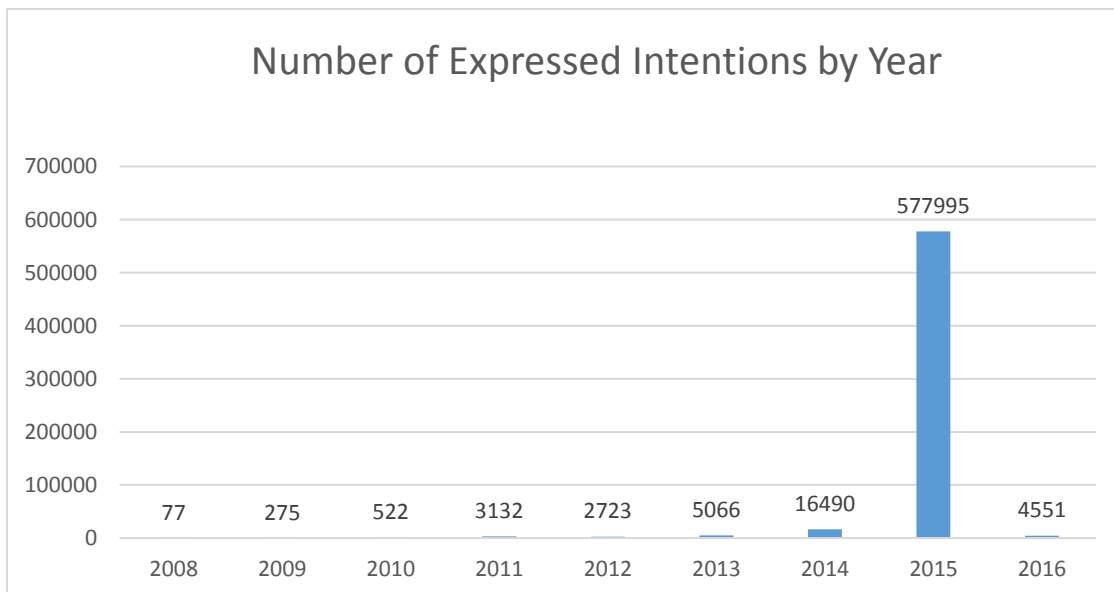
¹ All statistical data were obtained from the UNHCR Belgrade Office and the Asylum Office within the Ministry of Internal Affairs (MOI) of the Republic of Serbia.

The number of refugees who decided to stay and seek international protection in Serbia increased over the previous quarter, when 1,886 people had expressed the intention to seek asylum. The main reason definitely lies in the new restrictive migration policy of Western European countries and the fact that Hungary limited the number of people allowed to claim asylum on a daily basis.



In this reporting period, too, the MOI issued the most certificates of intent in its regional border administrations (1,858), the Preševo Reception Centre (652); it issued 127 certificates at the border crossings (127), 14 at the Aliens Shelter, and seven at the Nikola Tesla Airport. Seven certificates of intent were issued by the Asylum Office.

A total of 608,945 people have expressed the intention to seek asylum since the Asylum Act came into effect: 77 in 2008; 275 in 2009; 522 in 2010; 3,132 in 2011; 2,723 in 2012; 5,066 in 2013; 16,490 in 2014; 577,995 in 2015 and 4,551 in the first half of 2016.

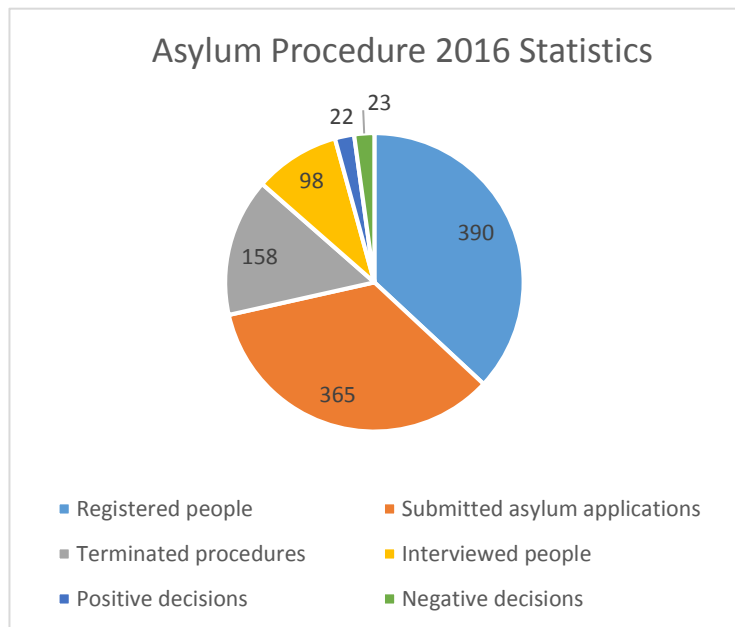


THE STRUCTURE OF ASYLUM-SEEKERS BY COUNTRY OF ORIGIN

Most of the asylum seekers had fled Afghanistan (1,107), Syria (726), Pakistan (313) and Iraq (232). Nationals of Somalia (57), Iran (53), Algeria (41), Morocco (26), Democratic Republic of Congo (19), Sri Lanka (16), Libya (15), Bangladesh (11), Palestine (8), Eritrea (5), United States of America (5), Cuba (4), Croatia (4), India (3), Tunisia (2), Lebanon (2), Nepal (2), Former Yugoslav Republic of Macedonia (2), the Russian Federation (2), Bulgaria (1), Yemen (1), Sudan (1), Cameroon (1), Mali (1), Slovenia (1), Turkey (1), Central African Republic (1), Montenegro (1) and Western Sahara (1) also expressed the intention to seek asylum in the reporting period.

STATISTICS ON OFFICIAL ACTIONS IN THE ASYLUM PROCEDURE

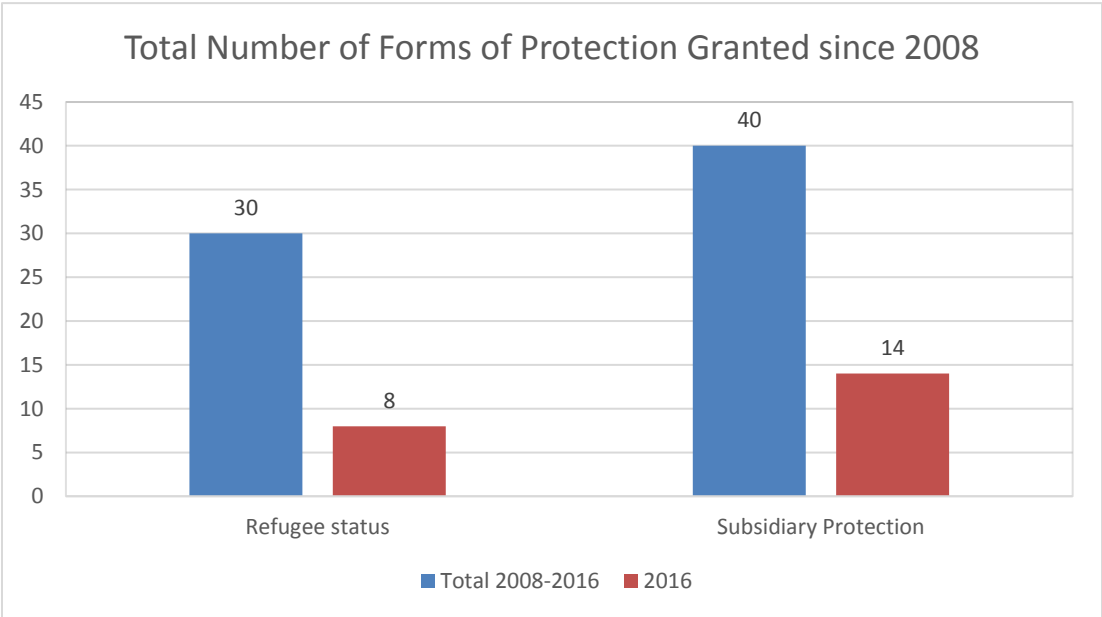
The Asylum Office registered 133 asylum seekers during the reporting period, i.e. nearly half as many as in the previous quarter (257). The Office received 103 asylum applications² and interviewed 46 asylum seekers. The Asylum Office upheld six asylum applications, granting asylum to a refugee from Cuba and subsidiary protection to five refugees from Afghanistan.



² Fifty-three of the applications were filed in June 2016 alone, more than in April and May together (when 19 and 31 applications were submitted respectively).

Only 365 of the 4,551 people who expressed the intention to seek asylum in the first half of 2016 actually applied for asylum and 98 of them stayed in Serbia until they were interviewed. The Asylum Office terminated the proceedings in 299 cases, mostly because the applicants had in the meantime left Serbia or violated the rules of procedure. The Asylum Office dismissed the applications of 23 asylum seekers, most of them nationals of Libya, and rejected the applications of 26 asylum seekers after reviewing them on the merits.

In the first half of 2016, the Asylum Office granted asylum to a total of eight refugees from Sudan, Afghanistan, Cuba, Syria and Kazakhstan, and subsidiary protection to 14 refugees from Libya, Ukraine, Afghanistan, Syria and Somalia. Thirty refugees have been granted asylum and 40 subsidiary protection in Serbia since the Asylum Act came into effect in 2008.



GENERAL OVERVIEW OF THE STATUS OF REFUGEES IN SERBIA

The large-scale inflow of refugees to Western Balkan countries was largely halted by the EU Member States' decision to conclude an agreement with Turkey on 8 March 2016.³ The agreement, *inter alia*, provides for returns of all 'irregular migrants' to Turkey; resettling a Syrian from Turkey in an EU Member State for every Syrian readmitted by Turkey; and, Turkey undertaking all measures to preclude the opening up of new routes towards the EU. The agreement led to a drastic decline in the number of refugees passing through Serbia en route to their destination countries. For instance, the MOI registered 98,003 aliens in need of international protection in the first and only 2,605 such aliens in the second quarter of 2016.⁴

The practice of issuing certificates of entry to refugees entering Serbia, who did not want to seek asylum in Serbia but wanted to legalise their temporary stay in its territory, was abandoned in April 2016.⁵ Only people expressing the intention to seek asylum and thus initiating the asylum procedure in Serbia have been registered since. It is impossible to establish precisely how many refugees and migrants have been passing through Serbia on a daily basis given that a single register of aliens transiting through Serbia has practically not existed since April. UNHCR estimated that around 1,700 refugees were

³ The joint statement is available at: http://ec.europa.eu/news/2015/docs/leader_statement_final.pdf.

⁴ Source: Asylum Office.

⁵ These certificates allowed the refugees to legally stay in Serbia for 72 hours, use the services of banks, hostels and hotels and receive urgent medical assistance. The Decision on the issuance of certificates is available in Serbian at: <http://www.slglasnik.info/sr/81-24-09-2015a/30724-odluka-o-izdavanju-potvrde-o-ulasku-na-teritoriju-republike-srbije-za-migrante-koji-dolaze-iz-zemalja-u-kojima-su-njihovi-zivoti-u-opasnosti.html>.

present in Serbia as of end May, 448 of whom in official reception facilities, i.e. twice as many as at the beginning of May, and around 470 in and out of Belgrade.⁶

As the weather improved, the refugees again started rallying at informal venues in Belgrade, the parks near the main railway and bus stations. There were between 120 and 400 refugees at these venues every day, depending mostly on the weather.⁷



Luka Djelovic Park in Belgrade

Representatives of the Commissariat for Refugees and Migration continued referring the

refugees at the informal venues to the Krnjača Asylum Centre, both those registered as asylum seekers or undocumented migrants merely transiting through Serbia.⁸ On arrival at the Krnjača Asylum Centre, these refugees were asked to fill the Commissariat questionnaire, enter their personal data, country of origin, countries they passed through on their way to Serbia, and the state in which they planned to seek asylum. Direct, free of charge transportation to Krnjača was organised twice a day, in the afternoons, which greatly reduced the number of refugees sleeping in the parks, in open air.

The building housing Miksalište - the hub of humanitarian activities near the Belgrade bus station run by non-government and humanitarian organisations distributing

⁶“Serbia Interagency Operational Update May 2016,” UNHCR, 31 May 2016, available at: <https://data.unhcr.org/mediterranean/download.php?id=1543>.

⁷*Ibid.*

⁸ Under Article 39 of the Asylum Act, only asylum seekers were entitled to accommodation in the asylum centres and only pending a decision on their asylum applications.

humanitarian aid to refugees since August 2015 - was torn down on 27 April 2016⁹; consequently, more than usual numbers of refugees spent time at the Asylum Info Centre¹⁰. In addition to humanitarian aid, they were provided with legal aid, including in the asylum procedure, extended by BCHR's legal professionals.

The Asylum Info Centre noted a large increase in the number of unaccompanied minors among the refugees rallying at informal venues in Belgrade on a daily basis since the



A group of refugees in Dimitrovgrad

beginning of the year, especially in May.¹¹The status of minors arriving in Serbia via Bulgaria was particularly concerning, given the difficult mountain roads they had travel, usually at the mercy of groups of smugglers. BCHR's field team in Dimitrovgrad, a town at the border with Bulgaria, continued collecting testimonies about the poor treatment of refugees in that country. According

to the refugees BCHR interviewed, both the Bulgarian authorities and private individuals continued treating the refugees in violation of the absolute prohibition of ill-treatment. Cases of inhuman and degrading treatment of refugees in Bulgaria were broadcast on state TV several times as well, with groups of vigilantes allegedly

⁹ N1, "Miksaliste Torn down to Make Room for Belgrade Waterfront," 26 April 2016, available in Serbian at:<http://rs.n1info.com/a155264/Vesti/Vesti/Rusi-se-Miksaliste.html>; Miksaliste's mobile team continued assisting refugees at the Belgrade railway and bus stations and the nearby parks and moved to its new headquarters in early June.

¹⁰ The Asylum Info Centre operates within the BCHR, which opened it in response to the need to facilitate the access of refugees in Belgrade streets to information relevant to their status in Serbia. The Asylum Info Centre interconnects the refugees and the competent institutions to help people in need of international protection exercise their rights.

¹¹ The Asylum Info Centre identified 19 unaccompanied minors in January, 15 in February, 53 in March, 69 in April and as many as 142 in May.

“protecting the state from migrants” gaining major popularity. The authorities failed to clearly and unequivocally condemn such treatment.¹²

The closure of the borders did not halt the refugees’ transit through Serbia towards to EU Member States. Their ordeals have merely become more difficult and insecure, given that most of the refugees decided to reach their destinations with the help of smugglers. BCHR’s legal professionals were engaged in several cases in which refugees and asylum seekers, including women and children, were victims of smugglers in their attempts to reach Serbia via Bulgaria. Apart from the huge amounts of money they had to pay the smugglers, they were exposed to inhuman and degrading treatment, and the MOI officers had to intervene in several cases to liberate them from the smugglers’ hideouts.¹³ Serbia does not have specialised facilities that can serve as safe houses for refugees who are victims of smuggling and human trafficking. Such refugees are extended aid by the NGO Atina, which has funded and run several safe houses, offering shelter also to refugees represented by BCHR’s legal professionals in the asylum procedure. The capacities of Atina’s safe houses are, however, limited and a system of support at the institutional level has to be developed to ensure that people in need of enhanced protection are not left without the accommodation and psycho-social support they need. The absence of adequate support of the competent institutions prompted most of the refugees to again strike deals with smugglers to take them to their countries of destination where they will be able to exercise their rights.

The BCHR team noted major inconsistencies in the treatment of refugees in similar situations by the competent authorities in Dimitrovgrad and Pirot¹⁴ over the past few months: some were ordered to leave the country (under Article 35 of the Aliens Act),

¹² In early April, the media reported that Bulgarian Border Police Chief Antonio Angelov decorated a group of vigilantes for “arresting” 23 refugees in the border area with Turkey, see: <http://www.balkaninsight.com/en/article/bulgaria-awards-vigilante-migrant-hunters-04-08-2016>.

¹³ *Blic*, “BG: Police Bring in 16 Migrants, Searching House,” 15 April 2016, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=04&dd=15&nav_category=12&nav_id=1120225.

¹⁴ Gradina Border Police Station, Pirot Misdemeanour Court, Commissariat for Refugees and Migration.

others were informally returned (pushed back) to Bulgaria; some were issued certificates of intent to seek asylum, others were allowed to continue their journey through Serbia without any certificates or were brought in by the police or brought before the Pirot Misdemeanour Court. The latter either terminated the proceedings and ordered the Gradina Border Police Station to issue certificates of intent to seek asylum to



A group of refugees in Dimitrovgrad

the refugees (if they expressed such intent before the judge) or sentenced the adult refugees to eight days' imprisonment or issued reprimands to the underage refugees.¹⁵

During a misdemeanour proceeding on 12 June 2016,¹⁶ the Pirot Misdemeanour Court judge warned the interpreter not to advise the refugees that they were entitled to seek asylum in Serbia because, as she said, they could have expressed such an intent to MOI officers but were not entitled to seek asylum before a judge. Given that most refugees were brought before misdemeanour judges as soon as they crossed the border and that the police officers did not necessarily provide them with interpreters who would explain to them, in a language they understood, that they were entitled to seek asylum, the judges should be able to identify refugees and provide them with the opportunity to enter the asylum procedure if they express such an intent.

¹⁵ Information obtained during BCHR legal team's field work and extension of legal aid to refugees in Dimitrovgrad and Pirot, and by perusal of Pirot Misdemeanour Court's decisions in individual cases.

¹⁶ Misdemeanour proceedings against 11 refugees from Afghanistan, Syria, Pakistan and Iran extended legal aid by BCHR's legal team, Judgment No 06 Pr 1892/16 of 28 June 2016.

The officers of the Gradina Border Police Station at Dimitrovgrad have been assessing the circumstances of the cases of refugees seeking asylum¹⁷ and then deciding whether they “deserved” to be issued certificates of intent to seek asylum. These officers have particularly endeavoured to establish whether the refugees had previously sought asylum in Bulgaria, before they came to Serbia. It needs to be noted that the fact that refugees previously sought asylum in another country does not deprive them of the right to express to the MOI officers their intention to seek asylum in Serbia and that the decisions on their asylum applications are taken by the Asylum Office staff during the asylum procedure.

During the misdemeanour proceeding on 28 June 2016 against 11 refugees from Afghanistan, Pakistan and Sri Lanka, the Pirot Misdemeanour Court judge called up the Deputy Chief of the Regional Border Police Centre towards Bulgaria to check the accuracy of the refugees’ claims that they had expressed the intention to seek asylum to the border police and why they had been brought to court. Although the border police confirmed the refugees’ claims, they told the judge that they had not issued them certificates of intent because they were unable to establish whether the refugees had passed through Bulgaria because they had no documents that would corroborate that. The judge accepted the police arguments and continued the proceeding, sentencing the refugees to imprisonment.¹⁸

The BCHR team has also observed inconsistencies in the Pirot Misdemeanour Court’s imposition of court fees in the past few months. Although it exempted the vast majority of refugees of the obligation to pay the court fees, it did on several occasions order the refugees to pay the court fees although they were in a similar situation as those who had been exempted.

¹⁷Although the Asylum Office is fully responsible for reviewing asylum applications under Article 19 of the Asylum Act and police officers merely issue certificates of intent to seek asylum, without going into the reasons why someone is seeking asylum.

¹⁸ The BCHR team obtained this information during its field work, when it extended legal aid to refugees N.R., H.A, M.S, T.V., L.A., H.E., K.D., M.S., R.D., M.D., S.M, who were found guilty of misdemeanours in the proceeding.

After the closing of the controlled route to EU destination countries via FYROM and Croatia in March, the refugees again started heading towards Hungary, although that country erected a steel fence along its entire land border with Serbia by 14 September 2015. The number of refugees on Serbia's border with Hungary gradually grew in April, from an average of 112 a day in the first week of April to over 400 a day a month later.¹⁹ The number of people the Hungarian police caught trying to enter that country illegally may provide more credible insight in the number of people who had managed to cross the border. Namely, the Hungarian Ministry of Internal Affairs stated that it registered a total of 13,338 "violent border crossings" from 1 January to 19 May 2016,²⁰ and that it registered 3,673 such crossings in June 2016 alone.²¹

The refugees, including women and small children, lived in tents in open air, in unhygienic conditions, in the immediate vicinity of one of the two so-called "transit zones" Röszke and Tompa,²² waiting to be allowed access to the asylum procedure in Hungary. The Hungarian police processed up to 70 applications at both crossings every



Refugees at Kelebija

day in April; families with small children were given priority. The number of those who managed to cross the Hungarian border grew from 263 in the first week of May to 460 in

¹⁹ "Serbia Interagency Operational Update April 2016," UNHCR, 30 April 2016, available at: <https://data.unhcr.org/mediterranean/download.php?id=1353>; and UNHCR, "Serbia Interagency Operational Update May 2016," 31 May 2016, available at: <https://data.unhcr.org/mediterranean/download.php?id=1543>.

²⁰ The report is available at: <http://www.kormany.hu/en/ministry-of-interior/news/numbers-of-those-illegally-crossing-the-border-violent-border-crossing-attempts-and-asylum-seekers-have-all-increased>.

²¹ Data on the number of people caught illegally crossing the border are available in Hungarian at: <http://police.hu/hirek-es-informaciok/hatarinfo/elfogott-migransok-szama-lekerdezes>.

²² These transit zones are near the Horgoš I and Kelebija border crossings.

the last week of May.²³ The number of people allowed to initiate the asylum procedure in Hungary on a daily basis was reduced to 15 at each border crossing in June. The Hungarian authorities explained that they were unable to process more applications per day because they had to perform the Eurodac checks,²⁴ conduct comprehensive interviews and perform national security screenings.²⁵

During their project activities in the field, the BCHR legal professionals talked with Syrian refugees informally returned from Hungary to Serbia, after the Hungarian authorities dismissed their asylum applications by automatically applying the safe third country concept.²⁶ Their applications were reviewed in summary proceedings in the transit zones on the border with Serbia and they were not allowed legal representation. In the night of 31 May/1 June 2016, a 22-year-old Syrian refugee drowned in Tisa, after a boat he and another seven refugees were in was intercepted by the Hungarian police, which used tear gas to push them back to Serbia.²⁷

²³ *Ibid.*

²⁴ System for comparing the fingerprints of people illegally staying or entering EU member states.

²⁵ "Operational Cell Daily Report – 18 May," UNHCR, 18 May 2016, available at: <https://data.unhcr.org/mediterranean/download.php?id=1354>.

²⁶ The Hungarian Government in 2015 amended the list of safe third countries, which now includes all Western Balkan states, including Serbia. That means that all refugees entering Hungary from Serbia can be returned to it, although Serbia's asylum system is practically inefficient and the country lacks an integration policy for people granted international protection.

²⁷ "UNHCR alarmed at refugee death on Hungary-Serbia border," UNHCR, 4 June 2016, available at: <http://www.unhcr-centraleurope.org/en/news/2016/unhcr-alarmed-at-refugee-death-on-hungary-serbia-border.html>.

FIRST-INSTANCE AND SECOND-INSTANCE ASYLUM PROCEEDINGS

This Report includes an analysis of first and second instance asylum proceedings, as well as individual decisions rendered by the Asylum Commission, the second-instance authority, in the first half of the year. These decisions, rendered in cases in which the asylum seekers were represented by BCHR's legal team, may be relevant to the evaluation of the work of this body and the effectiveness of appeals in the asylum procedure.

The analysis of the case law of the first-instance body, the Asylum Office, demonstrates that the asylum seekers still wait long periods of time from the moment they express their intention to seek asylum to the moment they submit their applications, usually over a month. The period from the time they apply for asylum until the Asylum Office renders its decision is overly long as well, sometimes lasting several months although the law lays down that decisions in administrative proceedings are to be rendered within two months. This delay is particularly problematic given the general two-month deadline within which decisions in administrative proceedings have to be rendered.²⁸ The Asylum Office granted asylum to eight and subsidiary protection to 14 applicants and rejected 26 asylum applications in the first half of 2016.

For the first time since the Asylum Act came into force in 2008, the Asylum Commission upheld an appeal by Libyan asylum seekers and itself ruled on the merits of the administrative matter, awarding the applicants subsidiary protection.²⁹ The Asylum

²⁸ Article 208, General Administrative Procedure Act.

²⁹ Asylum Commission Ruling No. AŽ 06/16 of 12 April 2016.

Office rejected the asylum applications of a Libyan couple A.S.I. and A.M.S, dismissing them as ill-founded. A.S.I. came to Serbia on a Libyan government scholarship back in 2010. The situation in Libya deteriorated significantly in the meantime, and A.S.I. could no longer return to his country of origin safely. A.M.S. joined her husband in Serbia in 2013. In its decision, the Asylum Office qualified their application as ill-founded, because they returned to Libya and spent time in their home town between 2010 and 2013, up until the time they applied for asylum in 2013, and that this fact was in contravention of their allegations that their lives and safety would be in jeopardy if they returned to Libya, due to the poor security situation and armed conflicts there. The Asylum Office thus concluded that it could not grant them subsidiary protection and that they had applied for asylum to extend their legal residence in Serbia.

The Asylum Commission upheld the appeal, in which the applicants claimed that the first-instance authority had erred when it found that the asylum seekers could not be granted subsidiary protection. The Commission underlined that the Asylum Office had been under the duty to take into account UNHCR's Position on Returns to Libya of October 2015,³⁰ updating its Position of 2014, in which it said that the current situation in Libya was characterised by a continued lack of rule of law and order, ongoing fighting between rival armed groups in many parts of the country and daily assassinations, bombings and kidnappings. The situation in Libya particularly deteriorated since 2014, wherefore UNHCR urged states to allow Libyan civilians access to their territory and to review the rejected asylum claims in light of the new circumstances. UNHCR particularly called on states to suspend forcible returns to Libya until the security and human rights situation has improved considerably until such time to permit a safe and dignified return. The Asylum Commission also referred to the European Court of Human Rights judgment in the case of *Sufi and Elmi v. The United Kingdom*,³¹ in which the ECtHR held that the

³⁰ "UNHCR Position on Returns to Libya - Update I", UNHCR, October 2015, available at: <http://www.refworld.org/docid/561cd8804.html>.

³¹ Applications No. 8139/07 and 11449/07, judgment of 28 November 2011.

applicant did not need to adduce evidence of real risk to his life and integrity when the general situation in his country of origin was extremely grave.

The Asylum Commission also qualified as irrelevant the asylum seekers' visits to Libya before the UNHCR published its Positions, because that did not lessen the risk to their lives and safety if they were returned to Libya, in view of the fact that the security situation had deteriorated since the last time they had been in their country of origin. It also found that their last stay in Libya, described during the public hearing, indicated that the security situation in that country was poor. The Asylum Commission qualified as particularly problematic the Asylum Office's view that the asylum seekers had applied for asylum to extend their legal residence in Serbia, because it had not taken into account the reports of large-scale human rights violations in Libya and that their safety and freedom would be jeopardised due to generalised violence.

BCHR welcomes the Asylum Commission's decision, because this body considered the status of the asylum seekers in a comprehensive manner and referred to the relevant UNHCR reports and ECtHR case law. In this case, the Asylum Commission decision ensured not only the enforcement of an effective legal remedy in the asylum procedure, but a safe life for the asylum seekers and protection of their human rights as well.

However, in another case, also filed by a Libyan national, A.M.A, his wife S.K.A.M. and their seven children, which is nearly identical to the above case, the Asylum Commission merely rescinded the first-instance ruling rejecting the asylum application and referred the case back to the Asylum Office for review.³²The latter stated in its initial decision rejecting the application that it was ill-founded because the asylum seekers had applied for asylum in order to extend their legal residence in Serbia, because they went back to Libya several times since the fighting broke out, which demonstrated that Libya was actually safe for them. Although the Asylum Commission underlined in its decision that

³² Asylum Commission Ruling No Až 15/16 of 24 May 2016.

the first-instance authority was under the obligation to review the facts in Libya and consult sources on the general situation in the country of origin, especially the above-mentioned UNHCR Positions, the Commission went beyond the claims in the appeal and itself identified specific ambiguities and contradictions in the first-instance decision and overturned it.

Namely, the appeal only specified that the Asylum Office had made an error of fact because it did not consider the relevant reports on Libya and thus erroneously concluded that there were no grounds to grant asylum in that case. The applicant asked the Asylum Commission to rescind the Asylum Office's first-instance ruling and itself rule on the merits of the asylum applications. The Asylum Commission, however, went beyond the claims in the appeal and itself identified specific ambiguities and contradictions in the first-instance ruling, which were not specified in the appeal. Due to these contradictions, the Asylum Commission decided against ruling on the merits of the application itself and referred the case back to the Office. In this case, the Commission correctly alerted the Asylum Office to its obligation to consult specific sources on the human rights situation in the country of origin when it ruled on an asylum application. Nevertheless, the Asylum Commission could have itself heard the asylum seekers (who are living in Belgrade), clarified the ambiguities and ruled on the merits of the application. Such action by the Asylum Commission would have greatly contributed to the realisation of the principle of efficiency of the administrative procedure (Article 6, General Administrative Procedure Act).

In the third case, concerning an asylum application by Russian national K.O. and his underage son K.I, the Asylum Commission upheld the appeal and overturned the first-instance ruling denying asylum and referred the case back to the Asylum Office.³³ K.O. had applied for asylum claiming he distrusted the political and judicial systems of the

³³ Asylum Commission Ruling No. AŽ 08/16 of 24 May 2016.

Russian Federation, specifying that the Russian police officers had threatened him and that he feared he would be persecuted because of his political opinions.

In this case, too, the Commission agreed with the applicant that the Asylum Office had not taken into account all the evidence in the proceedings and had based its decision exclusively on the asylum seeker's interview, which was in contravention of Articles 10 and 149 of the General Administrative Procedure Act. The Asylum Office failed to take into consideration the information about the country of origin presented by the parties' counsel, explain which information led it to believe that the asylum seeker did not have serious problems with the Russian authorities, and quote the relevant sources. The Asylum Commission ordered the first-instance authority to review all the facts presented to it before it rendered its decision.

This Asylum Commission decision commendably rectifies the work of the Asylum Office, because it notes its obligation to explain its first-instance rulings, list the relevant sources and assess all the evidence. It is nevertheless unclear why the Asylum Commission had not assessed the adduced evidence itself, i.e. ruled on the merits of the matter.

STATUS OF ASYLUM-SEEKERS AND MIGRANTS IN KRNJAČA ASYLUM CENTRE

In the second quarter of 2016, the BCHR team continued implementing project activities aimed at extending legal aid to refugees and asylum seekers in the Krnjača Asylum Centre in cooperation with the UNHCR Belgrade Office.³⁴

The number of refugees staying at the Krnjača Asylum Centre increased in May, from around 50 to several hundred per day. This can mostly be ascribed to the decision of the Commissariat for Refugees and Migration to allow all people in need of international protection to stay at the



Asylum Centre in Krnjača

Krnjača Asylum Centre, whether or not they expressed the intention to seek asylum.³⁵ Some of them decided to seek international protection in Serbia after several days but faced difficulties. The BCHR team continued hearing complaints from the refugees it talked to in the Krnjača Asylum Centre about the police officers in the Police Station in Savska Street, Belgrade, who reportedly prevented them from accessing the asylum

³⁴ In addition to the BCHR, other international organisations (UNHCR, Red Cross, Caritas, et al) and NGOs (Psychosocial Innovation Network – PIN, Asylum Protection Centre, etc.) have also been involved in extending legal, psychological and humanitarian aid to asylum seekers in the Krnjača Asylum Centre.

³⁵ The number of refugees staying at the Krnjača Asylum Centre increased tenfold in the reporting period; 50 refugees were on average accommodated in it in April, 120 were sheltered there in May and up to 600 in June 2016.

procedure. The refugees complained that they had waited in front of that Station for a long time to access the asylum procedure and that they had difficulties obtaining certificates of intent to seek asylum.

The Krnjača Asylum Centre capacities were insufficient to take in all the refugees in need of urgent accommodation in the reporting period, wherefore the authorities opened facilities that were in a desultory state. The humanitarian organisation Danish Refugee Council and the Delegation of the European Union to Serbia funded the reconstruction of three accommodation facilities and three smaller residential units within the Centre to increase the Centre's capacities and improve the living conditions in it.³⁶The renovated facilities were used to accommodate the asylum seekers, while persons in need of international protection, who had not initiated the asylum procedure, were accommodated in the non-renovated facilities. Most of the complaints about the living conditions in the Asylum Centre regarded lack of privacy and the stench in the bathrooms in the non-renovated facilities, cramped rooms, and accommodation of refugees from different states, often in conflict with each other, in the same buildings, which resulted in incidents and conflicts.

The Red Cross of Serbia played a prominent role in the distribution of food in the second quarter of 2016. Under Article 39 of the Asylum Act, only asylum seekers are entitled to free meals in the Asylum Centres; the packages with canned food for the other residents in need of international protection were provided by the Red Cross of Serbia. The food was distributed with the help and under the supervision of the Commissariat for Refugees and Migration. The aliens were given coupons every morning, in exchange for which they received meals.

The Asylum Centre in Krnjača continued providing health care services on a daily basis. The medical team was allocated separate offices in June. Médecins Sans Frontières

³⁶ More at: <http://www.kirs.gov.rs/articles/navigate.php?type1=3&lang=ENG&id=2532&date=0>.

(Doctors without Borders) staff occasionally extended medical assistance in the Krnjača Asylum Centre as well.

Interactive workshops and activities for children were organised in the Centre with the support of the UNHCR Belgrade office and the Danish Refugee Council. The Centre also organised Serbian Language classes for the asylum seekers to facilitate their integration.

STATUS OF ASYLUM-SEEKERS AND MIGRANTS IN OTHER RECEPTION AND ASYLUM CENTRES

This Report refers only to the Asylum Centres³⁷ and Reception Centres³⁸ the BCHR obtained information about and its team visited as part of the National Preventive Mechanism (NPM).

The number of refugees accommodated in centres for the accommodation and reception of refugees and asylum seekers in Serbia fell under 1,000 in mid-April, for the first time since the summer of 2015. Only 198 aliens were living in these centres at the end of April. The situation changed during May and June and, by end June, a total of 1,029 people in need of international protection were accommodated in these centres.³⁹ The greatest number of people in need of international protection in this reporting period, too, were staying at the Krnjača Asylum Centre and the Subotica Reception Centre and the fewest in the Bogovađa and Sjenica Asylum Centres.⁴⁰

The Subotica Reception Centre opened in November 2015, to temporarily accommodate persons in need of international protection for a few days. Although this Reception Centre was designed to take in 55 people,⁴¹ it housed up to several hundred people at any one time when the borders closed, especially in June. The living conditions in the Centre

³⁷ Five Asylum Centres- in Krnjača, Banja Koviljača, Bogovađa, Sjenica and Tutin -are currently operational in Serbia. No refugees were referred to the Asylum Centre in Bogovađa in the past few months.

³⁸ In addition to the Asylum Centres, Serbia in 2015 opened reception centres for the accommodation of persons in need of international protection, who do not want to seek asylum in Serbia. Such centres exist in Šid, Principovac, Adaševci, Preševo and Subotica.

³⁹ Source: UNHCR.

⁴⁰ Source: Commissariat for Refugees and Migration.

⁴¹ *Report on the Visit to the Subotica Reception Centre*, National Preventive Mechanism, Belgrade, 8 April 2016, available at: <http://www.npm.lis.rs/attachments/article/147/ENG%20Prihvatni%20centar%20Subotica%20-%20Izvestaj.pdf>.

consequently deteriorated and may now be qualified as inhuman and degrading. Due to the large number of people in need of international protection who had to be accommodated in Subotica, the Commissariat for Refugees and Migration reached an informal decision at UNHCR's recommendation that priority be given to sheltering the most vulnerable groups of refugees (families, women, children, et al) in the Subotica Reception Centre.

On 27 April 2016, the Ministry of Labour, Employment and Social and Veteran Issues, UNHCR and the Danish Refugee Council launched the third stage of renovating the former tobacco plant in Preševo, to improve the accommodation, reception and security conditions in this facility, which was designated as a reception centre in June 2015 under a Government Conclusion⁴² and through which tens of thousands of refugees have passed since January 2016. The refugees who came to Preševo from FYROM in the past few months, especially since the borders were closed in March 2016, were in visibly poor condition, both physically and psychologically, after walking for miles and weeks of uncertainty in Idomeni, on the Greek-FYROM border.⁴³ A number of refugees spent longer periods of time in the Preševo Reception Centre in April and May, waiting to continue their journey towards their countries of destination. Only around 40 refugees were staying at the Preševo Reception Centre in late June 2016, although, just six months earlier, this Reception Centre lacked capacity to take in all the refugees in need of accommodation.⁴⁴

The construction of a reception centre in Dimitrovgrad, planned because of the expected increase in the number of refugees coming to Serbia from Bulgaria, was to have been completed in April but was officially launched on 24 June 2016, after several delays.⁴⁵ This

⁴² RS Government Conclusion 05 No 464-7137/2015.

⁴³ BCHR's legal team in Belgrade met with and extended legal advice to refugees that came from Preševo.

⁴⁴ *UNHCR Serbia Update 27-29 June 2016*, UNHCR, June 2016, available at:

<http://data.unhcr.org/mediterranean/download.php?id=1592>.

⁴⁵ FAR, "Construction of Centre for Migrants Officially Launched in Dimitrovgrad," 24 June 2016, available in Serbian at:

<http://far.rs/index.php/sr/2016/06/24/u-dimitrovgradu-zvanicno-pocela-izgradnja-centra-za-migrante>.

Reception Centre on the border with Bulgaria will considerably help improve the living conditions of people in need of international protection and lower the costs of their transportation to one of the closest Asylum Centres in Krnjača, Tutin or Sjenica, which are over 300 km away.⁴⁶

The Banja Koviljača Asylum Centre boasts the best living conditions, compared to the other centres visited by BCHR's legal team in the reporting period. However, since Banja Koviljača is not on the so-called refugee route, even the refugees referred to this Centre after they expressed the intention to seek asylum were reluctant to go there and preferred staying at the Krnjača Asylum Centre, despite the much poorer living conditions in it.

The International Organization for Migration (IOM) continued implementing its Assisted Voluntary Return and Repatriation programme in the Asylum and Reception Centres in Serbia TO facilitate the voluntary returns of refugees and migrants to their countries of origin. Thanks to IOM's mediation, 26 people (nine from Morocco, six from Iran, five from Algeria, three from Iraq, two from Afghanistan and one from Turkey) were issued travel documents and returned to their countries of origin in April. One person voluntarily returned to his/her country of origin and 11 expressed the wish to access the Programme in May.⁴⁷

⁴⁶ The Commissariat for Refugees and Migration and the NGO Info Park covered the transportation costs of individual refugees who lacked funds to pay their fares to the Asylum Centres.

⁴⁷ Source: UNHCR.

STATUS OF UNACCOMPANIED MINORS AND WOMEN AMONG REFUGEE POPULATION

The number of vulnerable refugees and migrants, above all families and women travelling alone with their children, passing through or staying in Serbia grew noticeably in the reporting period. Many of them had lived in inhuman conditions in the informal refugee camp in Idomeni and were ill when they arrived in Serbia. Although only asylum seekers are entitled to health care free of charge under Article 40 of the Asylum Act, the health institutions extended free medical services also to persons who had not expressed the intention to seek asylum.

During their field work with women travelling alone with their children, the BCHR's legal team collected information indicating that many of them were travelling alone or had left their country for the first time, which has further exacerbated their plight. The vast majority of them still do not perceive Serbia as their country of destination, and stay only until the group they are travelling with or their husbands join them before they continue their journey together.

Unaccompanied minors arriving in Serbia continued to be referred to the competent social welfare centres. The welfare centres then take charge of the children and accommodate them in the closest institution caring for minors –the Vasa Stajić Institution for Children and Youths in Belgrade (hereinafter; Belgrade Institution), the Institution for Youths in Niš (hereinafter: Niš Institution) and Kolevka in Subotica. These institutions are not specialised for sheltering underage refugees and often lack the capacities to take in all unaccompanied minors in need of accommodation. The Belgrade and Niš Institutions' treatment of children who expressed the intention to seek asylum differed. The Niš Institution would refer unaccompanied minors brought in by the police to the

Krnjača Asylum Centre at its own expense as soon as they expressed the intention to seek asylum. On the other hand, the children accommodated in the Belgrade Institution would stay there even after they initiated the asylum procedure. The BCHR supports this practice and has repeatedly alerted to the inadequate conditions in the Krnjača Asylum Centre for unaccompanied minors. Given the financial difficulties and lack of capacities of the Belgrade and Niš Institutions, the state needs to put in place separate accommodations that can adequately fulfil the needs of this vulnerable group, as well as those of the children already living in these institutions.

Headway has been made in the treatment of pregnant refugees and mothers travelling alone with their children and thanks to the cooperation of the UNHCR Office, the competent Social Welfare Centre, the Home for Mothers and Infants in Belgrade, the BCHR and Atina. Particularly vulnerable refugees, identified by one of these stakeholders, have been accommodated in the Home for Mothers and Infants in Zvečanska Street in Belgrade, operating within the Belgrade Centre for the Protection of Infants, Children and Youths. Asylum seeker and BCHR client K.N.L. from Cameroon was referred with her newborn to the Asylum Centre in Krnjača after giving birth at a Belgrade hospital but was soon transferred to the Home for Mothers and Infants at the initiative of UNHCR and the Belgrade Social Welfare Centre because the conditions in the Asylum Centre were inadequate for the accommodation of the young mother and her newborn. The Home for Mothers and Infants specialises in the protection and recovery of mothers and children and provides them with health care, adequate nutrition and the hygiene and clothing they need. The identification, referral to the adequate institution, free medical and legal aid extended to this refugee and her baby are indicator of the good practice subsequently applied in the cases of several other mothers travelling alone with their children.

RIGHT TO INTEGRATION OF REFUGEES IN SERBIA'S SOCIAL, CULTURAL AND ECONOMIC LIFE

The Asylum Act lays down the state's general obligation to create conditions for the integration of refugees in its social, cultural and economic life, and facilitate their naturalisation commensurately with its capacities.⁴⁸ Under the Migration Management Act,⁴⁹ the Commissariat for Refugees and Migration⁵⁰ shall be charged with the accommodation and integration of individuals granted asylum or subsidiary protection.

The realisation of rights of persons granted asylum or subsidiary protection in Serbia is governed by the Asylum Act, notably Chapter VI comprising provisions on the right to residence, accommodation, basic living conditions, health care, education, social protection, as well as other rights equal to those of aliens permanently residing in the Republic of Serbia and those of Serbian nationals.⁵¹ These rights include the right to work, employment and entrepreneurship-related rights, right to permanent residence and freedom of movement, right to movable and immovable property, and the right to association.

The Migration Management Act governs the accommodation and integration of individuals granted asylum or subsidiary protection, which are within the remit of the Commissariat for Refugees and Migration. The Commissariat is, inter alia, charged with defining, proposing and taking measures for the integration of individuals granted

⁴⁸ Article 46, Asylum Act.

⁴⁹ *Official Gazette of the RS* 107/2012.

⁵⁰ Articles 15 and 16, Migration Management Act.

⁵¹ Articles 22-27, Asylum Act.

asylum and the accommodation of individuals granted asylum or international protection under the Asylum Act.⁵²

The method of integration of persons granted asylum in social, cultural and economic life shall be determined by the Government, upon the recommendation of the Commissariat.⁵³ The Commissariat is also charged with proposing a programme for developing a system of measures regarding families of aliens illegally residing in Serbia and a programme supporting the voluntary repatriation of aliens illegally residing in Serbia to their countries of origin.

Neither the Asylum Act nor the Migration Management Act define specific measures or procedures for designing individual integration plans for individuals granted asylum, wherefore this matter needs to be regulated by subsidiary legislation. The Serbian authorities are expected to enact a decree that will govern the individual integration of persons granted refugee protection. In July 2015, the Government of the Republic of Serbia adopted a Decree on Criteria for Establishing Priority Accommodation of Persons Recognised the Right to Refuge or Granted Subsidiary Protection and the Conditions for the Use of Temporary Housing.⁵⁴ In April 2016, the Commissariat for Refugees and Migration for the first time upheld a request for accommodation under these provisions and granted financial aid for the temporary accommodation⁵⁵ of BCHR's client, B.S. from Kazakhstan, who was granted asylum in January 2016.⁵⁶

Serbia unfortunately does not have an institution that would comprehensively address the integration of persons granted asylum; nor has it adopted legal regulations governing this matter in greater detail. Although the law entrusts the integration of refugees to the

⁵² Articles 10-16, Migration Management Act.

⁵³ Article 16, Migration Management Act.

⁵⁴ *Official Gazette of the RS 63/15*.

⁵⁵ Under Article 40 of the Asylum Act, persons granted asylum or subsidiary protection shall be provided with accommodation commensurately with the capacities of the Republic of Serbia, but not for longer than one year from the day the ruling granting them such a status becomes final.

⁵⁶ Commissariat for Refugees and Migration, Ruling No 9-4/4-7 of 25 April 2016.

Commissariat for Refugees and Migration, the most efficient support extended to the beneficiaries to date has come from civil society organisations active in the fields of asylum and migration, which have been providing legal aid during integration and other forms of support⁵⁷ to individuals granted international protection in Serbia.

Despite the deficiencies, it may be concluded that the Republic of Serbia has improved its legal framework to an extent. In December 2014, the parliament adopted the new Aliens Employment Act,⁵⁸ which is largely aligned with all the relevant European standards and for the first time recognises the refugees' and asylum seekers' right to work. In July 2015, the Government of the Republic of Serbia adopted a Decree on Criteria for Establishing Priority Accommodation of Persons Recognised the Right to Refuge or Granted Subsidiary Protection and the Conditions for the Use of Temporary Housing,⁵⁹ which governs in detail the accommodation of persons granted international protection.

In view of the constant increase in the number of asylum seekers, it would be reasonable to expect a greater number of positive decisions on asylum applications, wherefore the absence of regulations facilitating their integration may lead to major problems in the functioning of the system. Furthermore, in countries with high unemployment rates, such as Serbia, there are always fears that the immigrants will "compete" for the already scarce jobs. The integration of migrants and asylum seekers in Serbian society is a complex and very new process, given that Serbia has predominantly been a country of emigration in the past fifteen years or so. Serbia therefore faces an extremely challenging task of developing its migration policies and efficiently integrating the refugees in its society.

⁵⁷ This assistance mostly involves the organisation of Serbian language lessons, extension of administrative assistance to aliens filing requests with the competent institutions, etc.

⁵⁸ *Official Gazette of the RS* 128/14.

⁵⁹ *Official Gazette of the RS* 63/15.