RIGHT TO ASYLUM IN THE REPUBLIC OF SERBIA PERIODIC REPORT FOR JULY - OCTOBER 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 ten 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. In the first ten month 2017. godine 5153 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]

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. The Asylum Office granted refugee status in three cases and and ten ubsidiary protection in 2017 (from January until 31 Ocotober).

The proposal of the new Asylum Act, entered into the parliamentary procedure on 12 September 2017, but it was not adopted yet. His adoption is expected by the end of this year. The draft of the new Foreigners Act has not yet entered the procedure, nor is it known whether it will enter by the end of 2017.

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

The Council of Europe on 13 October 2017 published a Report[2] by the Special Representative of the Secretary General of the Council of Europe on Migration and Refugees, Ambassador Tomáš Boček, following his visit to Serbia and Hungary. The Special Representative visited the Serbian Asylum Centres in Krnjača and Bogovađa, and the Reception Centres in Adaševci, Principovac, Subotica, Sombor and Obrenovac, where he had met with representatives of state authorities and non-government organisations. In Hungary, the visit focused on the transit zones of Röszke and Tompa, during which consultations were held with representatives of the local asylum authority, representatives of the UNHCR and the non-government sector.

In the introductory part of the report, Ambassador Boček commended the Serbian authorities for their enormous efforts to provide the migrants and refugees with accommodation, food and other forms of support. He, however, said that access to the asylum procedure remained problematic, noting that, at times, migrants and refugees were pushed back from Serbia to its neighbouring countries without being given a real opportunity to claim asylum and that, in many cases, migrants and refugees lacked basic information about the possibility of obtaining international protection in Serbia and encountered difficulties in contacting the asylum authorities. He said that most of those currently in Serbia had been certified by the competent authorities as having expressed an intention to seek asylum but had not lodged asylum applications. "Consequently, the large majority of migrants and refugees are stranded in Serbia for several months without an official legal status, waiting for an opportunity to cross the borders with Hungary or Croatia. The flow of migration from Serbia to Hungary is managed through a waiting list which is compiled in an informal and non-transparent way, raising suspicion that corruption could be involved."

As migrants and refugee's prospects of reaching their destination countries are uncertain they might, over the course of their stay in Serbia, decide to seek international protection in Serbia. Therefore, it is important that they are provided with information on asylum in a systematic way and that they have real opportunities to access the asylum procedure. A strategic approach is also needed to address the precarious legal status of those who cannot be expelled from Serbia although they have not lodged asylum applications and to identify sustainable solutions regarding their social and economic rights.

[2] Council of Europe, *Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Serbia and two transit zones in Hungary*, 12-16 June 2017, SG/Inf(2017)33, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168075e9b2

During 2016, the UN High Commissioner for Human Rights dispatched monitoring missions to transit and border sites in Greece, Italy, Bulgaria, the former Yugoslav Republic of Macedonia and France in order to examine and identify the human rights challenges and protection gaps faced by migrants in these locations.[3] This report summarises the common concerns the monitoring teams identified throughout the countries visited, as well as the recommendations provided to the countries visited and to the European Union to better protect the human rights of migrants. The report concludes that States are too often relying on an emergency and security-focused approach to migration governance over one that is migrantcentred and human rights-based. Restrictive laws and policies, criminalisation of irregular entry, the increased use of detention practices or swift return procedures without robust due process guarantees, have far-reaching impacts on migrants' safety, health and ultimately, their dignity. Responses to migration, which are insufficiently sensitive to the human rights protection needs of the migrants seeking safety and dignity in Europe, lead to a number of protection gaps, in particular for unaccompanied and separated children. The limited avenues available to identify migrants in situations of vulnerability, as well as a scarcity of referral mechanisms, qualified staff or access to services, all indicated inadequate attention and commitment to ensuring the human rights of migrants. The teams found that the lack of adherence to minimum standards under international human rights law of particular migration measures invariably had a knock-on effect, leading to negative impacts on a range of migrants' human rights.

The States visited and the European Union institutions should therefore take urgent action in implementing their human rights obligations towards migrants and the recommendations resulting from the missions provide practical guidance on how to achieve this.

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 ten months of the year 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

[3] United Nation Human Rights Office of the High Commissioner, *Report on the human rights of migrants at Europe's borders*, 2017. Avaliable at: http://www.ohchr.org/Documents/Issues/Migration/InSearchofDignity-OHCHR_Report_HR_Migrants_at_Europes_Borders.pdf

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.

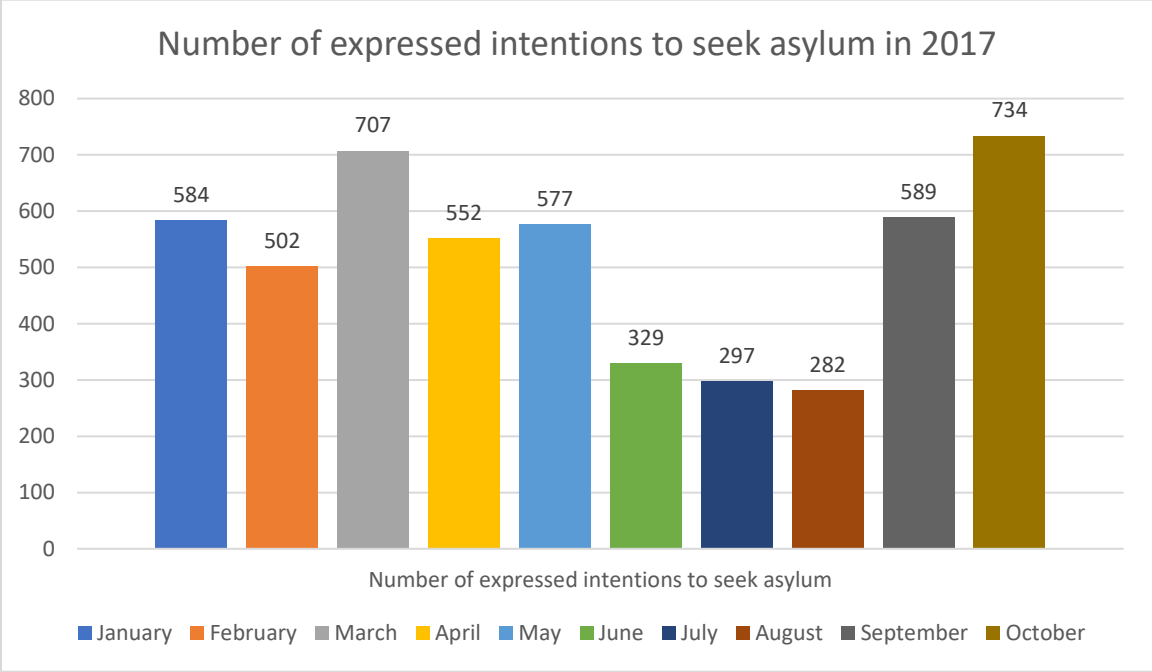
Access to the Asylum Procedure

Under Articles 22 and 23 of the Asylum Law,[4] 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*[5] and *Afis*.[6] 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.[7]

A total of 5,153 foreigners expressed the intention to seek asylum in the Republic of Serbia in the 1 January-31 October 2017 period; 4,303 were men and 850 were women. The intention to seek asylum was expressed by 2.292 children, 136 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, June – 329, July – 297, August – 282, September – 589 and October – 734. Most of them expressed the intention to seek asylum in the regional police administrations (4,713) and at border crossings (202). According to MOI data, 48 foreigners expressed the intention to seek asylum at the Belgrade Nikola Tesla

[4] *Sl. glasnik RS*, 109/07.
[5] 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.
[6] *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.
[7] Article 49, Foreigners Law, *Sl. glasnik* RS, 97/08.

Airport and such an intention was expressed by 24 residents of the Shelter for Foreigners and 153 residents of the Preševo Reception Centre in the first ten months of the year.



Since the Law on Asylum came into force 624.054 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; 5.153 in the first ten months of 2017 .

Most of the foreigners who expressed the intention to seek asylum in Serbia in the first ten months of 2017 were nationals of Afghanistan (2,249), Iraq (1,006), Pakistan (828), Syria (347) and Iran (219). Such an intention was also expressed by nationals of Algeria (73), Bangladesh (51), Libya (43), Somalia (41), Palestine (36), Morocco (35), Sri Lanka (29) India (28), Cuba (20), Egypt (18), Ghana and Nigeria (13), Russian Federation and Turkey (10), Lebanon (9), China (8), Eritrea, Cameroon and Chamber 6), Bulgaria, FYR Macedonia, Nepal and Ukraine (5), Tunisia (4), DR Congo and South Africa (3), Vietnam, Western Sahara and Yemen (two from each) and Armenia, Belgium, Bosnia and Herzegovina, Czech Republic, Ethiopia, Greece, Guinea, Jordan, Mongolia, Romania, the United States, Sudan and Tajikistan (one from each).

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. 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.[8] 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

[8] *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

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 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).

BELGRADE "NIKOLA TESLA" AIRPORT

In September and October 2017, the BCHR was contacted by a number of foreigners detained in the Belgrade Nikola Tesla Airport transit zone; most of them were Iranian nationals and had flown to Serbia from Turkey. They claimed they had expressed the intention to seek asylum in Serbia to the officers of the Belgrade Airport Border Police Station (hereinafter: BPS), but that they had not been issued certificates of intent to seek asylum and that they feared they would be forcibly returned to Turkey. Some of them said they had already been detained in the transit zone for two or three days. BCHR responded to all the calls: it contacted the BPS officers, requesting access to the migrants, who had requested its legal aid in the asylum procedure, asking them to issue them certificates of intent to seek asylum and enable them access to the asylum procedure in accordance with the Asylum Act. The BPS officers ultimately issued the certificates of intent to most of the migrants, on whose behalf the BCHR had intervened, although they had initially claimed that most of the migrants in issue had not expressed the intention to seek asylum

in the Republic of Serbia and denied the BCHR access to the transit zone to extend them legal aid in person, wherefore it had been forced to advise them by phone.

The case of Chinese national, M.A., who was detained in the Airport transit zone from 30 September to 3 October 2017, warrants attention. The authorities notified the Chinese Embassy in Serbia of his detention in the transit zone without his consent. M.A. refused to talk to the Embassy officials, due to his well-founded fear of persecution and threats he had been subjected to in China. The Serbian authorities violated the principle of confidentiality of asylum seekers (Article 18 of the Asylum Act) by notifying the embassy of M.A.'s country of origin of his detention and asking them to come to the transit zone to talk to him. M.A. told the BCHR that he had expressed the intention to seek asylum to the BPS officers, but that they had refused to issue him a certificate of intent and let him access the asylum procedure. After numerous telephone conversations between the BCHR and the BPS officers, M.A. was issued a certificate of intent to seek asylum and transferred to the Shelter for Foreigners.

On 3 October 2017, the National Preventive Mechanism (NPM) visited the Airport BPS[9], to monitor its fulfilment of the recommendations it had issued earlier. In its report on the visit, the NPM concluded that:

(1) The Ministry of Interior had not prepared the factsheet on the rights of foreigners denied entry into Serbia;

(2) There were problems in communication between foreigners not speaking English and the BPS officers, which may result in the failure of the latter to understand the intention of the former to seek asylum in Serbia;

(3) The poor hygiene conditions and ventilation in the room where the foreigners denied entry into Serbia are detained, their lack of access to fresh air, the fact that they are allowed to smoke in the room, and the overcrowding may amount to inhuman treatment;

(4) Some of the migrants interviewed by the NPM team said that they had expressed the intention to seek asylum in Serbia but had not received any feedback on the next steps and that they feared for their lives because the

[9] Protector of Citizens, Report on the Visit to the Belgrade Airport "Nikola Tesla" Airport Border Police Station, National Preventive Mechanism, Monitoring of the Fulfilment of NPM Recommendations, Ref. No. 37664 of 13 October 2017, available in Serbian at: http://www.npm.rs/attachments/article/734/37664.pdf

BPS officers had told them they would be deported to Turkey, where they risked *refoulement* to Iran.

The NPM also said that 498 foreign nationals had been denied entry into Serbia in the first half of 2017. Most of them were nationals of Turkey (112), Tunis (56) and Mongolia (54).[10]

PRACTICE OF CANCELLATION OF STAYE IN SERBIA

None of the rulings denying entry the BCHR had access to were reasoned; nor did they specify which countries the foreigners were to be deported to unless they left Serbia of their own free will within the specified time. Furthermore, the first-instance authority failed to specify in its rulings whether it had examined any circumstances indicating that there was a risk that the migrants in issue would be subjected to treatment in breach of Articles 2 and 3 of the European Convention on Human Rights. The second-instance authority – the MOI Administration for Foreigners – did not note the above-mentioned shortcomings in its rulings on the appeals of the first-instance rulings.

BCHR submitted requests for an indication of interim measures to the European Court of Human Rights with regard to two cases of migrants denied entry into Serbia, with a view to preventing their removal from the country. The Court indicated the measures in both cases, notifying the Serbian Government that they should not be removed from the country because of the risk of irreparable damage to their rights.

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.

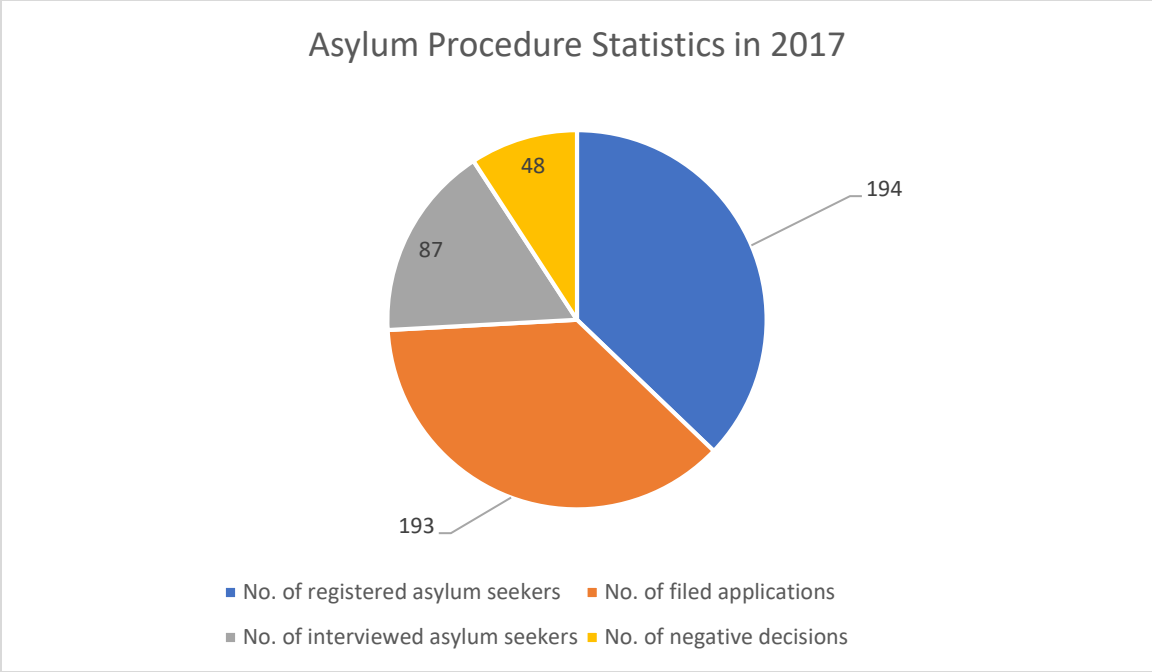
It may generally be concluded that foreigners, with regard to whom the MOI has already taken official measures, have had major difficulties accessing the asylum procedure, particularly

[10] Identical data were forwarded by the Ministry of Internal Affairs to the BCHR in response to its request for access to information of public importance, Memo GZ 06-182/17, of 3 August 2017.

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.

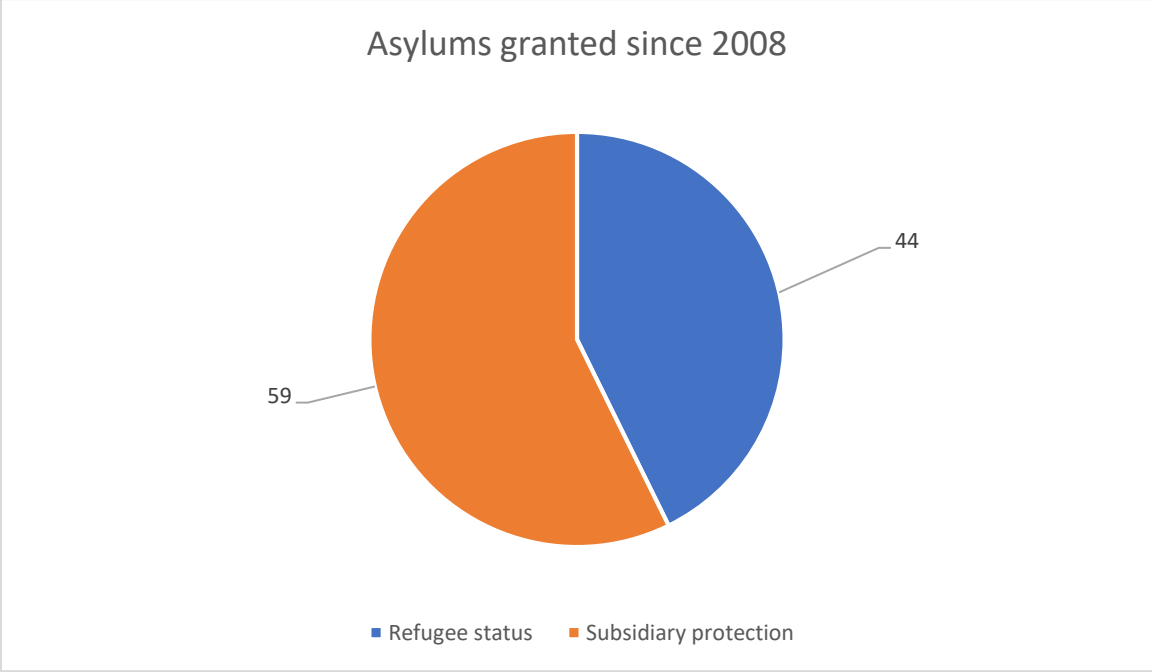
First-Instance Procedure

Although 5,153 foreigners expressed the intention to seek asylum in the 1 January-31 October 2017 period, the Asylum Office registered 194 foreigners and only 193 foreigners applied for asylum in that period. The Office interviewed 87 asylum seekers in the reporting period and asylum was granted to three persons and subsidiary protection to 10 persons; it dismissed seven applications concerning seven foreigners on the merits and dismissed 36 applications regarding 41 foreigners; it discontinued reviews of 96 applications regarding 138 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).



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. In July, it received seven applications and conducted one interview. In August, it received six applications and conducted 14 interviews. In September, it received two applications and conducted seven interviews. In October, it received 27 applications and conducted nine interviews. The Office performed the actions only in the Asylum Centres in Krnjača, Bogovađa, Banja Koviljaca the Preševo Reception Centre, border police stations Belgrade,Shelter for refgniers Padisnka Skela and district prison in Subotica. That means that asylum seekers staying at other centres were practically denied the opportunity to file their asylum applications.

The Asylum Office granted asylum to Burundi national R.G. in September 2017.[11] In this case, the Asylum Office granted asylum *sur place*, as the asylum seeker has been living in Serbia since 2011 and had not feared persecution at the time he had left his country of origin; namely, the developments precluding his return to Burundi occurred and intensified since his departure. The Asylum Office established that he came from a mixed marriage, wherefore he risked discrimination and persecution if he returned to his country of origin; it also took into account the political situation in Burundi, since the members of his family opposed President Pierre Nkurunziza's regime. In its reasoning, the Asylum Office also took into account reports by a number of UN bodies (UN Security Council, UN Secretary General, UN Committee against Torture and the Human Rights Commission), as well as the reports of other international and non-government organisations, documenting numerous human rights violations in Burundi, including violations of political freedoms and the freedom of movement, forced disappearances, et al.



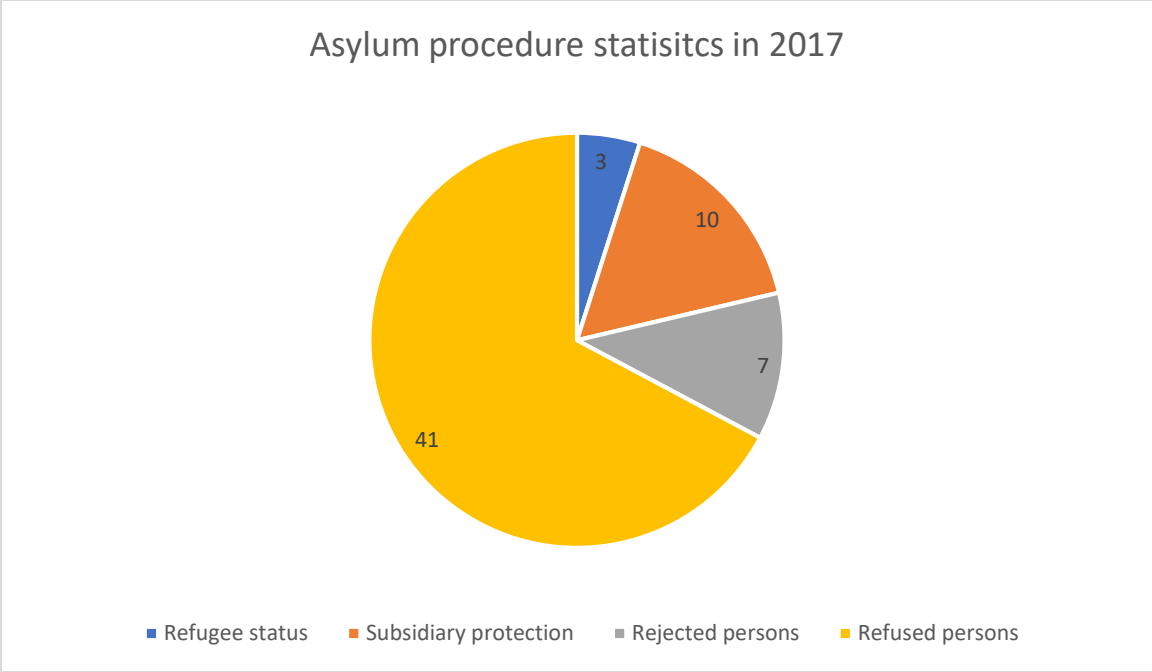
[11] Asylum Office Ruling No. 26-2434/16 of 20 September 2017.

The other decisions BCHR had access to in the reporting period [12] lead to the conclusion that the Asylum Office continued basing 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.[13] The Asylum Office has thus 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.[14] It also said it did not seek such guarantees because such an obligation was not laid down in the Asylum Act.

[12] BCHR lawyers analysed the Asylum Office decisions in cases in which they have been extending legal aid to and representing asylum seekers. The Asylum Office dismissed most of the asylum applications in the reporting period. This Report analyses in detail only some of them.

[13] 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 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.

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



The Asylum Office dismissed the asylum application of Iraqi national G.N[15] pursuant to Article 33(1(1)) of the Asylum Law, under which the Asylum Office shall dismiss an asylum application in the event it establishes that the asylum seeker could have received effective protection in another part of his/her country of origin, unless s/he cannot be reasonably expected to do so in view of all the circumstances. The Asylum Office specified in its decision that the asylum seeker could have sought protection in another part of Iraq, and referred to the views of an NGO and the authorities of a state, albeit without naming its sources. The Asylum Office decided to dismiss the application explaining that refugees could safely return to as much as 82% of Iraqi territory despite UNHCR's position that States should not deny international protection to persons from Iraq on the basis of the applicability of an internal flight or relocation alternative.[16]

As opposed to most of its prior decisions dismissing asylum applications, the Asylum Office in September 2017 delivered a ruling *rejecting the asylum application on the merits*,[17] pursuant to Articles 29(1) and 30(2(2)) of the Asylum Act. It explained that the applicant's submissions in the application contradicted the claims he had made during the oral hearing. It further held that the asylum seeker had not proven persecution by the authorities of his country of origin, especially persecution motivated by racial, ethnic, religious, linguistic, political or any other kind

[15] Asylum Office Ruling No. 26-474/17 of 22 September 2017.
[16] UN High Commissioner for Refugees (UNHCR), *UNHCR Position on Returns to Iraq*, 14 November 2016.
[17] Asylum Office Ruling No. 26-218/17 of 15.8.2017.

of intolerance. The Office specified in its ruling that it had consulted the topical reports on human rights and fundamental freedoms in the applicant's country of origin prepared by international and other relevant organisations, which said that it was one of the rare countries in Africa that had taken specific steps to fulfil its international legal obligations in the fields of human rights and refugee protection.

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

Second-Instance Procedure

In the reporting period, Asylum Commission rendered several decisions on cases in which the asylum seekers were represented by BCHR layers. 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[18] dismissing the appeal of a three-member family from Cuba denied asylum, because they had come to Serbia from Montenegro. It upheld the Asylum Office's view that Montenegro was on the list of safe third countries and that the asylum seekers had failed to prove that it was not safe for them during the procedure.

The Asylum Commission issued a ruling in the case of underage Cameroon national F.A,[19] upholding her appeal, voiding the Asylum Office ruling dismissing her application and remitting the case back to the first-instance authority. The Asylum Office had dismissed the asylum application under Article 33(1(6)) since the asylum seeker had spent time in Turkey–and Italy before arriving in Serbia. The Office had held that Italy, an EU Member State and signatory of numerous international instruments, could be considered a safe third country. The Asylum Commission said that, although it could be concluded that Italy was a safe third country, not all the circumstances had been ascertained in this case. It held that the Asylum Office had failed to clarify all the facts leading to such a conclusion and its application of Article 33(1(6)) of the Asylum Act. The Commission was in particular guided by the fact that the applicant was an underage unaccompanied girl, who belonged to the group of particularly vulnerable persons under relevant international and national law.

The Asylum Commission issued a ruling[20] rejecting the appeal filed by a national of the Russian Federation K.O. and his underage son K.I.[21] The Asylum Commission had already twice remitted the case back to the Asylum Office, which again failed to act on its instructions to review all the evidence submitted by the applicant and issued rulings dismissing K.O's and K.I.'s applications. The third-time round, however, the Commission upheld the Asylum Office's ruling. The Asylum Commission held that the Asylum Office was right to dismiss the asylum applications under Article 33(1(4)) of the Asylum Act/Law. The Office-Commission, however, erred in the findings of fact and failed to establish all the facts. Furthermore, in its ruling upheld by the Asylum Commission, the Asylum Office selectively quoted the report of the European Asylum Support Office entitled *EASO Country of Origin Report: Russian Federation – State Actors of Protection,* ignoring excerpts in that report regarding the relevant facts in this case. It, inter alia,

[18] Asylum Commission Ruling No. Až 16-1/17 od 5.7. 2017.
[19] Asylum Commission Ruling No. Až-19-1/17 of 19 July 2017.
[20] Asylum Commission Ruling 03/08/4 No. 26-4916/17 of 30 August 2017.
[21] More about this case in *Right to Asylum in the Republic of Serbia, Periodic Report for April-June 2017*, BCHR, pp. 14-15, available at BCHR's website specialising in asylum/refugee law: www.azil.rs

ignored the one on widespread corruption in all branches and at all levels of the Russian government, the one on the wrongful prosecution of persons who have been critical of the authorities et al. It also ignored other relevant reports on the human rights situation in Russia, such as the one by Human Rights Watch, *Online and On All Fronts*, documenting the prosecution of individuals posting criticisms of the Russian government on the social media. It also ignored the case-law of the European Court of Human Rights, which delivered as many as 640 judments finding Russia in violation of Article 3 of the ECHR in the 2012-2017 period. These statistics lead to the reasonable conclusion that there is definitely a risk that the prohibition of ill-treatment - an *ius cogens* (i.e. non-derogable) norm - will be breached in the event these asylum seekers are refouled to the Russian Federation.

The Asylum Commission's decision is a bad practice example, especially in view of the fact that that very Commission had voided the Asylum Office's rulings and remitted the case back to it twice and that the Asylum Office had ignored its instructions. Namely, in this case, the second-instance authority conformed its practice to that of the first-instance authority, which, for its part, has been rendering decisions based on incomplete and erroneous findings of fact and has been incorrectly applying the Asylum Act. The Asylum Commission should play the role of corrector and serve as an authority and provide the Asylum Office with proper guidance in its instructions, facilitating the adoption of comprehensive, well-reasoned and lawful decisions, which was not the case here.

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.[22] 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

[22] Article 23, Administrative Disputes Law, *Sl. glasnik RS, 111/09.*

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.

The Administrative Court adopted two important, *positive decisions*, in September 2017.[23] Both of them regarded Cuban nationals, who had left their country of origin in fear of persecution on grounds of their sexual orientation. The Administrative Court delivered judgments voiding the Asylum Commission's decisions rejecting the appeals and remitted the cases. The Administrative Court, however, failed to hold oral hearings, considering them unnecessary although the asylum seekers had earlier submitted during the oral hearings before the Asylum Office-Commission that they had left their country of origin of fear of persecution on grounds of sexual orientation and submitted evidence thereof. Furthermore, the Administrative Court failed to rule on the merits of the dispute of full jurisdiction, as it is entitled to under Article 43(1) of the Administrative Disputes Act. Nevetheless, in the reasonings of its judgments voiding the Asylum Commission's rulings, the Administrative Court said that, while enforcing its judgments, the administrative authorities should *ex officio* establish all the facts and circumstances in keeping with the Court's view on the plaintiffs' membership of a specific group of people and again rule on their asylum applications.

BCHR lawyers, who had represented the plaintiffs, had submitted during the prior asylum procedure evidence corroborating the claims about the situation in Cuba, both in the appeals and in the lawsuits, as well as information and evidence of the inadequacy of Montenegro as a safe third country (since the asylum seekers had come to Serbia from Montenegro), which was also noted by the Administrative Court in its judgments. The Administrative Court, inter alia, said that the Decision on Safe Countries of Origin and Safe Third Countries[24] could not be applied automatically and that the authorities had to peruse UNHCR reports on the states' compliance with the Convention Relating to the Status of Refugees, as well as NGO reports on the protection of refugee rights in those states. The Administrative Court thus went a step further than the Constitutional Court,[25] which is of the view that the asylum authorities are to take into

[23] Administrative Court Judgments 3 U.11867/17 and 3 U 11868/17 of 7 September 2017.
[24] Serbian Government Decision on Safe Countries of Origin and Safe Third Countries, *Sl. glasnik RS*, 67/07.
[25] Serbian Constitutional Court decisions Už-1286/2012 of 29 March 2012 and Už-5331/2012 of 24 December 2012.

consideration UNHCR reports during their enforcement of the Asylum Act, i.e. are not to dismiss asylum applications filed by individuals coming from countries designated as safe third countries in the Government Decision in the event these countries enforce their asylum procedures in contravention of the Refugee Convention. In the two judgments, the Administrative Court also said that reports on the protection of refugee rights in the relevant states had to be taken into account by the asylum authorities.

The Administrative Court's reasoning clearly indicates to the lower-instance asylum authorities that they also have to have regard of NGOs' reports, i.e. that they cannot automatically apply the safe third country concept but have to establish all the facts of relevance to their decision on the legal matter, with a view to gaining a realistic picture of the situation in those countries and the status of individuals seeking international protection.

Integration of Refugees in Serbia

Major integration-related changes occurred in the reporting period, notably in education: refugee and migrant children of primary school age have started attending Serbian state schools. In May 2017, the Ministry of Education, Science and Technological Development (hereinafter: Education Ministry) adopted Professional Guidance on the Inclusion of Asylum-Seeking Pupils in the Education System.[26] The staff of school administrations charged with the regions, in which the Asylum and Reception Centres are situated, were prepared, schools were given instructions to develop plans of support to the new pupils and the Professional Guidance Implementation Monitoring Working Group was established.[27] Around 400 teachers in nine school administrations with jurisdiction over schools near Asylum and Reception Centres were trained in August and September.[28] The school administrations were assigned mentors – external associates, tasked with monitoring the process and issuing regular progress reports.

[26] Education of Refugee and Asylum-Seeking Children in Serbia, available in Serbian at: http://www.mpn.gov.rs/wp-content/uploads/2017/06/Obrazovanje-ucenika-izbeglica-trazilaca-azila-u-Srbiji.pdf.
[27] Monthly Report on the Human Rights of Migrants, Refugees and Asylum Seekers in Serbia and Macedonia, Ana and Vlade Divac Foundation, August 2017.
[28] *Ibid.*

The integration of refugee and migrant children in the primary school system began in September. The 150 or so children, who attended class during the previous school-year, continued their education in those schools.[29] The Assistant Minister charged with preschool and primary education said that the system was prepared for the enrolment of 645 children of primary school age in the 17 municipalities with Asylum and Reception Centres.[30] The circa 400 teachers in nine school administrations with jurisdiction over schools near Asylum and Reception Centres were trained to work with this group of children and received thorough instructions on the implementation of the Professional Guidance.[31] The entire process is implemented by the Education Ministry, in partnership with the Commissariat for Refugees and Migration and the Education Policy Centre, and with the support of the UNICEF Belgrade Office, which helped raise the teachers' capacity and provide the children with school supplies.[32] The Ministry has also drawn up a list of migrant and refugee children of secondary school age, who, according to plans, will be exempted from taking the nationwide entrance exam, but will only be able to enrol in secondary schools with room after the other children's enrolment. The Ministry explained that secondary education was not mandatory.[33]

In view of the fact that the number of refugee and migrant children covered by the formal education system had been much smaller (around 150 such children attended school in the 2016/2017 school-year) and that the schools had not been extended systemic support, the Education Ministry and its partners started tailoring the education system to the new needs in mid-2017, to ensure Serbia's compliance with its obligations under the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[34], as well as national law. In his Report, the Special Representative of the Secretary General of the Council of Europe on Migration and Refugees, Ambassador Tomáš Boček said that the Education Ministry was making sincere efforts to have as many migrant and

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[29] *Ibid.*
[30] Backpacks and School Supplies for Migrant Children and Socially Vulnerable Children, Education of Minorities and Human and Minority Rights in Education, Ministry of Education, Science and Technological Development, September 2017, available in Serbian at: http://www.mpn.gov.rs/rancevi-i-skolski-priborom-deci-migrantima-i-deci-iz-socijalno-ugrozenih-porodica/.
[31] Monthly Report on the Human Rights of Migrants, Refugees and Asylum Seekers in Serbia and Macedonia, Ana and Vlade Divac Foundation, August 2017.
[32] Backpacks and School Supplies for Migrant Children and Socially Vulnerable Children, Education of Minorities and Human and Minority Rights in Education, Ministry of Education, Science and Technological Development, September 2017, available in Serbian at: http://www.mpn.gov.rs/rancevi-i-skolski-priborom-deci-migrantima-i-deci-iz-socijalno-ugrozenih-porodica/.
[33] Monthly Report on the Human Rights of Migrants, Refugees and Asylum Seekers in Serbia and Macedonia, Ana and Vlade Divac Foundation, August 2017.
[34] Republic of Serbia has sign Convetion 11.11.2004, but to this date has not ratified.

refugee children as possible enrolled in Serbian schools and noted the challenges, such as the children's lack of knowledge of Serbian and lack of teachers (around 350 need to be recruited). He also noted other issues limiting the children's enrolment in local schools, such as lack of information about their vaccination status, as well as practical difficulties in making arrangements for children to receive their meals outside the Asylum or Reception Centres where they were living, but underlined that these practical difficulties could be easily overcome and that the right to education should not be denied on the basis of such considerations.[35]

Boček said that he had not been made aware of any projects or initiatives to facilitate the adults' learning of the Serbian language or any other education programmes and that it was necessary to develop linguistic integration programmes for adult migrants in view of the fact that refugees and migrants continued to stay in Serbia for long periods of time. He issued the following recommendations based on the information he had collected. He called:

- on the competent Serbian authorities to ensure compulsory education for every child in Asylum and Reception Centres, in accordance with Serbian legislation;
- for support to the Serbian authorities in developing effective policies on linguistic support for adult migrants, in line with Council of Europe standards, while making full use of Council of Europe resources; and,
- for support to the Serbian authorities in developing sustainable and comprehensive integration policies. [36]

In general, the integration of refugee and migrant children in Serbian schools was not accompanied by major problems or community protests in the reporting period, except in Šid, where the parents explained they had nothing against migrant children going to school but that they were concerned whether the quality of education of their children would be maintained by the already overburdened school system in their community. The problem was resolved after the competent school administration discussed it with the parents and the municipal authorities.

[35] Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Serbia and two transit zones in Hungary, June 2017, Council of Europe. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168075e9b2.
[36] *Ibid.*