



**RIGHT TO ASYLUM IN THE REPUBLIC OF SERBIA
PERIODIC REPORT FOR APRIL - JUNE 2017**



Belgrade Centre
for Human Rights

Introduction

The Belgrade Centre for Human Rights (BCHR) continued implementing the *Support to Asylum Seekers in Serbia* project in the first six months of 2017 with the support of the United Nations High Commissioner for Refugees (UNHCR). The BCHR Project Team extended legal aid to and legally represented foreigners considering Serbia a country of asylum and monitored the treatment of people in need of international protection by the relevant authorities of the Republic of Serbia. BCHR also endeavoured to assist successful asylum seekers in integrating in Serbia's society.

In the reporting period, the Republic of Serbia continued extending humanitarian assistance to a large number of migrants (ranging between five and eight thousand from January until June 2017) in its 18 accommodation facilities (Asylum and Reception Centres), without ascertaining in each individual case whether they were in need of international protection or issuing individual decisions determining their status. A total of 3,251 foreigners expressed the intention to seek asylum in the first six months of the year, while thousands were staying in Serbia without having regulated their legal status.¹ Around 80% of the foreigners accommodated in Asylum and Reception Centres were nationals of refugee-producing countries – Afghanistan, Iraq and Syria. Children accounted for 41% of the foreigners living in the Centres.²

Most foreigners in need of international protection still do not perceive Serbia as a country of refuge, for the most part because countries with more developed asylum systems provide better conditions for the integration and life in dignity of refugees. This fact, however, should not deter the relevant Serbian authorities from investing efforts in establishing a fair and efficient asylum procedure and integration system. No-one was granted asylum in Serbia in the first half of 2017. The Decree on the Integration of Foreigners Granted Asylum in the Social, Cultural and Economic Life of the Republic of Serbia (Integration Decree)³ adopted in late 2016 was not fully enforced, because mechanisms for the coordination of the relevant authorities and adequate internal procedures to bridge specific legal lacunae had not been put in place yet.

¹ These foreigners neither expressed intention to seek asylum nor was their status regulated in accordance with the Law on Foreigners.

² Interagency Operational Update Serbia, May 2017, UNHCR, June 2017, available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/58242.pdf>.

³ *Sl. glasnik RS*, 101/16.

The migrants met with increasing difficulties in their attempts to leave Serbia after Hungary adopted even more restrictive laws and cut the number of migrants it allowed into the country every day. The amendments to the Hungarian asylum law, which came into force in late March 2017, impose restrictions on the movement of asylum seekers, including children over 14 years of age, throughout the asylum procedure. As of June 2017, Hungary also introduced new state border protection measures. Electricity now runs through the steel fence erected along the border with Serbia, a move the Hungarian Government has justified by its wish to register every contact with the fence, explaining that it was low voltage electricity that could not hurt people.⁴ Migrants, who want to legally cross into Hungary, can now seek asylum only in one of the two transit zones. Under the new rules, they are in detention pending a decision on their asylum application.

In its judgment in the case of *Ilias and Ahmed v. Hungary* of 14 March 2017,⁵ the European Court of Human Rights (ECtHR) found Hungary in violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) because it removed to Serbia two refugees from Bangladesh (after their asylum applications were dismissed in a summary procedure in the Roszke detention centre). In its judgment, the ECtHR found that the refugees' removal to Serbia, a country the UNHCR declared unsafe in 2012, exposed them to the risk of chain refoulement to the former Yugoslav Republic of Macedonia (FYROM) and Greece and treatment in violation of Article 3 of the ECHR (prohibition of torture). The ECtHR noted that the Hungarian authorities had not only failed to perform an assessment to determine the individual risk of inhuman and degrading treatment in case of their removal to Serbia, but had also refused to even consider the reports submitted to them, basing their decision exclusively on the Hungarian Government 2015 Decree declaring Serbia a safe third country. This ECtHR judgment should serve as a reminder to the authorities of the Republic of Serbia, who have in an almost identical manner been applying the 2009 Serbian Government Decision on Safe Countries of Origin and Safe Third Countries,⁶ that qualifications of a country as safe, which are not corroborated by reports of international organisations, may result in violations of the ECHR.

4 See the Belgrade daily *Blic* report of 4 July 2017, available in Serbian at: <http://www.blic.rs/vesti/svet/madarska-pustila-struju-kroz-ogradu-na-granici-sa-srbijom/qkv2rgy> and the *Balkan Insight* report, available at <http://www.balkaninsight.com/en/article/hungarian-smart-fence-opposes-eu-values-ngo-says-07-04-2017-1>

⁵ Application No. 47287/15, judgment of 14 March 2017.

⁶ *Sl. glasnik RS*, 67/09.

The collective deportations of hundreds of foreigners from Hungary and Croatia to Serbia, as well as the extremely violent, brutal and degrading treatment of these people by the border police of these two countries were registered from early May 2016 to the end of the reporting period. It is difficult to ascertain the precise number of collectively deported migrants, because many of them had tried to illegally cross the border more than once.⁷ The BCHR succeeded in documenting one case of collective deportation of migrants from Serbia to Bulgaria in February 2017, but it may be presumed that the number of such cases is much higher in view of Serbian Defence Minister Aleksandar Vulin's statement of July 2017 that the joint Serbian Army and police forces patrolling the state borders with FYROM and Bulgaria had prevented 21,300 migrants from illegally entering Serbia since July 2016.⁸

The United Nations Human Rights Committee (HRC) published on 10 April 2017 its Concluding observations on Serbia's third periodic report on the implementation of the International Covenant on Civil and Political Rights.⁹ The BCHR presented its shadow report on ill-treatment and the status of persons deprived of liberty, asylum seekers and refugees at the 119th session of this body.

Whilst recognising the challenges Serbia faces, the HRC expressed concern about: the existence of significant obstacles and delays in the process of registering, interviewing and providing identification for asylum seekers and the low number of asylum claims granted; reported cases of efforts to deny access to Serbian territory and asylum procedures, of collective and violent expulsions and of the misapplication of the "safe third country" principle, despite concerns regarding conditions in some of those countries; inadequate conditions in reception centres, including when unaccompanied minors are placed with adults, and the absence of care for individuals outside of reception centres; inadequate access for unaccompanied minors to guardians who make decisions in the best interest of the child; and inadequate procedures to determine the age of unaccompanied minors.

It recommended that Serbia "strictly respect its national and international obligations by: (a) ensuring that access to formal procedures for asylum applications is available at all border points, notably in international airports and transit zones, and that all persons engaging directly

⁷ "Forcible Irregular Returns to the Republic of Serbia from Neighbouring Countries," Humanitarian Centre for Integration and Tolerance, April 2017.

⁸ See TV N1's report of 14 July 2017 "Vulin: Over 21,000 Migrants Prevented from Entering Serbia," available in Serbian at <http://rs.n1info.com/a283450/Vesti/Vesti/Vulin-ulazak-ilegalnih-migranata.html>.

⁹ CCPR/C/SRB/CO/3 of 10 April 2017, available at <http://www.refworld.org/docid/591e9c4b4.html>.

with refugees or migrants are appropriately trained; (b) ensuring that all asylum applications are assessed promptly on an individual basis with full respect for the principle of *non-refoulement* and that decisions of denial can be challenged through suspensive proceedings; (c) refraining from collective expulsion of aliens and ensuring an objective assessment of the level of protection when expelling aliens to “safe third countries”; (d) ensuring adequate conditions both inside and outside reception centres for all refugees and asylum seekers; and (e) ensuring that appropriate protocols are in place for identifying the age of unaccompanied minors and ensuring that they receive appropriate guardianship and treatment that takes into account the principle of the best interests of the child.”

This Report, prepared by the BCHR project team, provides a brief analysis of the competent authorities’ practices and developments in the area of refugee law in Serbia in the first six months of the year (with particular focus on the second quarter of 2017), on the basis of information the BCHR collected during its fieldwork and in cases in which it legally represented the asylum seekers. All statistical data on the work of the Ministry of the Interior (MOI) were obtained from UNHCR, while the other information was obtained pursuant to BCHR’s requests for access to information of public importance.

The cover photo was released by its author Jin Kemoole under the Creative Commons Attribution 2.0 Generic (CC BY 2.0) license.¹⁰

¹⁰ Available at: <https://www.flickr.com/photos/146401137@N06/32028128852/>

Access to the Asylum Procedure

Under Articles 22 and 23 of the Asylum Law,¹¹ foreigners may access the asylum procedure in the Republic of Serbia by expressing the intention to seek asylum either orally or in writing to an authorised officer of the Ministry of the Interior (MOI), during a border check on entry into the Republic of Serbia, or within its territory, in one of the police stations. The police officers then register the foreigners and enter their personal data in the MOI electronic databases *OKS*¹² and *Afis*.¹³ The MOI does not apply any special procedure for specific nationalities (potential prima facie refugees) in this respect, nor is this special procedure envisaged by Serbian law. MOI officers do not engage interpreters to assist them in performing this official action. The foreigners are then issued certificates referring them to an Asylum or Reception Centre, to which they have to report within the following 72 hours. The police referred foreigners, whose identity they could not establish or who, in their opinion, might undermine the security and public order of the Republic of Serbia to the Shelter for Foreigners in Padinska Skela.¹⁴

Under Article 22(2) of the Asylum Law, foreigners, who express the intention to seek asylum, shall be referred to an Asylum Centre. This has often not been the case in practice however. There have been many instances of foreigners, who genuinely intended to seek protection in the Republic of Serbia, being referred to a Reception Centre, with no possibility of transferring to an Asylum Centre. These asylum seekers had difficulty initiating the asylum procedure, as the Asylum Office performed only a few procedural actions in Reception Centres (under Article 25 of the Asylum Law, the asylum procedure shall be initiated by the submission of an asylum application to an authorised officer of the Asylum Office). On 11 May 2017, a request

¹¹ *Sl. glasnik RS*, 109/07.

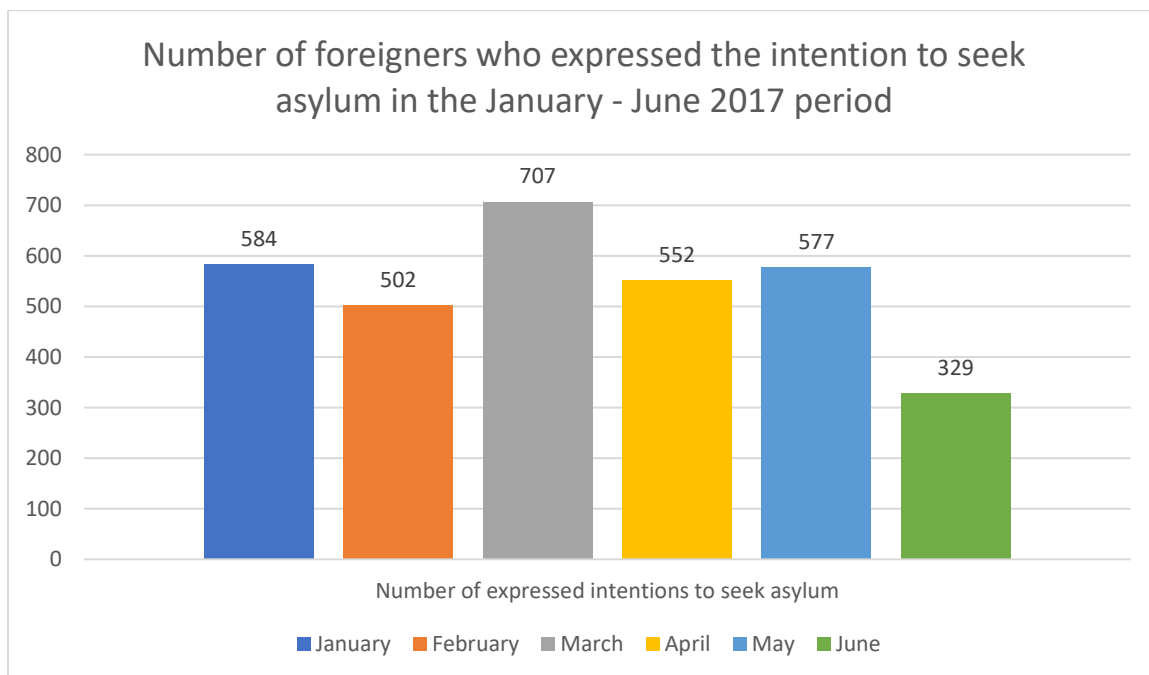
¹² *OKS* stands for Specific Category of Foreigners and denotes a database of foreigners in Serbia, in which all official measures the MOI has undertaken with respect to them are entered. Such measures include: rulings ordering them to leave the country (Article 35, Foreigners Law), motions to initiate misdemeanour proceedings against them and the imposed misdemeanour penalties, rulings referring them to the Shelter for Foreigners (Article 49, Foreigners Law), etc.

¹³ *Afis* is an MOI database in which data of perpetrators of crimes and misdemeanours in the territory of the Republic of Serbia are entered. Foreigners, who have expressed the intention to seek asylum, are also registered in it because it is much more reliable than *OKS* when it comes to checking data.

¹⁴ Article 49, Foreigners Law, *Sl. glasnik RS*, 97/08.

was submitted to the Asylum Office to schedule the submission of applications by seven BCHR clients staying at the Adaševci Reception Centre. The Asylum Office staff received the applications on 22 June 2017, in the police Šid Police and Border Police Stations. The group of foreigners, who submitted their applications on this occasion, included a three-member family from Cuba (BCHR's clients since 26 April 2017), which arrived in the Adaševci RC in September 2016. Therefore, over nine (9) months had passed from the moment they expressed the intention to seek asylum until they submitted their application.

A total of 3,251 foreigners expressed the intention to seek asylum in the Republic of Serbia in the 1 January-30 June 2017 period, 1,458 of them in the 1 April-30 June period; 2,769 were men and 482 were women. The intention to seek asylum was expressed by 1,535 children, 67 of them unaccompanied by their parents or guardians. Herewith a breakdown of foreigners who expressed the intention to seek asylum by month: January - 584, February - 502, March - 707, April - 552, May - 577 and June - 329. Most of them expressed the intention to seek asylum in the regional police administrations (2,953) and at border crossings (177). According to MOI data, the Belgrade airport Nikola Tesla officers did not register any foreigners who expressed the intention to seek asylum in that period. Such an intention was expressed by 14 residents of the Shelter for Foreigners and 95 residents of the Preševo Reception Centre in the first six months of the year.



Since the Law on Asylum came into force 619.101 persons expressed intention to seek asylum: 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; 12.821 in 2016; 3.251 in the first six months of 2017 .

Most of the foreigners who expressed the intention to seek asylum in Serbia in the first half of 2017 were nationals of Afghanistan (1,764), Pakistan (439), Iraq (422), Syria (234) and Iran (101). Such an intention was also expressed by nationals of Algeria (36), Bangladesh (32), Somalia (30), Sri Lanka (26), Palestine (21), Morocco (21), Cuba (18), Egypt (13), Ghana (13), India (10), Lebanon (9), Comoros (6), Libya (6), Turkey (6), Cameroon (5), FYROM (4), the Russian Federation (4), Ukraine (4), South African Republic (3), Nigeria (3), Bulgaria (2), Eritrea (2), Vietnam (2), Western Sahara (2) Bosnia and Herzegovina, the Czech Republic, Ethiopia, Yemen, China, Mongolia, the Democratic Republic of Congo, Nepal, Romania, the United States of America, Sudan, Tajikistan and Tunisia (one from each).

However, in the experience of BCHR's lawyers, officers of the Belgrade City Police Administration Department for Foreigners have systematically refused to issue certificates of intent to seek asylum to migrants with regard to whom the MOI had already taken legal measures envisaged by the Asylum Law or the Foreigners Law. Their practice has remained unchanged since the beginning of the year.¹⁵ Namely, these foreigners had already been issued certificates of intent to seek asylum by the MOI but they had not reported to the Asylum or Reception Centre they had been referred to or they were subsequently prevented from illegally crossing Serbia's borders. The MOI also refused to issue certificates of intent to foreigners whom the courts found guilty of illegally staying in Serbia (under Article 43 of the Foreigners Law) or had ordered them to leave the country (under Article 35 of the Foreigners Law). Police officers have probably considered they were preventing abuse of the asylum institute by denying these people access to the asylum procedure. Such conduct, however, is not in accordance with Articles 22 and 23 of the Asylum Law, which do not provide the police with any discretion to decide whether the expressed intention to seek asylum is well-founded or not. The police may report their suspicions of abuse to the Asylum Office, which is entitled to take the measures laid down in the law: refer the foreigners to the Shelter for Foreigners (Article 52(1(1)), Asylum Law) or prohibit them from leaving the Asylum Centre (Article 52(1(2)), Asylum Law). On the other hand, BCHR lawyers do

¹⁵ *Right to Asylum in the Republic of Serbia – January-March 2017 Periodic Report*, BCHR, Belgrade, 2017, available at: <http://azil.rs/en/wp-content/uploads/2017/05/periodic-report-january-may-2017-fin.pdf>

not have any information on whether officers in other Serbian police administrations have followed the suit of their Belgrade colleagues regarding access to the asylum procedure.

The problem that arises in the above situations is that asylum seekers may challenge rulings ordering them to leave the country with the MOI within 15 (fifteen) days from the day of service, but this legal remedy does not have suspensive effect. This legal remedy is ineffective in view of the fact that the filing of an appeal does not stay enforcement and that the foreigners are usually ordered to leave the territory of the Republic of Serbia within three (3), five (5) or 10 (ten) days. On the other hand, the question arises how a foreigner ordered to leave the country will actually leave the territory of the Republic of Serbia if the ruling was issued because s/he did not have a valid travel document (Article 11(1), Foreigners Law).

The case of Afghani minor M.W., BCHR's client, best illustrates the described practice of the Belgrade City Police Administration Department for Foreigners officers. On 22 June 2017, M.W., accompanied by his guardian, an officer of the Palilula Social Work Centre, entered the Savski venac Police Station to express the intention to seek asylum. However, rather than issuing him a certificate of intent, the relevant police officers issued a ruling ordering M.W. to leave Serbia and prohibiting him from returning until 22 June 2018, pursuant to Article 35 in conjunction with Article 11(1(1, 2 and 8)) of the Foreigners Law. The ruling ordered BCHR's client to leave Serbia within seven (7) days and stated that it had been established during a check of his data that M.W. had already been issued a certificate of intent to seek asylum on 20 September 2016, but that he had not reported to the Asylum Centre he was referred to within 72 hours. BCHR's lawyers appealed the ruling and the minor was referred to the Integration House for Vulnerable Refugees pending a decision on the appeal.

Access to the asylum procedure was granted to all foreigners assisted by BCHR lawyers in expressing the intention to seek asylum to the management of the Padinska Skela Shelter for Foreigners. The Shelter management notifies the Asylum Office of foreigners who expressed the intention to seek asylum and the latter issues them certificates of intent. The BCHR has no information on whether foreigners in the Shelter for Foreigners, who do not have legal representatives, have also been provided with access to the asylum procedure.

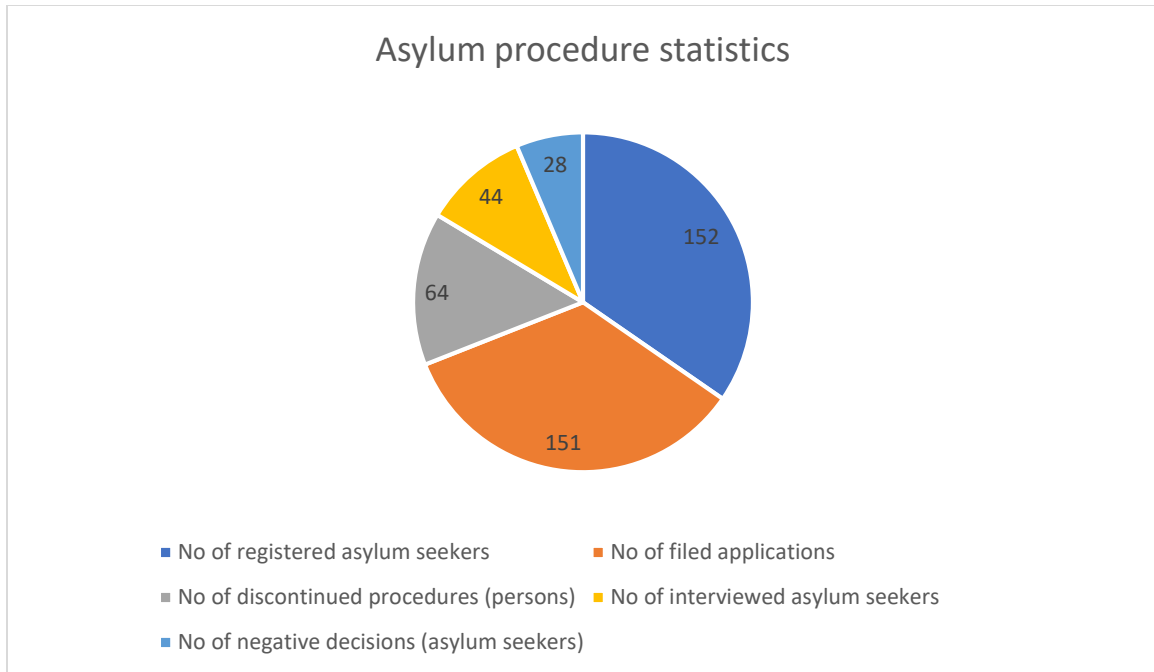
As mentioned, MOI data show that no foreign nationals expressed the intention to seek asylum at "Nikola Tesla" Airport in the past six months. It remains unclear whether this can be

ascribed to the fact that the Airport border police failed to recognise persons in need of international protection or that there were actually no such cases. No foreigners held at “Nikola Tesla” Airport in the first six months of the year contacted the BCHR to seek legal aid in the asylum procedure. The BCHR submitted a request for access to information of public importance with a view to collecting data on the number of foreign nationals denied entry at Airport “Nikola Tesla” in the 1 January – 30 June 2017 period because the police officers deemed they did not fulfil the requirements to enter the Republic of Serbia. The MOI had not replied to the request until the end of the reporting period.

It may generally be concluded that foreigners, with regard to whom the MOI has already taken official measures, have had major difficulties accessing the asylum procedure, particularly because appeals of rulings ordering them to leave the country do not have suspensive effect and the law does not envisage any legal remedies foreigners can apply to challenge the police officers’ refusal to issue them certificates of intent to seek asylum. Furthermore, the fact that the Asylum Office does not regularly perform official actions in all Asylum and Reception Centres has also hindered the foreigners’ access to the asylum procedure, notably, initiation of the asylum procedure by the submission of an asylum application.

First-Instance Procedure

Although 3,251 foreigners expressed the intention to seek asylum in the 1 January-30 June 2017 period, the Asylum Office registered 152 foreigners and only 151 foreigners applied for asylum in that period. The Office interviewed 58 asylum seekers in the reporting period but did not grant asylum to anyone; it dismissed four applications concerning four foreigners on the merits and dismissed 20 applications regarding 24 foreigners; it discontinued reviews of 40 applications regarding 64 foreigners, who had in the meantime left Serbia or withdrawn from the procedure. One of the chief problems arises from the fact that the Asylum Office, as the first-instance asylum authority, performed very few official actions in the reporting period, i.e. received asylum applications and interviewed asylum seekers (especially in April and May), despite the growing number of foreigners opting for staying in Serbia given their difficulties accessing the territories of the neighbouring states (Croatia and Hungary).



As of June 2017, around 40 BCHR clients were waiting for the Asylum Office to schedule an appointment at which they could submit their asylum applications. Some of them expressed the intention to seek asylum back in 2016 and the BCHR repeatedly appealed to the Asylum Office to perform the procedural actions.¹⁶ Herewith a breakdown of the Asylum Office's actions in 2017 by month: January – received 18 asylum applications and conducted 16 interviews; February – received 54 asylum applications and conducted 17 interviews; March – received 21 asylum applications and interviewed 18 asylum seekers. The Office did not receive any asylum applications and it conducted eight interviews in April. In May, it received nine asylum applications and conducted three interviews. In June, it received 50 applications and conducted three interviews. The Office performed the actions only in the Asylum Centres in Krnjača and Bogovađa, the Preševo Reception Centre and the border police stations in Šid and Belgrade, wherefore asylum seekers staying at other centres were practically denied the opportunity to file their asylum applications.

In the second quarter of the year, the Asylum Office continued its practice of arbitrarily profiling migrants living in the Asylum and Reception Centres,¹⁷ with a view to ascertaining whether they genuinely wanted to stay in Serbia, although this official action is not prescribed by

¹⁶ BCHR sent e-mails and telephoned the Asylum Office, and sent it a letter on 11 May 2017.

¹⁷ More in BCHR's *Right to Asylum in the Republic of Serbia – January-March 2017 Periodic Report*, p. 11, available at <http://azil.rs/en/wp-content/uploads/2017/05/periodic-report-january-may-2017-fin.pdf>

the Asylum Law.¹⁸ It remains unclear how and against which criteria it profiled the migrants and whether it engaged interpreters for the migrants' native languages or other languages they understand to assist. There was a case of a BCHR client, an Iranian woman, who had expressed the intention to seek asylum and wanted to settle down in Serbia; the police officers who profiled her concluded that she did not want to seek asylum in Serbia. This was the reason why the Asylum Office refused to schedule an appointment at which it would receive her asylum application, and specified as much in its letter to BCHR.¹⁹ The Iranian woman, a single mother of two children, had asked the BCHR to help her file an asylum application because she wanted to stay in Serbia. The Asylum Office ignored her request and she and her family were subjected to the disputable profiling. BCHR again insisted that she be allowed to apply for asylum in the Republic of Serbia. A lot of time passed and the woman eventually gave up trying to access the asylum procedure in Serbia. This can be qualified as a negative example of the Asylum Office's practice, because it failed to ascertain the real intention of the migrant in a procedure prescribed by law, thus depriving her of the opportunity to herself present her case.

As noted, the Asylum Office did not grant asylum to anyone in the first six months of the year. It issued four rulings dismissing asylum applications on the merits²⁰ and 20 rulings dismissing the applications.²¹ It discontinued the asylum procedure in 40 cases.²²

The decisions perused by BCHR lawyers lead to the conclusion that, like in the previous period, the Asylum Office based its decisions to dismiss applications on the fact that the asylum seekers had come to Serbia from states considered safe third countries under the 2009 Serbian Government Decision on Safe Countries of Origin and Safe Third Countries. The Asylum Office still does not give due consideration to the way in which country designated as safe apply their refugee law. Furthermore, despite the UNHCR reports indicating inadequate treatment of refugees in individual countries, wherefore they cannot be considered safe, the Asylum Office is of the view that the applicants themselves bear the entire burden of proving that they had personally been unable to seek asylum in specific "safe" countries.²³ The Asylum Office has thus

¹⁸ BCHR was told about this practice by its clients.

¹⁹ MOI letter 03/8/4 Ref. No. 26-738/17 of 10 April 2017.

²⁰ One in March, one in April and two in June 2017

²¹ Two in January, seven in February, four in March, two in April, two in May, and three in June 2017.

²² One in January, four in February, 17 in March, eight in April, four in May and six in June.

²³ The Asylum Office Ruling ref. No. 26-2185/16 of 20 February 2017 dismissing the asylum application specified that the applicant had failed to prove that Bulgaria was not a safe country for him (because he personally had not experienced any problems in that country) and that it concluded the applicant had access to the asylum procedure in Bulgaria upon its review of the statements

continued automatically applying the safe third country concept, without taking into account the objective reasons why the applicants were unable to obtain protection in one of the “safe” countries they had passed through before coming to Serbia. Furthermore, there are no records of cases in which the Asylum Office obtained guarantees that the unsuccessful asylum seekers would be accepted by the states from which they entered Serbia’s territory and that they would be granted access to the asylum procedure in them. The Asylum Office even said in its letter to BCHR that it did not have documents providing asylum seekers guarantees that they would be received by Bulgaria, Montenegro or the FYROM.²⁴ It also said it did not seek such guarantees because such an obligation was not laid down in the Asylum Law.

In one of its 2017 decisions dismissing an asylum application²⁵ filed by an Iraqi national, the Office held that the applicant had in this specific case proven that his safety was at risk in Bulgaria,²⁶ i.e. that Bulgaria was not safe for him, wherefore the requirements for applying Article 33 of the Asylum Law were not met, and it went on to review the decisive facts and took a decision on the merits of the application.²⁷ It, however, remains unclear why the Asylum Office failed to take such a view in other cases, in which the applicants also claimed they had been robbed and beaten up by the Bulgarian border police, and dismissed their applications without reviewing them on the merits.²⁸

The impression remains that the asylum procedure is neither fair nor efficient, that most asylum applications are dismissed under Article 33 of the Asylum Law and that fewer are reviewed on the merits. The Asylum Office needs to make sure that it does not base its decisions solely on the 2009 Serbian Government Decision and that it does not take into account only the statistical data and regulations recently adopted by the neighbouring countries. Rather, it should take into consideration reports on the actual situation of people in need of international protection

regarding Bulgaria. The Office, however, failed to consider the reports of relevant international organisations, including the UNHCR, about the grave deficiencies of the Bulgarian asylum system.

²⁴ Letter to the MOI Ref. No. 06-342/16 of 17 October 2016.

²⁵ Asylum Office Ruling Ref. No. 26-2303/16 of 15 June 2017.

²⁶ He had been robbed and beaten up by the Bulgarian border police a number of times, minutes of the interview conducted on 13 February 2017.

²⁷ After reviewing the grounds for asylum and the applicant’s statements during the interview, the Office nevertheless decided to dismiss the application, because it had not been established that the requirements under Article 31(1(1)) have been fulfilled. Under this provision, an asylum application shall be dismissed if there are serious reasons to believe that the applicant committed a crime against peace, a war crime, or a crime against humanity. An appeal of this Asylum Office decision was filed.

²⁸ Asylum Office Ruling Ref. No. 26-5867/15 of 20 April 2016.

in “safe” third countries and consult objective sources of information about these countries, notably, UNHCR reports.

Second-Instance Procedure

The Serbian Government appointed the new members of the Asylum Commission, which reviews appeals of asylum decisions, in March 2017. Since the terms in office of the previous Commission members expired in September 2016, the Commission was not operational for six months. In the first half of 2017, the Asylum Commission rendered several decisions on cases in which the asylum seekers were represented by BCHR lawyers. Some of them commendably amended the work of the Asylum Office, while others brought into question the proper interpretation of the definition of a safe third country under the Asylum Law. Although the Asylum Law specifies that safe third countries denote countries through which the asylum seekers had passed or resided in *immediately* before arriving in the Republic of Serbia (Article 2(1(11)) of the Asylum Law), the Asylum Commission overturned the first-instance decisions, requiring of the Asylum Office to explain why it had not qualified the other countries the asylum seekers had passed through or resided in as safe under the 2009 Government Decision on Safe Countries of Origin and Safe Third Countries.

The Asylum Commission issued a ruling overturning the first-instance decision²⁹ in the case of Russian Federation nationals K.O and K.I., who had left their country of origin in fear of political persecution. It also issued a ruling overturning the Asylum Office decision³⁰ dismissing the request for asylum in the Republic of Serbia. Having reviewed the appeals and case file, the Asylum Commission found that the Asylum Office had violated the rules of procedure when it adopted the impugned ruling because it had not assessed all the evidence in the procedure. The Asylum Office had also ignored the Asylum Commission’s instructions issued the first time it reviewed the appeal³¹ when it found that “the first-instance authority had reviewed and assessed only the facts it learned by personally interviewing the party during the oral hearing and based its decision on them” and instructed the Asylum Office to repeat the procedure and review and assess the facts presented to it before it reached the decision. The asylum seekers’ counsel had

²⁹ Asylum Commission Ruling 03/08/4 Ref. No. 26-4916/15, of 22 May 2017.

³⁰ Asylum Commission Ruling 26-4916/15, of 2 August 2016.

³¹ Asylum Commission Ruling AŽ-08/16 of 24 May 2016.

submitted the relevant reports of international organisations a (*Human Rights Watch, Immigration and Refugee Board of Canada et al*). As the Asylum Office failed to act on the Commission's instructions and take a view on the presented reports on the human rights situation in the Russian Federation, which are of relevance to a proper ruling on the asylum application, the Asylum Office acted in contravention of Article 232(2) of the General Administrative Procedure Law (GAPL).³² Furthermore, the reasoning of the impugned ruling did not specify the reports based on which the Office had decided to dismiss the asylum application. The Asylum Commission again instructed the Asylum Office to take a view on the reports on the human rights situation in the Russian Federation submitted during the first-instance procedure by the applicant's counsel and to render a decision on the application after a complete finding of facts. This Asylum Commission decision is a good practice example, because it corroborates the necessity of the authorities reasoning their decisions and corroborating their findings of fact by reference to the relevant reports of international organisations. The Asylum Office, however, issued a new ruling³³ dismissing the asylum application as Russian Federation is a safe country of origin. This decision was appealed as well.

The Asylum Commission dismissed the appeal filed by M.G., another Russian national³⁴. It based its decision on facts established during the oral hearing, and ignored the reports of international organisations submitted by the asylum seeker's representatives. M.G. is a Chechen, who left her country of origin in fear of persecution on grounds of her sex, i.e. of domestic violence (including honour killing) because she had violated the Chechen social norms. The Asylum Commission totally ignored the claims in the appeal and upheld the Asylum Office's view that M.G.'s family problems in the Russian Federation were not grounds for granting her asylum. The Asylum Commission failed to ascertain that her persecution was based on her sex, pursuant to the interpretation of Article 1A(2) of the UN Convention Relating to the Status of Refugees.³⁵ During its review of the appeal, the Asylum Commission failed to take into account the

³² Article 232(2) GAPL: 'In the event the second-instance authority finds that the deficiencies of the first-instance procedure will be eliminated more rapidly and cost-effectively by the first-instance authority, it shall issue a ruling overturning the first-instance ruling and instructing the first-instance authority to review the case again. In such cases, the second-instance authority shall specify in what respect the procedure needs to be supplemented and the first-instance authority shall fully comply with the second-instance ruling and adopt a new ruling without delay, within a maximum of 30 days from the day it receives the case. The new rulings may be appealed.'

³³ Asylum Office Ruling 03/08/4 Ref. No. 26-4916/17, of 31 May 2017.

³⁴ Asylum Commission Ruling 03/8 Ref. No.:26-286/16 of 20 June 2017.

³⁵ *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, UNHCR, May 2002.

allegations on the status of Chechen women in the Russian Federation (reports by EASO, the UN Committee against Torture and UN WOMEN) indicating that the asylum seeker's fear of persecution by the Chechen community because of her non-compliance with the social norms was well-founded and that she was unable to enjoy effective protection in the territory of the Russian Federation. Furthermore, the Asylum Commission said that the asylum seeker had family problems in her country of origin and that she was at risk of suffering specific consequences, but that this did not suffice to extend her refugee protection because she was not at risk of persecution by the state authorities. The Asylum Commission, however, overlooked the fact that persecution by non-state actors – the local population or paramilitary units was also grounds for extending refugee protection, in the event the country of origin was unable or unwilling to extend effective protection to the asylum seeker. This decision was appealed with the Administrative Court.

The Asylum Commission issued a ruling³⁶ overturning the ruling dismissing the asylum application of S.K.A., an Iraqi national, who had left his country of origin because he feared for his safety and that he would be mobilised by force. The Asylum Commission upheld S.K.A.'s appeal and overturned the Asylum Office's ruling. In the impugned ruling, the Asylum Office held that the asylum seeker had entered Serbia from the territory of a safe third country – FYROM, which S.K.A.'s representatives disputed in the appeal. In this case, however, the Commission went a step further and required of the Asylum Office to review whether Greece and Turkey were also safe third countries. The Commission incorrectly applied Article 2(1(11)) of the Asylum Law,³⁷ which, inter alia, specifies that safe third countries denote countries through which the asylum seekers had passed or resided in *immediately* before arriving in the Republic of Serbia. The Asylum Commission thus incorrectly instructed the Asylum Office to review whether Greece and Turkey were safe countries. In addition, the Commission reviewed issues beyond the appeal in this case, because it annulled the first-instance decision on the basis of facts that were not challenged in the appeal at all.

³⁶ Asylum Commission Ruling. Až-05-1/16 of 24 May 2017.

³⁷ Article 2(1(11)): "a safe third country shall denote a country on a list established by the Government, which observes international principles pertaining to the protection of refugees contained in the 1951 Convention on the Status of Refugees and the 1967 Protocol on the Status of Refugees (hereinafter referred to as: the Geneva Convention and the Protocol), where an asylum seeker had resided, or through which s/he had passed, immediately before s/he arrived in the territory of the Republic of Serbia and where s/he had an opportunity to submit an asylum application, where s/he would not be subjected to persecution, torture, inhuman or degrading treatment, or sent back to a country where his/her life, safety or freedom would be threatened"

The Asylum Commission upheld the appeal filed by a Libyan family A. and overturned the Asylum Office ruling dismissing the asylum application as ill-founded, instructing it to reopen the case.³⁸ The A. family had left Libya because they were persecuted in it and because of the security situation there. In its ruling dismissing the application, the Asylum Office referred to numerous reports on the situation in Libya,³⁹ but did not take a view on them. In its ruling on the appeal, the Asylum Commission stated that “the reports were used, i.e. presented as evidence, but were not reviewed, assessed or explained.” The first-instance ruling suffers from deficiencies in its explanation of the application of Article 30(1(2)) of the Asylum Law.⁴⁰ Namely, the grounds specified in the reasoning of the appealed ruling are neither clear nor precise, wherefore a conclusion on whether the application of that legal norm is well-founded cannot be drawn. The Office has thus acted also in contravention of Article 10 of the GAPL.⁴¹ In this case, the Asylum Commission did not itself rule on the merits of the administrative matter, although all the facts had already been established during the asylum procedure; rather, it invoked the principle of economy of proceedings and instructed the first-instance authority to again review the asylum application.

Two conclusions can be drawn from the analysis of the Asylum Commission’s case law. First, the Asylum Commission has been alerting the Asylum Office to the need to improve the quality of and elaborate the reasonings of its rulings and peruse the reports on the state of human rights in the asylum seekers’ countries of origin and transit countries. The Commission’s view is a good practice example and can considerably improve the quality of first-instance decisions. Second, the Asylum Commission has been interpreting the definition of a safe third country in the Asylum Law incorrectly and even more restrictively, and requiring of the Asylum Office to qualify all transit countries as safe third countries in the remitted cases, although, under the

³⁸ Asylum Commission Ruling, Až-15-1/16, of 24 May 2017.

³⁹ Amnesty International, *Amnesty International Report 2014/15 – Libya*, UNHCR, *Report on the Human Rights Situation in Libya*, November 2015., *UNHCR Position on Returns to Libya – Update*, October 2015.

⁴⁰ Article 30(1(2)): An asylum application shall be considered ill-founded if it has been established that a person who filed the application does not meet the requirements prescribed for granting the right to refuge or subsidiary protection, and in particular [...]“if the statements given in the asylum application regarding facts of relevance to the decision on asylum contradict the statements made in an interview with the asylum seeker in question or other evidence gathered in the course of the procedure (if, contrary to the statements given in the application, it has been established in the course of the procedure that the asylum application was submitted for the purpose of postponing deportation, that the asylum seeker has come for purely economic reasons, et al);”

⁴¹ Article 10, GAPL: “ The authorised officer shall at his/her own discretion determine which facts are to be admitted as evidence on the basis of a diligent and thorough assessment of each piece of evidence individually and in their entirety, as well as on the basis of the outcome of the entire procedure.”

Asylum Law, safe third countries are the ones from which the asylum seekers had directly entered Serbia.⁴²

Case Law of the Administrative Court

Asylum seekers may file lawsuits against final asylum rulings with the Administrative Court within 30 days from the day of service. A lawsuit may be filed in the event the second-instance authority failed to render a decision by the prescribed deadline (lawsuit challenging the silence of the administration). A lawsuit does not have automatic suspensive effect, which means that the party that filed it may seek stay of enforcement pending a decision of the Administrative Court.⁴³ However, the first-instance decisions in practice specify a deadline by which they are to be enforced from the day they become final. Given that a decision on asylum becomes final only once the Administrative Court rules on the lawsuit (or within 30 days from the day of service of the second-instance decision if no lawsuit is filed), the Administrative Court's decision practically has suspensive effect. The law should nevertheless explicitly lay down that lawsuits challenging asylum decisions shall have suspensive effect.

Three lawsuits challenging the Asylum Commission's rulings and two lawsuits challenging the silence of the administration were filed with the Administrative Court in the first six months of 2017. The Court ruled on two lawsuits filed in 2017 in the reporting period: it dismissed one lawsuit challenging the silence of the administration and dismissed a lawsuit challenging a ruling on the asylum application on the merits. The Administrative Court delivered nine decisions on lawsuits filed in 2016: it ruled in favour of the plaintiff in one case, dismissed seven lawsuits and discontinued the proceedings in one case.⁴⁴ The Court did not rule on the merits of the administrative matter in any of the cases. Nor did it hold oral hearings in cases regarding the right to asylum, deeming that the nature of any facts in dispute did not necessitate an oral hearing. This Report will draw attention only to the decisions bringing into question the effectiveness of this legal remedy and the Court's only decision in favour of the plaintiff in the first half of the year.

⁴² Article 2(1)(11)), Asylum Law.

⁴³ Article 23, Administrative Disputes Law, *Sl. glasnik RS*, 111/09.

⁴⁴ The Administrative Court's reply to a request for access to information of public importance Su II-17a 87/17 of 4 July 2017.

In the case of an Iraqi asylum seeker, S.H., who had left his country of origin due to persecution because of his political opinions (he was a member of the Kurdistan Democratic Party), the Administrative Court dismissed the lawsuit, ruling that the Commission had correctly qualified Hungary as a safe third country, from which the asylum seeker directly entered Serbia.⁴⁵ Namely, the Administrative Court absolutely ignored the UNHCR report “Hungary as a country of asylum. Observations on restrictive legal measures and subsequent practice implemented between July 2015 and March 2016”⁴⁶ referred to in the lawsuit and indicating that the asylum procedure in that country was not fair and that there were serious problems with respect to the compatibility of Hungarian laws with EU law. The Administrative Court ought to have also been familiar with the European Court of Human Rights judgment in the case of *Ilias and Ahmed v. Hungary*⁴⁷ of 14 March 2017, in which that ECtHR identified numerous shortcomings of the Hungarian asylum procedure and found Hungary in violation of Articles 5 and 3 of the European Convention on Human Rights. This case is analogous to the case of Iraqi national S.H.⁴⁸ who had, before entering Hungary, stayed in Serbia, where he was unable to access the asylum procedure. Given that the competent Hungarian authorities consider Serbia a safe third country, it may be presumed with certainty that S.H. would also have been returned to Serbia after a summary asylum procedure in Hungary. Particularly problematic is the Administrative Court’s view that asylum authorities are not authorised to decide whether countries listed in the 2009 Government Decision are safe for the asylum seekers and that they are under the obligation to consider them as safe if they are on the list. This view supports the automatic application of the safe third country concept by the Asylum Office and Commission.

In another case, in which it dismissed the lawsuit filed by a Pakistani national, the Administrative Court said that Bulgaria was a safe third country and that the asylum seeker had not proven that it was not safe for him personally. The Administrative Court failed to diligently review the relevant reports by international organisation submitted together with the lawsuit in this case as well. The Court said that these reports could not per se constitute evidence that some

⁴⁵ Administrative Court Judgment 4 U 3027/17 of 7 April 2017.

⁴⁶ UNHCR, “Hungary as a country of asylum. Observations on restrictive legal measures and subsequent practice implemented between July 2015 and March 2016”, May 2016, available at: <http://www.refworld.org/docid/57319d514.html> [accessed on 19 July 2017]

⁴⁷ Application No. 47287/15.

⁴⁸ The applicants, two nationals of Bangladesh, passed through Serbia on their way to Hungary.

countries did not comply with the Convention Relating to the Status of Refugees.⁴⁹ The Court thus concluded that the plaintiff had not submitted proof corroborating his claim that Bulgaria was not a safe third country. Its reasoning leads to the conclusion that it considered as relevant only evidence regarding the treatment of the plaintiff in a specific safe third country, whereas objective and impartial facts about the non-functioning of a country's asylum system are not evidence the relevant authorities should take into account in their decisions on asylum applications.

The Administrative Court took a similar view in several cases in which the asylum applications were dismissed by the application of the safe third country concept, because the asylum seekers had passed through or spent short periods of time in FYROM.⁵⁰ Although the plaintiff submitted the UNHCR report on the status of asylum seekers in FYROM⁵¹ advising states not to return refugees to that country because its asylum procedure was unfair and inefficient, the Administrative Court held that the plaintiff's claim that he was deprived of the right to asylum in FYROM was ill-founded because he presented no evidence that he had been unable to seek asylum in that country and that it was unsafe for him and that he did not express the intention of actually seeking asylum in it. The Court reiterated that the relevant asylum authorities were not under the obligation to ascertain whether the states listed in the 2009 Government Decision were actually safe, but merely to apply the Decision.

The only case in which the Administrative Court ruled in favour of the plaintiff in the first half of 2017 was the one in which it found that it had not been established by the asylum authorities whether the asylum seeker had passed through or stayed in FYROM on his way to Serbia (his asylum application was also dismissed by the application of the safe third country concept).⁵² Although the plaintiff denied that FYROM was a safe country, corroborating his claims by referring to the relevant objective reports, the Court ignored that evidence and overturned the Asylum Commission decision solely because the plaintiff said at the hearing that

⁴⁹ Administrative Court Judgments 17 U 12672/16 of 12 January 2017, 25 U 12673/16 of 20 January 2017, 1 U 13344/16 of 23 March 2017 and 7 U 14749/19 of 9 June 2017.

⁵⁰ Administrative Court judgments 9 U 14748/16 of 9 May 2017 and 7 U 14749/19 of 9 June 2017.

⁵¹ UNHCR, "The Former Yugoslav Republic of Macedonia as a country of asylum: Observations on the situation of asylum-seekers and refugees in the Former Yugoslav Republic of Macedonia", August 2015, available at: <http://www.refworld.org/docid/55c9c70e4.html> [accessed on 20 July 2017]

⁵² Judgment 7 U 12861/16 of 21 April 2017.

he had passed through FYROM, whereas the Asylum Office and Commission had stated he had spent some time in it.

Due to such views of the Administrative Court, the Asylum Law is not enforced in compliance with the Convention Relating to the Status of Refugees, ECtHR standards or the view of the Serbian Constitutional Court (expressed in its Decisions UŽ-1286/2012 of 29 March 2012 and 5331/2012 of 24 December 2012) that UNHCR reports contributed to the relevant Serbian authorities' application of the Asylum Law. The ECtHR has repeatedly noted that it was up to the authorities of states not merely to assume that the applicant would be treated in conformity with the Convention standards but, on the contrary, to first verify how the authorities of specific countries applied their legislation on asylum in practice.⁵³ Therefore, the relevant asylum authorities are definitely under the obligation to ascertain whether or not a country is really a safe third country; otherwise, the automatic application of the 2009 Government Decision listing the safe countries of origin and safe third countries may result in a violation of the non-refoulement principle and Article 3 of the ECHR.

Status of Asylum Seekers and Migrants in the Asylum and Reception-Transit Centres⁵⁴

A number of international instruments on minimum reception standards have been developed under the auspices of the UNHCR,⁵⁵ and in EU directives,⁵⁶ and Council of Europe documents. These documents define minimum reception standards as accommodation in

⁵³ *M.S.S v. Belgium and Greece*, Application No. 30696/09, Grand Chamber judgment of 21 January 2011. "The Court considers, however, that it was in fact up to the Belgian authorities, faced with the situation described above, not merely to assume that the applicant would be treated in conformity with the Convention standards but, on the contrary, to first verify how the Greek authorities applied their legislation on asylum in practice." (paragraph 359).

Ilias and Ahmed c. Hungary, Application No. 47287/15, judgment of 14 March 2017. The Hungarian authorities relied solely on the Government list of safe third countries (including Serbia) and totally ignored the reports of relevant international organisations and other evidence of treatment of asylum seekers in Serbia (paragraph 118).

⁵⁴ In Q2 2017, the BCHR team conducted 34 visits to the Asylum Centre in Krnjača, and 11 visits to each of the following Asylum Centres: in Banja Koviljača, Tutin and Bogovađa, as well as 12 visits to the Asylum Centre in Sjenica. It performed its regular weekly activities in the Reception-Transit centres in Bujanovac, Preševo, Dimitrovgrad, Pirot, Divljana and Bosilegrad, and, when necessary, visited the Reception Centres in Adaševci and Principovac at Šid, and in Obrenovac, Subotica and Vranje.

⁵⁵ See, e.g. Reception Standards for Asylum Seekers in the European Union, UNHCR, 2000, available at:

<http://www.unhcr.org/protection/operations/43662ddb2/reception-standards-asylum-seekers-european-union.html>.

⁵⁶ Directive 2013/33/EU laying down standards for the reception of applicants for international protection and Directive 2003/09/EC laying down minimum standards for the reception of asylum seekers.

facilities guaranteeing a specific degree of privacy and dignity, adequate sanitary and hygiene conditions, regular meals of adequate nutritional value fulfilling the beneficiaries' cultural and religious dietary requirements, provision of basic non-food products such as clothing, footwear, personal hygiene products, bed linen and towels, medical examinations on arrival and health care of persons suffering from acute illnesses. Migrants also have to be provided with access to legal counselling, psycho-social protection and adequate information in the language they understand about the legal aspects of their status, the asylum procedure and special procedures for the protection of vulnerable groups. Although the fulfilment of these standards is primarily the obligation of the state, in Serbia, it mostly depended on civil society organisations, which have been extending services and protection to migrants free of charge,

There were five⁵⁷ Asylum Centres and 13⁵⁸ Reception-Transit Centres, which could take in a total of 5,930 people, in Serbia in the reporting period; 5,522 asylum seekers and migrants were living in them in late June 2017.⁵⁹ Although there are two categories of facilities, Asylum Centres and Reception-Transit Centres, referral to them was not conducted in accordance with clearly set criteria; rather, it depended on which of them had free beds, wherefore various categories of migrants-asylum seekers and foreigners who have not sought asylum in Serbia and have not regulated their legal status were accommodated in them. In this respect, and seeing that the Asylum Office does not conduct administrative actions in all facilities, the cooperation and coordination between the Asylum Office and the Commissariat for Refugees and Migration (the body under which jurisdiction are most of accommodation facilities) needs to be improved.

In the past few months, the Reception Centre in Šid was closed and Reception Centres in Obrenovac, Kikinda and Vranje were opened. The Sjenica Asylum Centre has been provided with a brand-new facility, which can take in up to 250 people. During the reporting period, the greatest numbers of migrants were staying at the Asylum Centre in Krnjača and the Reception Centres in Obrenovac, Adaševci and Preševo, while the fewest migrants resided at the Asylum Centre in Tutin. Some of these Centres were overcrowded; the number of migrants staying at the Reception Centre in Adaševci was double its capacity, which is why many of them slept in large tents in the

⁵⁷ In Banja Koviljača, Bogovađa, Krnjača, Sjenica and Tutin.

⁵⁸ In Adaševci, Bosilegrad, Bujanovac, Dimitrovgrad, Divljana, Kikinda, Obrenovac, Pirot, Preševo, Principovac, Sombor, Subotica, Vranje.

⁵⁹ UNHCR Serbia Update 26 June-02 July 2017, *UNHCR*, July 2017, available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/58391.pdf>.

yard. The Asylum Centres in Bogovađa and Banja Koviljača, as well as the Reception Centres in Obrenovac, Principovac and Sombor, were also overcrowded, but to a lesser degree. On the other hand, the Reception Centre in Preševo had the greatest number of spare beds. Provision of a minimum degree of privacy was problematic not only in the overcrowded Centres, but also in the ones with collective dormitories with over 30 beds, separated by screens, like the ones in the Reception Centres in Preševo and Dimitrovgrad. The migrants' privacy was also violated in the Centres in Divljana, Pirot and Principovac, which do not have separate bathrooms for men and women. A satisfactory degree of privacy was afforded only in the Reception Centre in Vranje, housed in a former hotel, in which every family has its own room with a bathroom.

All Centres endeavoured to comply with the principle of family unity on admission, but were often unable to provide separate rooms or facilities for vulnerable groups, such as unaccompanied children. Only the Asylum Centre in Krnjača had a separate facility for the accommodation of unaccompanied children, while the other Centres usually accommodated such children (as a rule, boys) together with adult men not travelling with their families. Exceptionally, Centres, such as the one in Adaševci, accommodated the unaccompanied girls referred to this Centre, in separate rooms.

Asylum seekers and other migrants accommodated in Asylum and Reception Centres are provided with food and health care, for the most part from donations or the direct provision of services by international and national non-government organisations. The availability of other services in the Centres varies, depending on the presence of civil society organisations; the greatest number of services was still available in the Centres close to Belgrade and the fewest in Bosilegrad, Pirot, Sjenica and Tutin.

The regime in the Asylum Centres is regulated by the Rulebook on Asylum Centre House Rules,⁶⁰ but it remains unknown which legal enactment the regime in the Reception-Transit Centres. The vast majority of Reception Centres are under minimum security and the managements of some Centres issue the migrants special passes with which they can leave the Centre during the day. The security level in the Preševo and Obrenovac Reception Centres is somewhat higher and only a specific number of migrants are allowed to leave them for short periods of time during the day. In the reception centres in Pirot, Divljana, Dimitrovgrad and

⁶⁰ *Sl. glasnik RS*, 31/08.

Bosilegrad there is also a limited freedom of movement in terms of the number of people who can be outside the center at the same time. Although there are no direct sanctions for people who leave one of the four centres without a permission, only those who have a permission can get documents confirming their status, while others risk being stopped by a police patrol.

The availability of legal aid and psycho-social support services, two extremely important elements of migrant protection, varied among the Centres, in some of them, because the managements were unwilling to let the NGOs conduct their activities on the Centre grounds.

The living conditions in the Asylum and Reception Centres in Serbia vary greatly. As opposed to the Asylum Centres, which are established under the Asylum Law for the accommodation of asylum seekers for longer periods of time, pending the completion of the asylum procedure, the Reception Centres were established during the refugee crisis as temporary centres in which the migrants were to stay several days. Even the new facilities built specifically to take in migrants have large dormitories, with over 30 beds, and are unsuitable for longer sojourn. Smaller rooms with bathrooms would provide more privacy and are more suitable for longer sojourn, particularly in view of the fact that the migrants have been staying in the Centres for several months now. Furthermore, the authorities need to enact a by-law governing the regime in Reception Centres, like they did in the Asylum Centres by the Rulebook on Asylum Centre House Rules. The Protector of Citizens (National Preventive Mechanism) noted a number of deficiencies in the accommodation provided to migrants and asylum seekers in 2017.

[Activities of the National Preventive Mechanism \(NPM\)](#)

With a view to examining the treatment of refugees and migrants by the relevant public authorities pursuant to the valid regulations and international standards, the National Preventive Mechanism (NPM)⁶¹ conducted 29 visits in the reporting period. It visited the Asylum Centres,

⁶¹ The National Preventive Mechanism is a body charged with continuous monitoring of institutions holding persons deprived of liberty, with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment. Under the Law Amending the Law Ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the NPM duties shall be performed by the Protector of Citizens.

Reception Centres, the Shelter for Foreigners in Padinska Skela, the Border Police Regional Centre towards Bulgaria, the Niš Centre for Children and Youths and the informal venues at which refugees have been rallying.

As opposed to its visits in the past, which focused on the police treatment of migrants and foreigners in need of international protection, the NPM's 2017 visits focused on the accommodation conditions in the Asylum and Reception Centres. The NPM issued 36 recommendations to public authorities to address the irregularities and improve the migrants' status. These recommendations were issued to the Commissariat for Refugees and Migration (CRM), the MOI, the Ministry of Labour, Employment and Veteran and Social Issues (MLEVSI) and Social Work Centres. It needs to be noted that the NPM had already issued many of these recommendations and reiterated them after its 2017 visits, because it ascertained that they had not been acted on by the authorities they had been addressed to.

Most of the recommendations on irregularities concern the migrants' and refugees' poor living conditions. During its visit to the Obrenovac Reception Centre in February, the NPM noted that the living conditions in it were poor but that the Centre had just opened and that the CRM officers said that its adaptation was planned. However, after its follow-up visit in June⁶², the NPM reiterated that "[H]ygiene in the facilities in which the migrants are accommodated is extremely poor ... most of the toilets are decrepit, and the sanitary equipment is dilapidated ..." In its Report on the Visit to the Regional Border Police Centre towards Bulgaria⁶³, contrary to the police officers' claims, the NPM ascertained that there was a room in the Centre in which they held migrants, which did not satisfy even the minimum living conditions (it did not have a toilet, drinking water or adequate heating). In its report on the Visit to the Shelter for Foreigners in Padinska Skela⁶⁴ the NPM noted the extremely poor hygiene in the Shelter and concluded that specific measures to ensure adequate living conditions in the facility had not been undertaken since its prior visit in 2016.

Given that many children live in the Reception Centre, the NPM reviewed the work of the Social Work Centres during all of its visits. Although there are good practice examples, e.g. that of the Pirot Social Work Centre, the staff of which interview all the families living at the Reception

⁶² Report on the Visit to the Reception Centre in Obrenovac 281-48/17 of 3 July 2017.

⁶³ Report on the Visit to the Regional Border Police Centre towards Bulgaria 281-15/17 of 24 February 2017.

⁶⁴ Report on the visit to the Shelter for Foreigners in Padinska Skela 281-50/17 of 22 June 2017.

Centre,⁶⁵ the NPM concluded that, in most cases, the social workers rarely visited the Reception Centres and that the MLEVSI and the Social Work Centres had to ensure the presence of their professional staff in the Reception Centres.⁶⁶

Another problem very frequently alerted to in the NPM reports is the lack of interpreters, especially for Farsi, Urdu and Pashtu, which has resulted in major difficulties in communication between the staff and the migrants, especially in the Reception Centres.

A lot of foreigners issued certificates of intent to seek asylum were staying at Reception Centres. Although some of them had been issued such certificates as many as six months before the NPM visited the Centres, none of them were registered or issued IDs under the Asylum Law. They have had difficulty initiating the asylum procedure since the Asylum Office staff have not been visiting the Reception Centres to receive asylum applications,⁶⁷ wherefore the NPM recommended to the Office to register foreigners issued certificates of intent to seek asylum and to conduct all the actions prescribed by the Asylum Law.

The NPM ascertained that physical and verbal clashes frequently broke out among the migrants in the Asylum and Reception Centres, as well as among the migrants and CRM staff, but that official reports on such incidents were not drawn up. The NPM Teams learned about them only from their interviews with the migrants, refugees and CRM staff. In order to ensure the efficient exchange of information about the developments on the ground and the security situation, with a view to ensuring proper and timely response, the NPM recommended to the CRM⁶⁸ to take the requisite measures to ensure that all Asylum and Reception-Transit Centres register out-of-the-ordinary events. Such records should, at the very least, comprise detailed descriptions of the out-of-the ordinary events, identify the migrants who had taken part in them and the undertaken measures (whether the police or another service was called, medical examinations, any measures taken against the migrants, et al).

⁶⁵ Report on the Visit to the Reception Centre in Pirot 281-7/17, February 2017.

⁶⁶ See the Report on the Visit to the Reception Centre in Dimitrovgrad 281-7/17, February 2017, or the Report on the Visit to the Reception Centre in Divljana 281-36/17.

⁶⁷ As the NPM noted in its reports on the visits to the Reception Centres in Pirot, Dimitrovgrad, Bosilegrad and Divljana.

⁶⁸ Report on the Visit to the Asylum Centre in Krnjača 281-49/16 of 3 July 2017.

Status of Unaccompanied Children

Refugee and migrant children have continued irregularly moving towards Europe, both in the company of adults or unaccompanied, although the so-called Balkan Route was closed over a year ago. The changed circumstances prompted the children to turn for help to organised smuggling networks, to help them reach their destinations. A report prepared by the International Rescue Committee and *Save the Children* in cooperation with several other NGOs, including the BCHR, estimated that around 1,300 unaccompanied migrant and refugee children travelling the still active Balkan Route were exposed to daily risks of exploitation, violence and human trafficking due to the increasingly restrictive border control policies.⁶⁹ As the weather improved, many children left the Serbian Reception Centres with the intention of illegally crossing the border with the help of smugglers. In May 2017 alone, 148 unaccompanied children left the Reception Centre in Preševo and 18 children left the Reception Centre in Bujanovac.⁷⁰ A fifteen-year-old unaccompanied boy from Afghanistan was killed in a tragic accident on the highway near the Reception Centre in Adaševci on 23 June, while his 13-year-old friend, who was seriously injured, was taken to the hospital. The accident reportedly occurred when the two boys jumped out of a moving truck when they realised it was heading towards Belgrade rather than Croatia.⁷¹

Out of the 1,535 children, who had sought asylum in Serbia since the beginning of the year, 67, most of them from Afghanistan, were not accompanied by their parents or guardians. In view of the situation in the field and reports by numerous organisations, including by UNHCR,⁷² it may be concluded that the number of unaccompanied children in Serbia is much higher, but that their status is irregular and that they are not covered by the protection system. The children, who had for months lived in the deserted storehouses near the Belgrade Main Bus Station, were transferred to the Asylum Centre in Krnjača in May. Most of the unaccompanied children in the reporting period were living at the Reception Centres in Obrenovac and Adaševci, which do not

⁶⁹ "Out of Sight, Exploited and Alone – A Joint Brief on the Situation for Unaccompanied and Separated Children in Bulgaria, the Former Yugoslav Republic of Macedonia, Serbia and Croatia," International Rescue Committee, March 2017, p. 2, available at: <https://www.rescue.org/sites/default/files/document/1489/outofsightexploitedandaloneweb.pdf>.

⁷⁰ Interagency Operational Update Serbia May 2017, UNHCR, June 2017, available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/58242.pdf>.

⁷¹ UNHCR Serbia Update 19-25 June 2017, UNHCR, June 2017, p. 1, available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/58187.pdf>.

⁷² Available at: <http://data2.unhcr.org/en/situations/mediterranean>.

have separate facilities for these children or professional staff capable of extending them protection at all times. Serbia still does not have separate, specialised social institutions in which this particularly vulnerable category of migrants can live and enjoy the special attention it requires.⁷³

Some headway has been made over the prior reporting period re the assessments of the best interests of the child and appointment of the children's guardians by the competent Social Work Centres, albeit not in all the Centres. With UNHCR's support, the Obrenovac Social Work Centre started implementing systematic assessments of the best interests of all the unaccompanied children in the Reception Centre in that municipality. Assessments of the best interests of all unaccompanied children were conducted also in the Centres in Adaševci, Bogovađa, Dimitrovgrad, Kikinda, Krnjača, Preševo, Principovac, Sombor and Subotica. Lack of professional social workers and interpreters has, however, in practice often resulted in the children's inability to engage even in basic communication with the guardians they had been appointed.⁷⁴

The enrolment of unaccompanied migrant children in Serbian schools started in December 2016. Ninety-four unaccompanied children were enrolled in ten primary schools and the authorities plan on enrolling unaccompanied children in all the schools within the nine regional school administrations covering the municipalities in which the Asylum and Reception Centres are located at the outset of the 2017/2018 school-year.⁷⁵ UNICEF and its partner organisations, including the Centre for Educational Policy, planned to extend support to schools and collect data on children of school age to be covered by the Serbian education system during the summer holidays. In early May 2017, the Ministry of Education, Science and Technological Development issued Guidance on the Integration of all Children in the Education System (Guidance),⁷⁶ which governs in detail the enrolment of the pupils and extension of support to their inclusion in the school system. The adoption of the Guidance is a major step forward, particularly in view of the fact that over 2,000 migrant children of school age are living in Serbia⁷⁷

⁷³ More in *Unaccompanied and Separated Children in Serbia*, BCHR, May 2017, pp. 23-24, available at: <http://azil.rs/en/wp-content/uploads/2017/06/Unaccompanied-and-Separated-Children-in-Serbia.pdf>.

⁷⁴ The conclusion the BCHR Team drew on the basis of its monitoring visits to Asylum and Reception Centres.

⁷⁵ Information obtained from Centre for Educational Policy Project Coordinator Ivana Cenerić.

⁷⁶ Ref. No 301-00-00042/2017-18 of 5 May 2017.

⁷⁷ Source: Ministry of Education, Science and Technological Development. Available in Serbian at: <http://www.mpn.gov.rs/obrazovanje-dece-migranata>.

and that they have to be integrated in the formal school system without delay, as laid down in the Convention on the Rights of the Child⁷⁸ and Serbian law.⁷⁹ Under the Guideline, children who lacking school certificates, which migrant children as a rule do not have, will be tested to check their knowledge. Based on the test results, the schools' professional inclusive education teams will draw up individual plans of support the schools will extend the pupils, which may entail the engagement of interpreters for the languages the children understand and other professionals, depending on the schools' finances. The support plans may also prescribe preparatory classes for migrant children, lasting between two weeks and two months, to facilitate their gradual adjustment, an intensive Serbian Language course, individualised teaching activities and the children's involvement in extracurricular activities. Given that the Guidance was adopted at the end of the previous school-year, it will not be possible to assess the effects and scope of their enforcement until the new school-year begins in September 2017.

In some of the Asylum and Reception Centres in local communities where formal education is not provided, civil society organisations were implementing informal education activities, including lessons in Serbian and foreign languages, math, geography, various forms of vocational training, et al. In May 2017, the humanitarian organisation ADRA started implementing vocational training in specific occupations⁸⁰ for unaccompanied children staying at the Asylum Centre in Krnjača. Depending on the occupation, the training lasts between one and three months; the participants are issued certificates they can apply for jobs with. Training has also been implemented within the so-called Integration House, run by the Jesuit Refugee Service, accommodating 20 unaccompanied and separated children under 14 years of age, placed under the guardianship of the city Social Work Centre.⁸¹

As per permanent arrangements for unaccompanied children are concerned, the Belgrade Centre for Foster Care and Adoption started implementing a project entitled "Adequate Care and Protection of Unaccompanied Children in Migration Situations: Building Capacity for Quality Foster Care" in cooperation with Save the Children and the International Rescue Committee and with MLEVSI's support. The project involves providing 90 foster families in Belgrade, Novi Sad

⁷⁸ Articles 28 and 29 of the Convention.

⁷⁹ Articles 3 and 6 of the Education System Law, *Sl.glasnik RS* 72/2009, 52/2011, 55/2013, 35/2015 - authentic interpretation, 68/2015 i 62/2016 - Constitutional Court Decision.

⁸⁰ Painter, hairdresser, baker, cook, beautician, tailor, car mechanic, tiler, plumber, et al.

⁸¹ See: <http://jrsserbia.rs/en/our-projects/>.

and Niš with specialized training in caring for unaccompanied refugee children. Thirty-eight families were fully trained and ready to provide foster care to migrant children in mid-June; 21 children have so far been placed with foster families.⁸² Foster care of unaccompanied children will hopefully spread in view of the positive aspects of this form of alternative care and Serbia's commitment to deinstitutionalisation.

European Commission's Comprehensive Framework on the Protection of Children in Migration⁸³

"In recent years, the number of children in migration arriving in the European Union, many of whom are unaccompanied, has increased in a dramatic way. In 2015 and 2016, around thirty per cent of asylum applicants in the European Union were children. There has been a six-fold increase in the total number of child asylum applicants in the last six years. The recent surge in the number of arriving migrant children has put national systems and administrations under pressure and exposed gaps and shortcomings in the protection of all categories of children in migration."⁸⁴ With a view to adequately responding to the problem, the European Commission (EC) on 12 April 2017 adopted a Communication on Protection of Children in Migration, the first comprehensive framework on the protection of migrant and refugee children. The EC Communication lays out a coordinated set of actions to be undertaken both at the EU and the national, regional and local levels, in cooperation with the civil sector and international organisations. This document is of major relevance to Serbia as it also deals with the protection of children along the migrant route in the transit countries, focusing on unaccompanied migrant children, the number of which has been growing in Serbia every month.

Informed by experiences in all relevant EU policy areas, the EC offers a set of principles and suggestions aimed at protecting the children's rights from the moment they arrive in Europe until their integration, whether or not they have come with their families or unaccompanied. The Communication sets out the priority measures to be taken in all stages – from identification and

⁸² "Over 2,500 Refugee and Migrant Children in Serbia," *RTS*, 14 June 2017, available in Serbian at:

<http://www.rts.rs/page/stories/sr/story/125/drustvo/2769330/u-srbiji-vise-od-2500-dece-izbeglica-i-migranata.html>.

⁸³ Communication from the Commission to the European Parliament and the Council: The protection of children in migration, 12 April 2017, *COM(2017) 211 final*, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf.

⁸⁴ *Ibid*, p.2.

reception, determination of status and family reunification, to ensuring access to health care and education.

The Communication sets out that persons directly responsible for the protection of the children should be present during the registration procedure and in all facilities in which children are accommodated; this involves the appointment of child protection officers at each hotspot. The needs and best interest of the child must be assessed immediately upon the child's arrival and all children, regardless of their status, must have access to legal aid, health care, psycho-social support and education. Unaccompanied children need to be appointed guardians and alternative care options need to be reviewed. EU Member States are under the obligation to place the children in administrative detention only if all the other options have been exhausted and only for short periods of time.

The Communication provides for the establishment of a European guardianship network to exchange good practices; the EASO is to update its guidance on age assessment. The Commission will promote the integration of children through available funding and exchange of good practices and encourages the Member States to increase resettlement to Europe for children in need of international protection and ensure that appropriate family tracing and reintegration measures are put in place to meet the needs of children who will be returned to their country of origin.

The Communication provides major impetus to the improvement of the child protection system in Serbia, especially in view of the fact that many of the measures it sets out are already prescribed by Serbian law, but that there have been problems in applying them. Updated EASO guidance on age assessment with good practice examples will undoubtedly prove beneficial to Serbia, which still lacks a legal framework governing this area. Furthermore, the networking and exchange of experience within the future European guardianship network will also benefit Serbia, which only made its first steps in designing durable solutions for unaccompanied migrant children in 2016.